

Racing Industry Reforms

Advising Agency	Department of Internal Affairs
Decision sought	Agree to transition the racing industry through the creation of a new transitional agency, decision on two new betting products, repeal betting levy, move provision for funds disbursement to Regulations (from primary legislation).
Proposing Minister	Minister for Racing

Summary: Problem and Proposed Approach

Problem Definition: What problem or opportunity does this proposal seek to address? Why is Government intervention required?

The racing industry is in a state of decline. In April 2018 the Minister for Racing advised Cabinet of his concerns regarding the racing industry. An industry expert, John Messara, was commissioned to assess the racing industry and his report (the Messara Report) discusses many of the reasons for its decline. Some of these are due to competitive inroads into the betting industry from offshore. Some are about the governance structure needing to change to better focus the industry on its commercial activities. Others are due to the large number of racing venues and the challenge of upgrading facilities.

The Government has committed to reform the industry to address these issues. It is in the government’s interests to revitalise the racing industry. This will lead to increased employment opportunities, support for provincial communities and an increase in the industry’s contribution to the economy. This in turn will increase the Crown’s taxation revenue from the industry. Not proceeding with the reforms risks that these gains won’t be realised. The racing industry’s importance to the New Zealand economy, including provincial communities and businesses, reinforces the case for Government intervention.

The Department of Internal Affairs (the Department) considers that the magnitude of the changes being sought in the reforms exceeds the current mandate of the NZRB. Previous reforms did not take all the necessary steps required to get the racing industry back on track. Government intervention is still needed as driving industry reforms without a legislative mandate risks an insufficient level of intervention, as has happened in the past.

There is already a regulatory system in place for the racing industry to provide for: organisation of the racing industry; for races on which betting may be conducted; and the distribution of the proceeds from this betting to both the racing and sports codes. However, the current structural arrangements are not allowing the necessary changes required to revitalise the industry.

In 2015, the then Minister for Racing established a Working Group to review the issue of offshore gambling and its impact on the racing industry's income. It acknowledged that there was significant leakage of betting revenue offshore. Regulated restrictions on what products the TAB can offer has meant New Zealand customers move to offshore providers where they are offered a broader range of products with more favourable margins. This leads to risks for New Zealand bettors accessing betting provider services in an unregulated offshore market. Risks include an increased risk of harm from gambling, alongside a loss to New Zealand through, for example, reduced tax and levy income and reduced returns to communities.

The proposals in this Regulatory Impact Assessment (RIA) are the first step of a programme to reform the racing industry structure, governance, operations and funding in order to make the industry sustainable and help it continue its significant contribution to the New Zealand economy. Further legislative and non-legislative changes will be made in the last quarter of 2019 in order to fully implement the package of measures proposed by Messara.

The ideal future state would meet the following principles which are intended to guide the reform of the racing industry:

1. **Overall reforms:** the reforms are focused on delivering a New Zealand racing industry that is financially sustainable, internationally recognised and competitive.
2. **Production cycle:** New Zealand has a reputation both domestically and internationally, for delivering high performing animals that attract investment.
3. **Industry governance:** Industry governance is future-focused and is known for making the tough decisions for the industry.
4. **Consumer:** The New Zealand betting provider is internationally competitive and both meets and exceeds the expectations and requirements of the New Zealand consumer.

Proposed Approach: How will Government intervention work to bring about the desired change? How is this the best option?

This RIA focuses on setting up the governance infrastructure required to transition the racing industry to financial viability while maintaining business-as-usual (BAU) functions in the interim. To do this, the transition-focused proposal adds a range of specific expertise and change management requirements that have been identified as integral to drive the reform of the racing industry. The main elements of the new industry operating structure and its governance arrangements will be the subject of a subsequent RIA and a second Racing Amendment Bill in late-2019.

This RIA also sets out proposals that will provide additional revenue streams. These include extending what sports NZRB can provide bets on, the proposal to cease the betting levy and charging offshore providers for: their use of New Zealand racing and sports information; and accepting bets from New Zealanders. These proposals will go some way to re-establishing the industry's financial sustainability.

Section B: Summary Impacts: Benefits and costs

Who are the main expected beneficiaries and what is the nature of the expected benefit?

The main beneficiaries will be racing industry stakeholders including the three racing code bodies, racing clubs, industry participants – horse owners, trainers, jockeys and breeders.

National Sporting Organisations (NSO) and more broadly, domestic sports in New Zealand, will also benefit from the changes. The industry will benefit financially over time, as stakeholders receive the benefits of better outcomes through improved governance structures, increased efficiencies and new revenue streams. This will have a flow-on effect to industries that service the racing industry. This is a stepped change. The full benefits of the reforms will not be realised through the initial changes covered by this RIA.

The repeal of the betting levy (also known as the Totalisator Duty) will return \$57 million in additional revenue to the racing industry over four years, but this will be at a direct cost to the Crown. However, tax revenue will increase if the financial health of the industry improves. These results rely on the implementation of a package of initiatives which will be delivered by two Amendment Bills of which this is the first. The Department is not able to quantify the likely returns at this time.

Moving the formulas for distributing funding to the racing codes and sports codes from primary to secondary legislation (regulations) will enable timelier changes in response to changing market conditions.

Where do costs fall?

The racing industry will continue to be responsible for meeting the costs associated with BAU racing, betting, gaming, broadcasting, integrity, animal welfare and other related functions.

It is anticipated that the Crown will make a one-off contribution as part of Budget 2019 of approximately \$3.5 million towards the cost of the proposed transitional change management. The Department estimates that the overall cost of changes, which will mainly be borne by the industry, will significantly exceed this amount. The anticipated contribution from Government recognises the magnitude of the transition being sought and the additional costs that this will bring.

The repeal of the betting levy will see the Government forego forecast revenue \$57 million over four years, which is intended to be redistributed back to the racing industry and NSOs.

What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?

The Messara Report has set out the need for the industry to pivot towards a stronger focus on its economic and financial viability. The changes being sought through the reform of the racing industry will require bold and deliberate decision-making – with a clear focus on outcomes. The risk is that if the hard decisions are not taken, this will undermine the impact of the entire suite of proposals in place to support the reforms. Care needs to be taken to make this shift while still acknowledging the community underpinning of the industry. To help mitigate this risk, deliberate choices have been made about the qualities required by members of the entity charged with transitioning the racing industry.

A key risk is the loss of specialist capability needed to maintain BAU (for example, those with knowledge of the IT systems that deliver TABs online services, commercial expertise etc.). This RIA contains extensive material on proposed transitional processes and entities which are designed to ensure that the new industry entities are established on a sustainable basis.

Another key risk relates to timing. Without urgent action, there is a risk the industry will continue to decline until it is no longer viable. The timeframes for delivery are short. This puts some constraints on the depth of analysis that the Department has been able to apply to the proposals in this RIA. The risk associated with the speed of the reforms are mitigated somewhat by the fact that this is a multi-stage process, which will provide further opportunities to address any issues identified as part of the ongoing policy work. Many of the proposals contained in this RIA have been already been considered as part of a previous Bill, which further mitigates risk.

The transition process involves managing BAU and change functions. In addition, these processes need to align with the development and implementation of a second amendment Bill (Bill No. 2) which is critical to the design and governance of the proposed Wagering New Zealand (TAB NZ), Codes and Racing New Zealand.

The Department does not support a POC charge in Bill No. 1. In an earlier RIS, the Department outlined various policy issues that could inhibit the successful implementation of a POC charge. Some of the Department's issues with the introduction of a POC charge at that time included: significant variation in the projections of possible revenue, the level of voluntary compliance by offshore operators, the cost of administration, the perception of double taxation (with GST), and difficulty for offshore operators in complying with requirements.

The Department recommends a POC charge be considered in the context of the review of online gambling under the Internal Affairs portfolio. This would look at how this charge might best fit in New Zealand's overall system for regulating (and minimising the harm of) gambling. The online gambling work being carried out by the Department will look at the full range of options to better regulate the online environment without disrupting the New Zealand gambling framework. An option that improves the regulation of online gambling is likely to benefit the racing industry as well.

Other risks relate to extending the range of sports that NZRB can provide betting products on which could contribute to an increase in harmful gambling. The Department considers that this risk is managed through bringing the new product under the existing regulatory regime, which includes a focus on harm minimisation.

The Minister for Racing has sought approval for funding through Budget 2019 to enable a Crown contribution to cover the loss of funds collected through the betting levy. This will be confirmed through Budget 2019 processes. Repealing the betting levy could be seen as inequitable. Other New Zealand gambling entities may lobby for a repeal of, or a reduction in, their levy rate. Inland Revenue has forecast revenue from gaming duties (excluding the betting levy) at approximately \$224–\$239 million per annum.

Repealing the betting levy will help the racing industry's ongoing viability by providing an additional source of revenue. Racing has a high cost bloodstock (breeding and training) element but bloodstock generates overseas income and international prestige.

Identify any significant incompatibility with the Government’s ‘Expectations for the design of regulatory systems’.

The proposals are consistent with the Government’s ‘Expectations for the design of regulatory systems’.

Section C: Evidence certainty and quality assurance

Agency rating of evidence certainty?

The Department has taken the evidence and the propositions from the Messara Report as being a well-informed expert view on the problems of the industry and its solutions. The Ministerial Advisory Committee for Racing (the MAC)¹ is further examining the Messara Report’s proposals to restore the racing industry to sustainability and viability. The MAC’s initial findings are set out in the Interim Report on the Review of the New Zealand Racing Industry. The Department has also used evidence that formed the basis of the discharged Racing Amendment Bill 2017.

Quality Assurance Review Agency

Department of Internal Affairs

Quality Assurance Assessment

Partially Meets

Reviewer Comments and Recommendations

The RIA clearly articulates the constraints and limitations, including timing constraints, under which the analysis has been completed. However, these constraints lead to drawbacks in the analysis, particularly regarding the costs and financial implications as well as detailed consideration of the evidence and propositions relied on in the Messara report. There has been a consideration amount of consultation, both through earlier legislative processes and on the Messara report, but the specific package of reforms proposed here has not been directly consulted on.

¹ The MAC consists of members with a broad range of relevant expertise, including of the racing industry. It was established by the Minister for Racing in January 2019.

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Executive Summary

Australian expert Mr Messara's review of the New Zealand racing industry made numerous recommendations for reform. The Government has accepted the need for reform, noting that change is required to enable the racing industry to thrive. The New Zealand Labour Party and New Zealand First Coalition Agreement included a commitment to support the racing industry.

This RIA sets out proposals requiring legislative change which are designed to provide the foundation for the broad reforms that Messara recommends. Specifically, this RIA relates to the set of proposals covered in a suite of Cabinet Papers titled:

- Review of Racing: Paper 1 – Overview of the New Zealand Racing Industry and identified issues;
- Review of Racing: Paper 2 - Policy decisions on transitional governance to drive change; and
- Review of Racing: Paper 3 – Proposals for immediately increasing revenue for the racing industry.

What proposals this RIA covers

A Transitional Governance Arrangements

This section provides options on 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 a successfully revitalised and sustainable industry.

The Department recommends that the organisational form, governance and accountability arrangements for a Racing Industry Transitional Agency (RITA) be:

- a body corporate established under the Racing Act 2003 (the Racing Act), the same organisational form as the NZRB currently;
- a Board of up to seven members appointed by the Minister for Racing; and
- close accountability to the Minister for Racing through measures including ministerial input and guidance on the development of its strategy and initiatives and an ability for the Minister for Racing to require frequent progress updates.

B Changes to legislative settings for distribution of racing and sports funds

The Messara Report recommended changes to the distribution of the NZRB's profits. The distribution formulas set out how the NZRB returns money to the racing codes and makes payments to NSOs. This section provides information on removing the formulas from the Racing Act and in to regulation to enable the formulas to be changed more quickly in the future. Moving the sports distribution formula was a consideration of the discharged Bill.

The Department recommends removing both the distribution formulas from the Racing Act (primary legislation) in to regulation (secondary legislation). The formulas themselves are not the subject of these changes which will be reported on separately in due course.

C Betting on new sport products

This section sets out information from the previous RIA for a proposal that extends which sports the NZRB can provide betting products on . This proposal was included in the discharged Bill.

The Department recommends enabling, in primary legislation, the NZRB to offer betting products on sports not represented by a qualifying domestic NSO, where there is an agreement in place with Sport New Zealand (Sport NZ) as a way to increase revenue for the racing industry.

D Offshore charges: Information Use Charge and Point of Consumption Charge

The Messara Report recommended the introduction of two offshore charges: an information use charge; and a point of consumption charge. This section sets out information from the previous RIA on the two proposed offshore charges that formed part of the discharged Bill.

The Minister for Racing is seeking agreement to introduce both an information use charge and a point of consumption charge. The Department recommends introducing an information use charge. The Minister of Internal Affairs has directed an online gambling review, which is currently underway. The Department does not recommend the introduction of a point of consumption charge. Rather it would be more appropriately considered as part of the online gambling review.

E Repealing the betting levy paid by NZRB

The Messara Report recommended repealing the betting levy (totalisator duty) currently paid by the NZRB to the Crown under s4 of the Gaming Duties Act 1971, with the subsequent revenue instead being retained by the racing industry and distributed to the codes, as a way to provide funds to start the revitalisation of the racing industry.

The Department's preferred approach is to repeal the betting levy and specify in regulations a new distribution formula for this additional funding. The Department agrees with the MAC that a proportion of this distribution should go to sports codes.

The Department considers there is a risk that New Zealand's other gambling providers who pay duties will see this as inequitable and will argue that the racing industry should not be given special treatment.

How to read this report

This RIA addresses a range of proposals that aim to address the decline of the racing industry. To avoid duplication, the problem definition and objectives (Section 2.1) and information on current relevant regulatory systems (Section 2.2) are set out up front and are not duplicated for each proposal. The remainder of Section 2, options identification (Section

3), Impact Analysis (Section 4) and Conclusions (Section 5) are completed separately for each set of proposals.

The sections on Implementation and operation (Section 6) and Monitoring, evaluation and review (Section 7) then cover all the proposals together.

Some of the proposals set out in this paper were part of the now withdrawn Racing Amendment Bill 2017 and are being reinstated. For these proposals, analysis from the previous RIA has been summarised, rather than recreated and extraneous sections of this RIA template removed.

A subsequent suite of Cabinet Papers is planned for the second half of 2019. These will seek policy decisions to be implemented through a subsequent Racing Amendment Bill, which will be the subject of another RIA.

List of abbreviations

Organisation, Legislation, Titles, Name, etc:	Shortened language to be used:
Betting Information Usage Charge (aka Racefields)	"information use charge"
Department of Internal Affairs	"The Department"
Gambling Act 2003	"The Gambling Act"
Greyhound Racing New Zealand	"GRNZ"
Harness Racing New Zealand	"HRNZ"
John Messara's "Review of the New Zealand Racing Industry"	"The Messara Report"
Judicial Control Authority	"JCA"
Ministerial Advisory Committee for Racing	"The MAC"
Minister for Racing, Rt Honourable Winston Peters	"The Minister for Racing"
National sporting organisation	"NSO"
New Zealand Racing Board	"NZRB"
New Zealand Thoroughbred Racing	"NZTR"
Offshore betting charges	"offshore charges"
Offshore gambling operators	"offshore operators"
Offshore Racing and Sports Betting Group	"The Working Group"
Point of Consumption tax	"POC"
The Betting Levy (totalisator duty)	"The Betting Levy"
Racing Act 2003	"The Racing Act"
Racing Amendment Bill (withdrawn)	"The discharged Bill"
Racing Amendment Bill 2019 No. 1	"Bill No. 1"
Racing Amendment Bill 2019 No. 2	"Bill No. 2"
Racing Integrity Unit	"RIU"
Racing New Zealand	"RNZ"
Sport New Zealand	"Sport NZ"
Wagering New Zealand	"WNZ"

Impact Statement: Racing Industry Reforms

Section 1: General information

Purpose

The Department is responsible for the analysis and advice set out in this RIA except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of seeking final decisions by Cabinet to proceed with policy changes that will begin the process of reforming the New Zealand racing industry. This RIA analyses options for the governance model required to support the racing industry through a transition to a more viable and sustainable industry. This includes proposals to increase its revenue and enable more timely changes to distribution formulas.

Key Limitations or Constraints on Analysis

Scoping of the problem

The Minister for Racing commissioned Mr Messara, an Australian expert on the racing industry, to conduct an independent, high-level assessment of the state of the New Zealand racing industry and provide recommendations, supported by research, for reform. Mr Messara delivered his report, *Review of the New Zealand Racing Industry* (the Messara Report) in August 2018. Mr Messara concluded that the racing industry had declined over time and was now at a tipping point. He considered that, without intervention, the industry was at risk of suffering irreparable damage. He provided a set of recommendations he considered would address the decline.

This RIA uses the information and evidence set out in the Messara Report to identify the key areas of improvement needed to revitalise the industry. Mr Messara has expert knowledge of the thoroughbred racing industry in Australia and has a demonstrated ability to investigate and report on areas for improvement based on his work with New South Wales (NSW) racing. His information and advice, as well as his recommendations, are being examined further by the MAC.

Public consultation on the recommendations of the Messara Report

Consultation was carried out on the recommendations of the Messara Report in September and October 2018, with over 1,700 submissions received. The majority of submitters feeding back on the proposed reforms agreed that fundamental sector reform is required.

Ministerial Advisory Committee for Racing

In December 2018, the MAC was established with the purpose of supporting the reform of the racing industry by analysing and prioritising, and providing a plan to operationalise, those recommendations that the Messara Report identified as the main drivers required for successful industry reform.

The MAC was created as a precursor to the establishment of RITA (subject to future Government decisions on the recommendations of the Messara Report). The MAC is made

up of individuals with extensive knowledge of the racing industry and its drivers and influences in the New Zealand context, alongside a range of commercial, governance, legal and financial expertise. In terms of the Messara recommendations regarding what is needed to support the industry to become sustainable and viable, the Department has recognised the expertise that Mr Messara and the MAC bring. The Department has also applied analysis to the options presented.

The MAC is gathering and analysing a wide range of inputs and carrying out engagement, investigation, and analysis about the effects of specific proposals and provided initial advice to the Minister for Racing on 28 February 2019. This advice, set out in the Interim Report on the Review of the New Zealand Racing Industry, and MAC's views on the specific proposals contained in this RIA, have been taken into account. A final report will be delivered by the MAC in June 2019.

Previous consideration of proposals

Some of the provisions set out in this RIA were contained in a discharged Bill, the withdrawn Racing Amendment Bill 2017. The Bill acknowledged there was significant leakage of betting revenue offshore and set out a series of proposals to address this. This Bill was withdrawn to enable the Messara Report's recommendations to be included in the Government's wider consideration of the structure of the racing industry and decisions on any possible future legislative change.

The Minister for Racing noted that officials would consider the matters included in the discharged Bill as part of wider consideration of the reforms.

The Department did not consider it necessary to reanalyse the proposals included from the discharged Bill. A summary of previous considerations, consultation feedback and final proposals are included. Where it is available, updated information and evidence has been included.

The previous RIS are available through the links below for reference:

1. [Regulatory Impact Statement: Offshore Racing and Sports Betting \(2017\) - DIA](#)
2. [Regulatory Impact Statement: Commission payments made by the NZRB to National Sports Organisations \(2017\) - Sport New Zealand](#)

Before the previous Bill was discharged, it was considered at Select Committee and submissions were received. Where relevant, the Department has drawn on these submissions.

Limitation on options under consideration

Analysis of options limited to the recommendations of the Messara report

The options analysis is limited to consideration of the recommendations of the Messara report, and pragmatic alternatives that may achieve the outcomes sought.

Whilst the Messara Report identifies the components that make up a sustainable future state, it is not explicit about what is required to get there. The Department has provided options for managing the industry through the transition to the future state.

Quality of data and evidence

The Department has taken the evidence and the propositions from the Messara Report as being a well-informed expert view on the problems of the industry and its solutions. The Department has not independently verified the evidence and propositions due to time constraints. That information has been subject to further due diligence and examination by New Zealand industry experts, through the MAC, which has also examined the proposals and the propositions that Messara makes about how to restore the racing industry to sustainability and viability. Where relevant, the Department has also used evidence that formed the basis of proposals in the discharged Racing Amendment Bill 2017.

Scope of this RIA

This RIA covers proposals that form the Racing Amendment Bill No. 1 (Bill No. 1). These enable the creation of a transitional agency that will carry out change management and BAU racing functions, alongside some of the recommendations from the Messara Report. Other recommendations in the Messara Report which require legislative change are expected to be addressed later in 2019. They will be covered in a separate RIA. These are expected to be implemented through Racing Amendment Bill No. 2 (Bill No. 2). Together, these two Bills, and non-legislative changes, will bring about the intended reforms.

Limited understanding of financial implications

At this time, the Department is unable to quantify the broader monetised benefits of the changes being proposed in this RIA. The final form of the racing industry will be set out in Bill No. 2 and this should enable the Department to provide more certainty around the likely monetised and non-monetised benefits.

Timing

Given the current state of the racing industry and the need for urgent change, the Minister for Racing has set a tight timeframe to achieve the reforms. This puts some constraints on the depth of analysis that the Department has been able to apply to the proposals in this RIA. The risk associated with the speed of the reforms are mitigated somewhat by the fact that this is a multi-stage process, which will provide further opportunities to address any issues identified as part of the ongoing policy work. Many of the proposals contained in this RIA have been already been considered as part of a previous Bill, which further mitigates risk. There are also benefits to moving quickly. Setting up a transitional entity through Bill No. 1 enables the reform of the industry to get underway, which is critical to address the industry's continuing decline.

Responsible Manager (signature and date):

Raj Krishnan

General Manager

Policy Group

Department of Internal Affairs

Section 2: Problem definition and objectives

2.1 What is the context within which action is proposed?

Sections 2.1 and 2.2 provide context and information on the regulatory framework for all the proposals in this RIA.

The Racing Industry

1. The racing industry was responsible for generating more than \$1.6 billion in the 2016/17 year² in value-added contribution to the New Zealand economy. It consists of:
 - The New Zealand Racing Board
 - Breeders and rearers of foals and pups (6,612)
 - Racehorse and greyhound owners and trainers (27,385)
 - The three codes of racing (thoroughbred, harness and greyhound)
 - Racing clubs (117)
 - Jockeys and Drivers (614)
 - Industry staff (12,745)
 - Volunteers (10,810)³
 - Racing Integrity Unit
 - Judicial Control Authority.
2. The NZRB, established in 2003 under the Racing Act, has the role of administering all racing and sports wagering in New Zealand via the TAB (the NZRB's betting brand). It has a statutory monopoly in offering racing and sports betting in New Zealand. It makes the majority of its income from race and sports betting, with the proportion of revenue gained from sports betting growing year on year. The majority of profits are distributed back to the three racing codes and some profit is also distributed to selected NSOs.
3. Racing is an industry built on two foundational elements:
 - a strong community focus - much of the infrastructure supporting the industry is governed through community governance arrangements (this includes those who are involved with racing clubs and the upkeep and utilisation of venues, some of which are small and remote); and
 - a commercial focus – the revenue from betting, gaming, publicity and broadcasting of racing and sports events and the breeding and training of animals, which in turn flows through to many involved in these activities.
4. The Department considers that the tension between these two elements could be seen as a significant contributor to industry decline. For example, much of the asset base is community governed and not necessarily effective in driving strong asset management through the overall 'industry balance sheet'. The large number of regional and local facilities require additional maintenance and improvement, which is

² IER (February 2018) *Size and Scope of the New Zealand Racing Industry*. Commissioned by the NZRB.

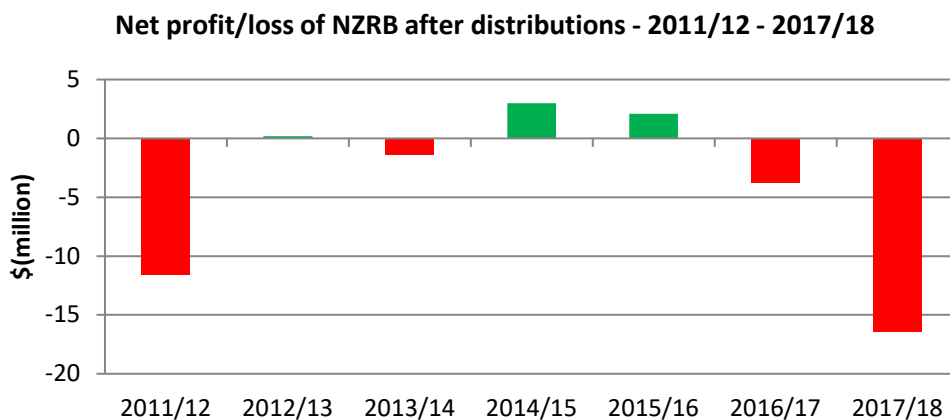
³ All figures listed are from the 2018 *Size and Scope of the New Zealand Racing Industry* Report.

necessarily a cost to the whole industry, which draws on revenue that the industry needs to apply to improving prize money paid.

5. Previous attempts at reform have failed to effectively manage these tensions – including the governance changes made in 2003⁴. For example, in reviews in 1965 and again in 1970 (with the McCarthy Royal Commission on Racing), the number of small clubs in existence in regions led to the conclusion that “the industry’s finances demand a reduction in the spread of money spent on maintenance and improvements on an excessive number of racecourses”⁵. Despite these regular reports, a reduction in the number of racing clubs in New Zealand has been strongly resisted and has not been achieved.

What the data shows

6. Figures from a 2010 NZRB-commissioned report⁶ indicated that racing generated around \$1.6 billion in economic value. This is the same value as reported for the 2016/17 year in the 2018 IER report, reflecting a loss of value in real terms of around 11 percent.
7. After providing for distributions, the NZRB has experienced losses over four of the last seven years, with total losses outweighing costs. The loss in 2017/18 came about as a result of a planned increase in distributions to the racing code. NZRB noted that its strong balance sheet supported this distribution, and expected the balance sheet to grow as a result of future profitability driven by NZRBs strategic initiatives.



8. The NZRB has some characteristics of an industry-owned cooperative (for example, Fonterra) where a focus is on maximising pay-outs to ‘shareholders’ rather than investing in future profitability. Messara argued that the NZRB is not delivering sufficient returns to the racing industry to ensure its ongoing viability.

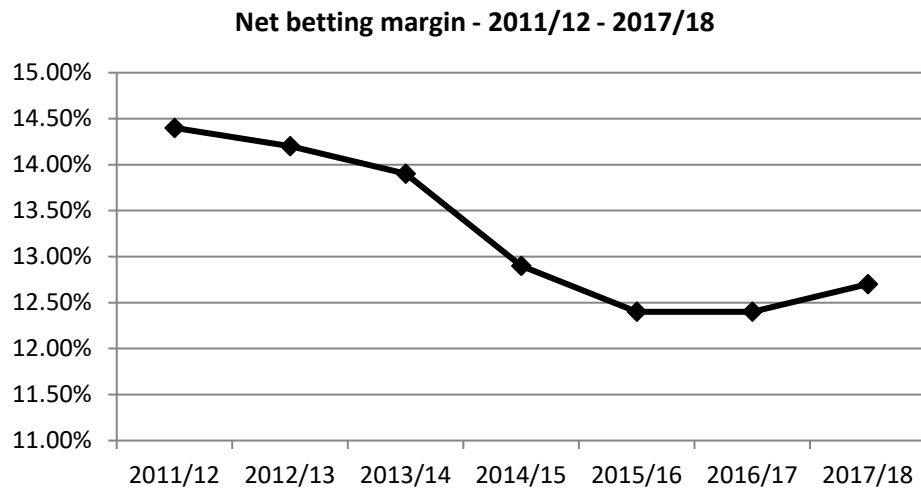
There are flow-on impacts of diminishing returns

⁴ From 2003, the NZRB has had the role of overall industry development as well as TAB operations. Prior to this (between 1971 and 2003) the TAB was a separate entity.

⁵ Quoted in the Messara Report, page 44.

⁶ IER (February 2010) *Size and Scope of the New Zealand Racing Industry*. Commissioned by the NZRB.

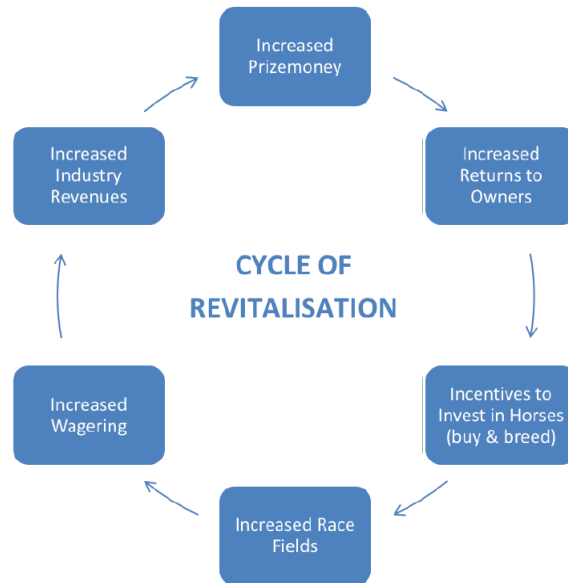
9. Although total revenue has been increasing, betting profit margins reduced from 14.4 percent in 2008/09 to 12.7 percent in 2017/18.



10. The main reason for this has been a shift in customer preferences, away from comparatively high-margin totalisator (tote) betting on races and towards lower margin fixed odds betting on sports events. This declining net betting margin directly impacts how much money can be distributed to the three racing codes and NSOs.

The Messara Report

11. In April 2018, an industry expert, Mr Messara, was commissioned by the Minister for Racing to conduct an independent, high-level assessment of the state of the racing industry and provide recommendations, supported by research, for reform.
12. Mr Messara is an Australian thoroughbred horse breeder and owner, and former Chair of Racing New South Wales (Racing NSW). Racing NSW is the body established to control and regulate the NSW thoroughbred racing industry. While Chair, he led a reform of NSW thoroughbred racing which increased total revenue and prize money. Mr Messara has a good level of knowledge about the New Zealand thoroughbred industry and a broad level of knowledge about the wider racing sector.
13. Mr Messara delivered his report, Review of the New Zealand Racing Industry (the Messara Report), in August 2018. It found that the racing industry was in a state of serious decline. It notes that the decline has occurred over a long period of time with industry confidence now at a tipping point, causing reduced commitment to investment in racing and breeding and the continuing loss of key participants.
14. Mr Messara noted that there are flow-on impacts from reduced revenue. Prize money is low, so returns to owners are low (total returns to New Zealand owners were 22.9% compared to New South Wales owners which were 48.1%) and the industry lacks money for reinvesting. Foal crops are declining (from 5,264 in 1994/95 to 3,448 in 2016/17), which inhibits future race field sizes, leading to less wagering and less revenue to the racing industry. Industry infrastructure, such as racing tracks, is in a poor state.
15. The Messara Report presented a suite of recommendations (attached as Appendix A) that would deliver better governance and economic outcomes for the industry to lead to a cycle of revitalisation, as pictured below:



16. The suite of 17 recommendations fall under four broad areas:

- The NZRB does not have sufficient scale to compete with global wagering operators and its commercial activities should be outsourced;
- New Zealand has too many racing venues, the number should be reduced to free up capital for sector investment;
- Sector governance and financial arrangements need to change to create better decision-making, greater accountability, and financial sustainability; and
- Other initiatives that could increase sector revenues and efficiencies.

17. Public consultation was carried out on the Messara Report’s recommendations between 13 September and 19 October 2018. There was a high level of interest in the consultation, with 1,701 submissions received. The majority of submitters providing feedback on the proposed reforms agreed that fundamental sector reform is required including the industry’s main governance bodies: NZRB, NZTR, HRNZ and GRNZ.

The Ministerial Advisory Committee for Racing

18. In December 2018, the MAC was established by the Minister for Racing. Collectively the members have experience, skills and knowledge about the racing industry as well as extensive commercial and legal experience.
19. The MAC’s role is to set a sense of direction for the intended racing reforms with a particular focus on prioritising and operationalising those recommendations that have been identified as the main drivers required for successful industry reform. To carry out this role, the MAC is gathering and analysing a wide range of inputs and carrying out engagement, investigation, and analysis about the effects of specific proposals. The MAC has provided initial advice to the Minister for Racing, as set out in its interim report. The MAC considers Messara’s recommendations provide a strong framework for taking the racing industry forward.

The risk of taking no action

20. It is in the government's interests to revitalise the racing industry. This will lead to increased employment opportunities, support for provincial communities and an increase in the industry's contribution to the economy. This in turn will increase the Crown's taxation revenue from the industry. Not proceeding with the reforms risks that these gains won't be realised and that the decline of the racing industry will continue unchecked, until it is no longer viable.
21. There is already a regulatory system in place for the racing industry to provide for: organisation of the racing industry; for races on which betting may be conducted; and the distribution of the proceeds from this betting to both the racing and sports codes. However, the current structural arrangements are not allowing the necessary changes required to revitalise the industry.
22. As was noted above, previous reforms have taken place to address the decline of the racing industry but the magnitude of change required to get the racing industry back on track has not taken place. Government intervention is needed because without a legislative mandate for change, there is a risk that the required reforms will again not be implemented in full.

Previous Government consideration of racing industry issues

Racing Amendment Bill 2017

23. The previous Government identified that the racing industry was facing a number of challenges to its ongoing sustainability. In 2015, the then Minister for Racing established a Working Group to review the issue of offshore gambling and its impact on the racing industry's income. The Working Group acknowledged the issue that offshore operators are not required to make any financial contribution to New Zealand racing or sports, or minimise gambling harm.

The impact of offshore operators

24. In common with most other parts of the retail and services sector, in recent years bookmaking has seen an increase in customers using online channels compared with physical premises and telephone services.
25. The working group considered that the existing legislative framework did not enable a level playing field for racing and sports betting. Offshore operators are not constrained by analogous legal restrictions of the Racing Act or the Gambling Act 2003 (the Gambling Act), as the NZRB is, in what gambling products they can offer. This means that offshore operators have a competitive advantage in being able to offer a wider range of betting products. They also do not have the same level of duties, levies and distributions, or the same requirements to consider, such as harm minimisation and distributing funds to local communities, which means that offshore operators are able to offer better odds/margins to bettors than NZRB can.
26. To address these issues, the Working Group recommended:
 - introducing charges that offshore betting operators should pay in relation to bets they take on New Zealand racing and sports events, and from people in New Zealand

- lifting restrictions on the betting products that the NZRB may offer in order that it can compete with equivalent products that are already offered by offshore operators.
27. The Racing Amendment Bill 2017 was introduced 31 July 2017 to bring about the Working Group’s recommendations. It was withdrawn 17 October 2018 by the Minister for Racing. This was to allow for a wider consideration of the structure of the racing industry and decisions on any possible future legislative change, as canvassed by Mr Messara. The Minister noted that officials would consider the matters included in the discharged Bill as part of wider consideration of the reforms.

Objectives guiding the reform of the racing industry

28. The Department worked with MAC to develop guiding principles for the reform of the racing industry. These are:
1. **Overall reforms:** the reforms are focused on delivering a New Zealand Racing Industry that is financially sustainable, internationally recognised and competitive.
 2. **Production cycle:** New Zealand has a reputation both domestically and internationally, for delivering high performing animals that attract investment.
 3. **Industry governance:** Industry governance is future-focused and is known for making the tough decisions for the industry.
 4. **Consumer:** The New Zealand betting provider is internationally competitive and both meet and exceed the expectations and requirements of the New Zealand consumer.
29. This framework was used broadly as a guide for the Department’s analysis of the proposals of this RIA. The Department identified specific criteria for individual proposals to ensure that option analysis, where relevant, is fit for purpose.
30. The specific proposals of this RIA are focused mostly on principle 1 and principle 3 above. This RIA sets out a variety of different mechanisms that are guided by these principles, including improving long-term governance arrangements, simplifying legislative requirements and providing for new revenue streams.

Principle 1: the reforms are focused on delivering a New Zealand Racing Industry that is financially sustainable, internationally recognised and competitive.

31. One of the purposes of the Racing Act is to promote the long-term viability of New Zealand racing. Viability is important, because the racing industry is a significant employer and contributor to the New Zealand economy. For example, there are currently 14,398 full-time equivalent jobs sustained by the New Zealand racing industry. Almost half of these are the direct result of racing industry activity, while the remainder are in industries that produce and supply goods and services to the industry.⁷ The racing industry is particularly important to many rurally-based businesses, as well as a focal point for many provincial communities.

⁷ IER (February 2018)

32. One of the drivers behind the Racing Amendment Bill 2017 and the Messara Report was to address the current inequity between offshore operators and the NZRB and to support a more financially sustainable racing industry.

Principle 3: Industry Governance: Industry governance is future-focused and is known for making the tough decisions for the industry.

33. The Racing industry contains a large number of entities with interests in racing. The Messara Report identified a general concern that there needs to be strengthened governance across many industry participants – and it has a specific reference in Recommendation 3 “Change the composition and qualifications for directors of regulatory agencies”.
34. The entities which exist include the three racing codes, the racing clubs, the wagering body (currently part of NZRB) and the various judicial and integrity bodies. The Messara Report noted concern that many of the appointees to the boards of these entities do not have a sufficient future focus and that those in governance roles are chosen more due to their industry knowledge than due to their management, business or governance skills.
35. It is considered that if the entities have more clearly defined functions and their boards are selected based on a wider range of skills, then the industry will be better positioned to manage its current and future challenges.

2.2 What regulatory system, or systems, are already in place?

36. The racing regulatory system aims to:
- provide effective governance arrangements for the racing industry;
 - provide for betting on the three racing codes (thoroughbred, harness, and greyhound), and other sporting events;
 - promote integrity in the racing industry;
 - provide for the distribution of betting and gaming revenue to the racing codes and sporting organisations;
 - promote the long-term viability of New Zealand racing; and
 - balance the future success and sustainability of the racing sector, with Parliament’s general direction for controlled, responsible and safe gambling in New Zealand (under the Gambling Act).
37. The racing industry and its functions are governed by the following statutes:
- Racing Act
 - Gambling Act
 - Anti-Money Laundering and Countering Financing of Terrorism Amendment Act 2017
 - Animal Welfare Act 1999

The Racing Act

38. The Racing Act is designed to deliver the following statutory purposes:
- provide effective governance arrangements for the racing industry

- facilitate betting on thoroughbred, harness and greyhound races, and other sporting events
 - promote the long-term viability of New Zealand racing
39. The processes, policies, regulations and rules applying to the racing regulatory system relate back to these objectives. An important contributor to the achievement of the systems objectives is bookmaking, which is the main source of income for the racing industry.

The NZRB's role

40. The racing regulatory system is highly devolved to the racing industry. The framework has limited direct central government control and oversight. NZRB has a dual role to promote and enhance the racing industry and as the provider of race and sports betting via its TAB brand. It has a statutory responsibility to develop policies that are conducive to the economic development of the racing industry and the economic well-being of those who derive their livelihoods from racing.

The Gambling Act

41. The Gambling Act has three main principles. These are:
- Communities benefit from the profits of gambling
 - Gambling harm is minimised and the cost of mitigating harm is borne by the industry
 - Gambling is authorised and conducted by trusted and reputable providers.
42. Alongside these principles, it is designed to deliver the following statutory purposes:
- Control the growth of gambling
 - Prevent and minimise harm from gambling, including problem gambling
 - Authorise some gambling and prohibit the rest
 - Facilitate responsible gambling
 - Ensure the integrity and fairness of games
 - Limit opportunities for crime or dishonesty associated with gambling and the conduct of gambling
 - Ensure that money from gambling benefits the community
 - Facilitate community involvement in decisions about the provision of New Zealand racing.
43. Regulatory oversight in this area is critical because gambling can cause harm. Harm from gambling can include (but is not limited to): relationship breakdowns; depression; suicide; reduced work productivity; job loss; bankruptcy; and various types of gambling-related crime including family violence, and crime committed to finance gambling). There are also 'ripple effects' – that is harms can, and often do, extend beyond gamblers to encompass family members, whānau, friends, employers, colleagues and whole communities.
44. The regulatory framework is in place to minimise this harm (particularly that caused by problem gambling) as well as ensure the integrity of games and reduce opportunities for crime and dishonesty. Another important regulatory role is having a framework to support communities to benefit from some of the gambling revenue.

Competing interests of the Racing and Gambling Acts

45. The Gambling Act and Racing Act operate together at the centre of New Zealand's statutory framework for regulating gambling. The Department acknowledges that there are significant but potentially competing objectives in these Acts, one being that the future success and sustainability of the racing sector relies, in the main, on revenue from betting as its main income stream, and the other being Government's general direction for controlled, responsible and safe gambling in New Zealand which is focused on minimising harm from gambling and contributing to communities.
46. There is recognition of the potential for harm from the racing industry's betting activities through, for example, the application of a problem gambling levy that is, and will continue to be, paid. The Department also recognises that gambling harm has a disproportionate impact on Māori communities. The Department considers that the regulatory system takes account of these harm minimisation mechanisms and that the proposal to extend which sports the NZRB can provide betting products on, as contained in this RIA, does not undermine this. This is particularly the case, given that currently products like this already exist in the market (delivered through offshore operators) which means any users moving from offshore operators to the TAB would have protections afforded to them from the regulatory framework.

Agencies involved in the racing regulatory system

47. The Department has policy responsibilities under the racing regulatory system. The Department supports the Racing Portfolio and administers the Racing Act and the Gambling Act. The Department's involvement in the racing regulatory system is largely limited to providing policy advice to the Minister for Racing on related matters. The Department also administers the Racing Safety Development Fund, which provides grant requests to projects that help improve safety in the racing industry and the quality of facilities at racecourses.
48. The Department works with the Ministry of Health which funds and co-ordinates problem gambling harm services.
49. The Ministry of Justice administers the Anti-Money Laundering and Countering Financing of Terrorism Amendment Act (AML/CFT) 2017 which requires the NZRB to have AML/CFT measures in place. The NZRB will need to start complying with the AML/CFT Act from 1 August 2019. The NZRB will need to put AML/CFT measures in place when it: provides accounts to customers for gambling or betting; and carries out cash transactions above a specified threshold. The Department will supervise the NZRB and help it comply with the law and enforce it when needed.
50. Inland Revenue collects the totalisator duty (the betting levy) paid by the NZRB. Revenue from this is forecast to be approximately \$14 million in the 2019/2020 financial year.

A. Transitional Governance Arrangements

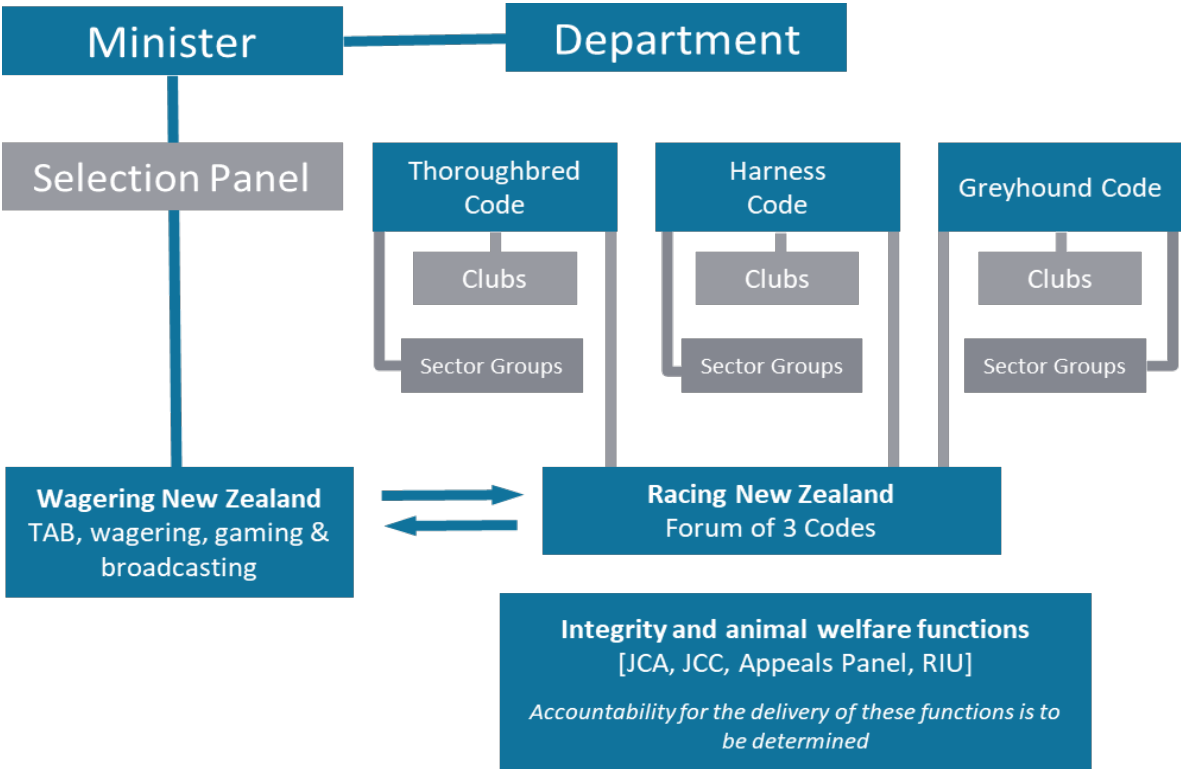
Section 2a: Problem definition and objectives

2.3 What is the policy problem or opportunity?

The Messara Report recommends stronger governance of the racing sector

51. The Messara Report proposes the formation of new entities and changes to existing entities. The proposed future state has organisational forms that bear some similarity to the racing sector before the commencement of the Racing Act in 2003.⁸ Figure 1 outlines the proposed future structure of New Zealand racing.

Figure 1: Proposed future structure for New Zealand racing



52. The key recommendation relating to transitional governance proposed in the Messara Report is recommendation 1: Change the governance structure, so the NZRB becomes Wagering NZ (WNZ) with racing responsibilities devolving to the individual codes. This is intended to sharpen the commercial focus of TAB operations and improve the decision-making and accountability of the codes.

⁸ In particular, The Messara Report recommends that the betting functions of the NZRB are devolved to WNZ – which is similar to the previous structure for the TAB under the Racing Act 1971. The Report also recommends that decision-making relating to industry development and management sits with each of the three racing codes. This is different to the system operating between 1971 and 2003 (when the New Zealand Racing Industry Board had this substantive role, and the TAB was a separate entity) or between 2003 and the present – during which time the NZRB has had the role of overall industry development and also contained the TAB operations.

53. The Department has considered two approaches for implementing this recommendation as follows:
- a. to move directly to the final industry structure, from the current structure; or
 - b. to provide a transitional phase (and a transitional entity) to manage processes and design work to get to the final industry structure.
54. The first approach is to move directly from the current state (in which the NZRB has extensive functions relating to betting, racing industry development, development of the racing calendar, and management of judicial and integrity functions) to the future state. In that future state the NZRB is replaced by WNZ, which takes over the NZRB betting functions, and the residual functions are assigned to other entities. The Department has discounted this approach.
55. The Messara Report identifies some areas where the exact structure of the industry in the future is unclear, including for example, the governance and funding of integrity functions. Therefore the Department needs to identify appropriate entities and governance arrangements to operate effectively. In addition, the current BAU functions of the NZRB and strategic initiatives need to be maintained throughout the transition.
56. Due to the risks of serious failure if a direct transition (option a. above) to the new structure is implemented, the following discussion considers how to manage through the transitional period.

A Racing Industry Transitional Agency is recommended to manage the transition to the future state

57. The nature of the challenges in the transitional period require a bespoke approach to change management, delivered through an organisation whose leadership have skills and experiences that differ from both the NZRB and the future WNZ Board. There is a need for changes to some existing entities and the creation of transitional entities to undertake transition functions. The Department recommends the establishment of a Racing Industry Transitional Agency (RITA) to lead the industry through to the future state. Once formed, the RITA will need to be resourced for its new functions.

Legislative change is required to establish RITA and to assign functions

58. The transitional arrangements needed to support an effective transition of the racing industry are not described in detail by Messara. They have been further developed by the MAC and the Department. The changes will involve the transfer of some functions e.g. from the current NZRB to a transitional entity and ultimately to the racing codes. The proposed Racing Amendment Bill No. 1 will include transitional changes to the NZRB and will facilitate the necessary transfers of functions currently set in the Racing Act.

Transitional functions that need to be performed

59. The transitional functions which will need to be delivered include:
- management of sector change;
 - 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;

- considering transitional issues, such as setting the composition and qualifications for directors of regulatory bodies and ensuring these requirements are implemented;
- the unbundling of the NZRB functions, potentially into a subsidiary, to prepare them for devolution to racing codes;
- managing the transfer of regulatory functions to racing codes; and
- management of BAU racing, judicial and animal welfare functions and continuation of the initiatives to drive revenue growth.

60. RITA would need to have the legislative powers necessary to allow for any appropriate functions or assets to be transferred to it on a temporary basis from anywhere (NZRB, clubs codes, etc.) as necessary, to prepare for transfer to new entities.

2.4 Are there any constraints on the scope for decision making?

61. The Minister for Racing has already identified that direct implementation of the new industry structure is not practicable or desirable. For that reason the focus of this analysis is on the mechanism for managing transition – by the formation of transitional entities.

2.5 What do stakeholders think?

Public submissions on the recommendations of the Messara Report

62. Public consultation was undertaken on the recommendations of the Messara Report in September and October of 2018. 115 submissions were received on Messara Report recommendation one (the creation of WNZ). 46 submissions 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). Issues relating to the racing codes and the future state generally are not being considered in this RIA. It is likely that those issues will be the subject of a future RIA which will support policy decisions to be implemented through Bill No. 2.

63. In relation to transitional arrangements specifically, these were not the focus of a specific recommendation in the Messara Report. However, in his speech on the release of the Messara Report, the Minister stated that he instructed officials to consider a Racing Industry Transition Agency. This would have an instrumental role in operational processes, such as changes in governance structures and racecourse consolidation. Some governance bodies and individuals did provide commentary on this in submissions.

64. 65 submissions provided comments on this proposal. 10 submissions saw the benefit of a separate Agency, however most believed the NZRB and codes should steer the transition, believing a separate Agency would slow down the process. 36 submissions from the Greyhound sector expressed concerns about the potential for a separate agency to have a Thoroughbred focus.

65. New Zealand Thoroughbred Racing (NZTR) strongly supported the principles underpinning the Report. It also strongly supported the establishment of RITA ‘to guide the industry through this period of radical change’ and believed radical reform of the racing industry is urgently required. NZTR stated that the statutory arrangements for the industry are preventing thoroughbred racing from developing and reaching its economic potential.
66. The NZRB did not support the establishment of a separate RITA. NZRB believed it can undertake the transition role through its existing mandate. Harness Racing New Zealand (HRNZ) believed that RITA is not needed, and that its objectives are best achieved through a transitional NZRB.
67. Greyhound Racing New Zealand (GRNZ) believed that the NZRB and the Codes are best placed to manage the transition collaboratively, and that this can be managed within the existing NZRB/Code framework. They noted that the NZRB is due for a major renewal and suggested that new Directors could be used as the vehicle for assisting the industry with change.

The MAC’s Position

68. The MAC is very supportive of the broad proposals in the Messara Report. The MAC strongly supports the proposed separation of WNZ to undertake the betting activities of NZRB. The MAC has been consulted on transition proposals and its comments are:
 - MAC supports the recommendation for the NZRB to be reconstituted into RITA to manage change and BAU;
 - MAC agrees that the RITA requires a specific skill set to manage the change process and handle BAU functions;
 - MAC believes RITA needs to work closely with the Minister for Racing through the transition period, likely to be months rather than years, to safeguard the investment that the Government is making into industry reform.

Section 3a: Options identification

3.1 What options are available to address the problem?

Options for the delivery of transitional functions

69. This section discusses four options for the management of the transitional period and the organisational structures that are recommended to support the transition. The key decision is whether the change management functions should be delivered by the same entity that is also responsible for the delivery of BAU⁹ activities, or whether these are better delivered by separate organisations. Consideration of the respective advantages and disadvantages of these alternatives is discussed below.

⁹ BAU activities are: operation of the betting system, racing industry development, management oversight and funding of judicial and integrity services, animal welfare.

Transition Option A: NZRB reconstituted into Racing Industry Transition Agency (RITA) to manage change and BAU (Preferred Option)

70. Under Option A the NZRB would 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 change management of the transition to the future state. RITA would receive additional resources to enable it to perform the change management function. This is set out in figure 2, below.

Figure 2: Transition Option A: NZRB reconstituted into RITA to manage change and BAU

Functions	Status Quo ➔	Transition (A) ➔	Future
Change management	N/A	RITA	N/A
BAU Betting	NZRB	RITA	WNZ
BAU Racing		RITA	Codes + RNZ
BAU Integrity		RITA	
Residual functions	N/A	N/A	TBC

71. 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:
- betting and related activity can be delivered by WNZ;
 - certain racing and integrity functions can be delivered by racing codes and potentially RNZ; and
 - 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.
72. During the transition period, RITA would undertake all these functions, so that WNZ is fully operational on its commencement date. As part of the unbundling of its functions, RITA would have the option of setting up the assets and personnel which will ultimately constitute WNZ into a specific operational division, or a subsidiary company, to better facilitate its transfer into the eventual WNZ structure. Bill No. 1 is intended to clarify the powers that RITA has to do this.

Transition Option B: RITA manages change while a Transitional Racing Board (TRB) manages BAU

73. Under Option B, RITA would be established as a new organisation to undertake the change management functions in Section 2.3, and drive the implementation of the Messara Report changes. These may include, for example, assisting racing codes to prepare for receipt of devolved functions. At the end of the transitional phase RITA might be dissolved, or continue for a further period to deliver any residual functions before they transfer and become part of the racing codes, RNZ, or WNZ. This is shown in Figure 3.

Figure 3: Transition Option B: RITA manages change while a TRB manages BAU

Functions	Status Quo ➤	Transition (B) ➤	Future
Change management	N/A	RITA	N/A
BAU Betting	NZRB	TRB	WNZ
BAU Racing			Codes + RNZ
BAU Integrity			
Residual functions	N/A	N/A	TBC

74. Under Option B, the NZRB would be reconstituted into a TRB. The TRB would be solely responsible for managing the former NZRB’s BAU activities and, in parallel RITA would be established to undertake the change management functions and oversee system change. The TRB would be subordinate to RITA.

Transition Option C: NZRB manages transition (discounted)

75. This option would provide for the existing NZRB to continue in its current organisational form, and undertake existing functions as well as oversight of processes leading up to the new structure.
76. The option has been discounted as there is a high risk that the NZRB would be unable to make the changes in organisational focus and mission necessary to undertake both BAU and change management functions on a strictly time-limited basis. Additionally, given the magnitude of the proposed reforms, this approach would likely require greater accountability which would need to be legislated for.

Transition Option D: TRB manages BAU while the Department manages change (discounted)

77. This option is similar to Option B above and has some of the same issues. The use of two entities to manage the transition is not recommended. In addition, the Department does not possess the necessary racing expertise and sector relationships to manage this transition and may be conflicted in its roles to provide advice to the Minister, and as a gambling regulator.

Discussion of viable options

78. The two viable options have been compared using the following criteria (also listed in Section 3.2):
- drives successful transition to the future state, while managing risks;
 - maintains continuity of BAU racing, betting, gaming and broadcasting functions and maintenance of capability in the management of the racing sector;
 - supports industry sustainability by leading appropriate strategic initiatives to drive revenue growth, including:
 - where appropriate continuing or amending those current NZRB strategic initiatives that will drive revenue growth;
 - continued assessment as to whether betting should be outsourced; and
 - development of, and preparation for, the implementation of offshore betting charges;
 - helps position industry governance and management to pursue more effective decision-making in the future state;

- develops a fit-for-purpose organisational structure for WNZ, tailored for its function as a racing, betting, gaming and broadcasting operator;
 - minimises transitional costs for industry and government; and
 - 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 (RNZ) and others.
79. These objectives have been considered in developing the proposal to reconstitute the NZRB into RITA. The impact analysis table in Section 4a considers the options under these criteria.
80. Overall Option A has lower costs, lower risks and a greater likelihood of achieving the reform objectives in the comparatively short transition period. It requires that RITA is able to balance its focus on both BAU and change management functions, including the transition to WNZ and devolution of other functions. Option B would require the establishment of a new entity, including the set-up of its board and employment of staff. All these elements would take time, involve additional costs, and have risks.
81. On balance the Department recommends Option A: RITA manages change and BAU. This is also the MAC's preferred option.

Costs

82. Under both viable options it is proposed that the racing industry continues to meet its costs in the delivery of the BAU racing, betting, gaming, broadcasting, integrity, animal welfare and other industry related functions.
83. Exact establishment costs will be determined by decisions on the specific role and structure of the proposed transition agency. The costs for the single entity proposed in Option A would be less than the two entities required under Option B. The Department anticipates the Crown will make a one-off contribution of approximately \$3.5 million to the cost of the proposed transitional change management through Budget 2019.

Organisational form options for RITA (preferred transition option)

84. The organisational form options for RITA are:
- a body corporate established by legislation (like the current NZRB);
 - a Crown entity; or
 - a non-statutory entity such as a trust, company or incorporated society.
85. A key factor when considering the most appropriate organisational form for RITA is the extent to which the organisational form will enable the Minister to provide significant input and guidance to RITA. While the Messara Report and the MAC envisage that in the future state an industry organisation such as WNZ should be accountable primarily to the racing industry, the most appropriate arrangements for the transitional period are quite different. Given the Crown's substantial investment in the development of the reform proposals, the passage of legislation and the industry's historic inability to improve its situation without government intervention, we consider that the success of the transition requires strong accountability of RITA to the Minister.

86. A second important consideration is the ease with which the transitional arrangements can be implemented, so that the focus of the transition can be on the devolution of functions, not the establishment of RITA.
87. Table 1 provides an analysis of the organisational form options for RITA against the following criteria, that the form:
- supports appropriate accountability to the Crown for a successful transition;
 - allows for the provision of significant ministerial input and guidance to RITA; and
 - is feasible to be created in the timeframe, with minimal additional costs.

Table 1: Analysis of organisational form options for RITA

Criteria	Body corporate ¹⁰	Crown entity ¹¹	Non-statutory entity
Supports appropriate accountability to the Crown for a successful transition	Yes. Mechanisms available for this include, board appointments, Terms of Reference (ToR), Letters of Expectation (LoE), Statement of Intent (SOI), business planning and regular reporting. Can be more closely held by the Crown than the other organisational form options. (+ + +)	Mechanisms available for this include, board appointments, LoE, SOI, business planning and regular reporting. Crown agents must give effect to government policy when directed by the responsible Minister. Autonomous Crown entities must only have 'regard' to a ministerial direction. (+)	At arm's length from the Crown. Potentially difficult for the Crown to influence. This form would be more suitable for an entity that is to be accountable to the racing industry. (- -)
Allows for the provision of significant Ministerial input and guidance to RITA	Ministerial control can be enhanced compared to the NZRB; by legislation that provides for board appointments, ToR, LoE, SOI, business planning and regular reporting. (+ + +)	Ministerial appointment of board members. Responsible Minister manages the entity's performance and accountability to Parliament. (+)	Ministerial appointment of board members. No or minimal accountability to Parliament or the Minister. (- -)
Is feasible to be created in the timeframe, with minimal additional costs	Straightforward to establish by reconstituting the NZRB with new governance and accountability arrangements. (+ + +)	Requires the creation of a new organisation and the transfer to it of assets and responsibilities. This is comparatively complex. The provisions of the Crown Entities Act 2004 would apply to RITA. (- - -)	Requires the creation of a new organisation and the transfer to it of assets and responsibilities. This is comparatively complex. (- - -)
Key	+++ strong option, ++ good option, + adequate option, - - - very poor option, - - weak option, - option has negative elements		

¹⁰ Body corporate with perpetual succession established under the Racing Act or amended Racing Act (the same form as the NZRB presently)

¹¹ Crown agent or autonomous Crown entity

88. On balance the recommended option is that the organisational form for RITA should be a body corporate established under the amended Racing Act. This organisational form is recommended because with appropriate legislative provisions RITA can be closely accountable to the Minister for a successful transition. The establishment of RITA will be the most straightforward of all the options. Establishing RITA as a Crown entity or non-statutory entity would risk the focus of the transition being on the process of establishment of RITA itself, rather than the management of change, and would impose avoidable costs.

Governance of RITA

89. Given the close and direct involvement of the Minister in processes (including legislative processes) necessary to reform the racing industry, there is a strong argument in favour of the Minister appointing the RITA board.
90. The RITA board will govern both the BAU functions of the present NZRB and the management of change necessary for the successful transition to the new arrangements proposed by the Messara Report. A RITA board of up to seven members is recommended, with the majority having skillsets related to change and the remainder with skills related to BAU. To carry out these roles effectively, the governance of RITA should have competencies that include:
- industry expertise to effectively manage racing functions;
 - commercial and/or legal expertise to manage devolution of assets, functions and responsibilities;
 - knowledge and experience of sport at a national level; and
 - change management expertise to oversee the transition process.
91. Due to the critical need for the board to ensure effective transition while also delivering BAU elements, we consider that management, change management and business skills are essential selection criteria for RITA board members.
92. Members of RITA need to 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, the creation of specific code positions on the RITA board is not recommended. This is a change from the current mechanism for appointments to the NZRB, for which the chairs of each racing code (or their delegates) are appointed, and a panel, which also includes them, has the task of selecting the independent board members, subject to the decision of the Minister.

Accountability

93. The RITA board should be closely accountable to the Minister. This can be achieved through measures including significant ministerial input and guidance to the development of RITA's strategy and initiatives.
94. In addition to the current NZRB's annual planning and reporting requirements, the Minister 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 according to the circumstances, considering RITA's performance, to balance compliance costs to the entity with the Minister's information

needs. It is proposed that RITA would be required to make periodic progress updates to the racing industry. Provision is recommended for the use of other accountability arrangements as required, including some of the following as appropriate:

- Ministerial appointment of board members;
- Ministerial Letters of Expectation;
- approval of a Statement of Intent;
- approval of RITA's business plan, and/or transition plan;
- the ability for the Minister to require the provision of more frequent progress updates, to ensure that the transition is proceeding according to plans; and
- that the entity be required to make periodic progress updates to the racing industry.

95. Ultimately, it is considered that having a Terms of Reference (ToR) for the proposed option is a degree of additional oversight that is more appropriate for standalone options for a RITA that is separate from an entity managing BAU. As this option was not pursued, the option for a ToR to be specified has not been included.

3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?

Objectives for transition

96. It is important that the approach to transition should achieve these objectives:

- enables successful transition to the future state, including risk management;
- prevents interruption to BAU racing, betting, gaming and broadcasting functions and maintenance of capability in the management of the racing sector;
- continues with initiatives that will drive revenue growth, including:
 - the continuation of current NZRB strategic initiatives that will drive revenue growth;
 - continued preparation for consideration of whether betting should be outsourced; and
 - development of, and preparation for, the implementation of offshore betting charges;
- helps position industry governance and management to pursue more effective decision-making in the future state;
- develops a fit-for-purpose organisational structure for WNZ, tailored for its function as a racing, betting, gaming and broadcasting operator. This will necessarily be different from the existing NZRB structure;
- minimises transitional costs for industry and government; and
- 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.

97. We have applied these objectives in the assessment of options for transition. Monetary and financial costs are considered in the assessment of which type of entity might be best for the proposed transitional entity.

3.3 What other options have been ruled out of scope, or not considered, and why?

98. As noted earlier, Options C and D have been discounted – for the reasons given in paragraphs 75 and 77.

Section 4a: Impact Analysis

The two viable options have been compared against having no transitional entity using the criteria set out above.

Table 2: Option comparison

Options	No transitional entity – direct transition to new structure (discounted)	A: NZRB reconstituted into RITA to manage change and BAU (preferred)	B: RITA manages change while TRB manages BAU
Successful transition including risk management	Low probability that new structure would be implemented effectively. (- -)	A single vertically integrated entity manages both BAU and change management functions. (+ +) Ability to create subsidiaries to facilitate devolution. (+ +)	The use of separate entities to manage BAU and change management risks misaligned incentives that may impede progress. Unlike Option A, Option B would require specific legislative authority for RITA to be able to direct the delivery of BAU functions by the TRB during the transition. (--)
BAU maintenance	Some risks of failure in immediate transition to new WNZ. (- -)	This option utilises the existing staff to manage BAU, but under governance that must also consider transitional priorities. (+ +)	This option utilises a dedicated entity and existing staff to manage BAU. (+ + +)
Continuation of growth initiatives	Significant risk that growth initiatives would be unsupported. (-)	This option utilises the existing staff to manage the growth initiatives, but under governance that must also consider transitional priorities. (+)	This option utilises a dedicated entity and existing staff to manage the growth initiatives. (+)
Ability to develop suitable organisational structure for WNZ	Limited ability to manage formation of elements for operationally effective new organisation. (- -)	Refreshed governance will need to ensure that the WNZ structure does not simply replicate the NZRB. Knowledge from former NZRB staff may assist in the development of a workable solution. (+ +)	A separate transitional entity will develop the WNZ structure independently. This risks a structure that may not be feasible, if developed without wider input. (+)
Minimises transitional costs	Minimises direct financial costs. (+ +)	This option utilises the existing entity so minimises set-up and back office costs. New governance appointments will be required. (+ + +)	This option requires the establishment of a new entity with associated legal etc. costs and duplication of back office costs. New governance appointments will be required. (+)

Options	No transitional entity – direct transition to new structure (discounted)	A: NZRB reconstituted into RITA to manage change and BAU (preferred)	B: RITA manages change while TRB manages BAU
Provides for the management of any residual functions after the transition	Risk that residual functions are unsupported and assets (people and systems) are difficult to access or reform. (-)	The transitional board could continue until residual functions have been transferred. (+)	The transitional entity could continue until residual functions have been transferred. (+)
Key	+++ strong option, ++ good option, + adequate option, - - - very poor option, - -weak option, – option has negative elements		

Section 5a: Conclusions

5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

- 99. Overall Option A has lower costs, lower risks and a greater likelihood of achieving the reform objectives in the comparatively short transition period. It requires that the transitional entity RITA is able to balance its focus on both BAU and change management functions, including the transition to WNZ and devolution of other functions. Option B would require the establishment of a new entity, including the set-up of its board and employment of staff. All these elements would take time, involve additional costs, and have risks.
- 100. On balance the Department recommends Option A: RITA manages change and BAU. This is also the MAC’s preferred option.
- 101. Having decided on the best transitional arrangement, we have undertaken investigation of what form the entity should take, and what its governance and accountability mechanisms should be.

Organisational form options for RITA (option A)

- 102. The organisational form options for RITA are a body corporate established by legislation (like the current NZRB), a Crown entity, or a non-statutory entity such as a trust, company or incorporated society.
- 103. A body corporate established through an amendment to the Racing Act is the recommended organisational form of RITA. This organisational form is recommended because with appropriate legislative provisions RITA can be closely accountable to the Minister for a successful transition. It is also relatively straight forward to reconstitute the NZRB as RITA. All these elements do involve considerable transaction and resource costs. However, these are necessary to achieve an improved outcome.

5.2 Summary table of costs and benefits of the preferred approach

Affected parties (identify)	Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	Impact \$m present value, for monetised impacts; high, medium or low for non-monetised impacts	Evidence certainty (High, medium or low)
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Additional costs of proposed approach, compared to taking no action or leaving NZRB to manage forward			
Regulated parties	Cost to industry in terms of engagement, input and understanding process changes. NZRB will use own resources (which are ultimately industry resources) to part fund BAU activity including broadcasting and gaming activity development until WNZ formed.	Cost – low Benefit - medium	Medium

Regulators	There is a cost to government of the proposed Transition. Risk that if transition does not proceed effectively, may require additional funding.	Proposed cost to support change management in the transition \$3.5m. Other costs – resource to assist in monitoring, reporting to Minister	Medium
Wider government	Nil	-	High
Total Monetised Cost	<i>Proposed Government contribution to RITA</i>	Direct cost \$3.5m	Medium
Non-monetised costs	<i>Monitoring of RITA and advice to Minister</i>	<i>Department Resource - medium</i>	Medium
Expected benefits of proposed approach, compared to taking no action or leaving NZRB to manage forward			
Regulated parties	Benefit of managed transition to new industry structure. Improved probability of effective implementation.	Medium	medium
Regulators	Benefit is that the transition can be overseen and managed.	Medium	Medium
Wider government	Benefit that transition could align with any other government requirements.	Low	Medium
Other parties	Improved clarity about transition direction and certainty of delivery.	Medium	Low
Total Monetised Benefit	The monetised benefit is difficult to estimate	Unknown	Low
Non-monetised benefits	Clarity and certainty of direction.	<i>Medium</i>	Low

5.3 What other impacts is this approach likely to have?

104. The RITA will have an important role in managing the transition process. As for any organisation, there are risks that it might move away from its expected path and priorities. However, its clear role as manager of change and the transition process reduces the chance that it will deviate from its appropriate course.
105. This risk will be managed by being clear on Ministerial expectations and having a regular reporting schedule.

5.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?

106. The Department considers this is compatible with Government's expectations for the design of regulatory systems.

B. Changes to legislative settings for distribution of racing and sports funds

Section 2b: Problem definition and objectives

2.3 *What is the policy problem or opportunity?*

107. The Messara Report recommended changes to the distribution of NZRB's profits to the three racing codes. Currently, under s16 of the Racing Act, the NZRB's profits are distributed to the racing codes (Thoroughbred, Harness and Greyhound) in the same proportions to which the codes contribute to the NZRB's turnover¹². The Racing Act also allows for this formula to be amended if a majority of the codes (two out of three) agree in writing. Under this provision, there have been several minor amendments to the formula.
108. Similarly, s57(1)(d) of the Racing Act sets out a formula for distributions to sports codes, which bases payments on a percentage of TAB sports betting turnover and fixed odds betting.
109. Changes to the distribution formulas require change to primary legislation, which impedes a timely response to changes in the industry's operating environment.

The proposal is to move the distribution formulas from the Racing Act to Regulations

110. Moving the distribution formula to regulations supports the viability and financial sustainability of the racing industry, as it:
 - supports the effectiveness of the NZRB and racing codes or sports codes to make changes to the distribution formula in a more efficient way
 - it reduces the amount of time and resource Government needs to contribute through amending the Racing Act
 - maintains appropriate transparency for interested parties.
111. No change to formulas is being proposed at this time. Rather, in anticipation of future changes to the formulas that are being considered by the MAC, there is an opportunity to amend the legislative processes required to alter the distribution formula for both the racing codes and the sports codes to make future changes easier, while still retaining appropriate government oversight and transparency for stakeholders.

Distribution to Racing Codes

112. It is proposed to move the racing codes distribution formula from s16 so that in future the formula is contained in regulations made through Order in Council. This will mean that changes can be undertaken more quickly and at lower cost than if they are continued in the Racing Act. Issues relating to the actual formula to be applied in future will be the subject of further work, including by the MAC.

¹² New Zealand turnover of the NZRB is defined as the total gross amount received by the NZRB from race betting placed in New Zealand on races run in New Zealand.

Distribution to Sporting Codes

Changes were proposed to the distribution formula relating to sporting codes as part of the discharged Bill

113. The discharged Bill would have created a regulation making power, removing the formula for payments to sports codes from legislation to regulation. This was being done in anticipation of a change in the funding formula, which was agreed to between NZRB and Sport NZ.
114. The proposal to move the formula for payments to sports codes from primary legislation to regulation is taken from the discharged Bill. The Department considers that the process to develop the previous proposal was robust and that the analysis carried out for the previous RIA remains fit for purpose. The Department considers this to be a relatively minor change. Similar changes are being proposed to move other formulas from primary legislation to regulation.

Summary of previous consideration

115. Previous consideration of this change was set out in the *Regulatory Impact Statement: Commission payments made by the New Zealand Racing Board to National Sports Organisations*, authored by Sport NZ (2017). It noted that the Racing Act not only contained the requirement that NZRB must provide a certain amount of sports betting revenue to the relevant NSO, but also provides the actual formula that must be used to calculate the minimum payment to the relevant NSO.
116. It considered that it was not appropriate for the actual formula to be in primary legislation, that including such detail in the Racing Act makes it inflexible because it cannot be easily changed to respond to changes in the NZRB's betting operations. An example was provided of needing to have a change to primary legislation passed to respond if there was a significant change in betting patterns or the NZRB's profitability.
117. The original clause would have replaced s 57(1)(d), which sets out the current formula for calculating the minimum amount that is to be paid to NSOs from money received from sports betting. The replacement provision provides for the necessary formula (or formulas) to be prescribed in regulations. Any formula provided for in regulations would continue to specify a minimum amount.
118. The Department also considered, as a result of submitter views, that it is appropriate for the Bill to place a requirement on Ministers that, in making recommendations for the formula or formulas to be set in regulations, they must be satisfied that the resulting distribution between racing and sports is fair and reasonable. This would take into account NZRBs (or a successor organisation's) ability to profit from sports betting and the desire that sports codes should receive an appropriate share of the proceeds from these bets.
119. The Department also advocated including a specific requirement that the distribution be fair and reasonable to provide a further safeguard against the possibility that Ministers might ever seek to balance the distribution of this money disproportionately in favour of one side or another.
120. The Department proposes to remove the formula for payments to sports codes from legislation to regulation. Note that the Department has not completed the remaining

template for this proposal. For more information on this proposal, please see the 2017 *Regulatory Impact Statement: Commission payments made by the New Zealand Racing Board to National Sports Organisations*.

2.4 Are there any constraints on the scope for decision making?

Interdependencies

121. There is a strong argument for ensuring consistency with how the different formulas are treated legislatively. In this case, the distribution formulas for both sports and racing are effectively the same mechanism. It would be inconsistent to remove the formula for racing to regulation, and not do the same for distributions for sports and vice versa. Further, if there is agreement to repeal the betting levy (as discussed in Section E of this RIA), this would also see a distribution formula provided for in regulation.

2.5 What do stakeholders think?

Key stakeholders

122. Key stakeholders are the NZRB, the code bodies NZTR, HRNZ and GRNZ and the racing clubs, who receive distributions from the code bodies.

123. There has not been broad-based consultation on the proposal to move the s16 distribution formula to regulation. It is closely aligned to the previous change noted above in Section 2.3.

124. For changes to where the distribution formula for sports is, note that previous feedback has been reflected in Section 2.3 above.

The MAC's position

125. The MAC strongly supports the proposed change to establish the distribution formulas. It considers that public submissions from the discharged Bill showed widespread support to change the status quo.

126. The key benefit of moving both distribution formulas into regulations is the flexibility it gives the industry moving forward to make change, should that be required. It gives the industry the ability to react in a more timely manner to a dynamic, ever changing international gaming and betting environment. This represents an approach which is consistent with that being recommended with the repeal of the betting levy.

Section 3b: Options identification

3.1 What options are available to address the problem?

Distributions to racing codes: Status quo (specifying distribution formula in the Racing Act)

127. Currently the distribution formula relating to racing codes is defined in the Racing Act. As a result, changes to the prescribed distribution formula need to go through the standard parliamentary process for amending the Act.¹³ Making changes to the Racing Act could mean that from the time a decision is made to change the distribution formula to when it is reflected in the Racing Act could take well over a year.

¹³ Unless a majority of the racing codes agree in writing to changes – see s16 (1)-(4)

128. The main costs are borne by Government, as the 'owner' of the process for making changes to the legislative process. However, costs could also accrue to the sector if changes to the distribution formula are delayed and many beneficiaries are unable to realise financial benefits as quickly as might be the case under other options.
129. The positives are that the existing process to make changes to the formula provides many opportunities for interested parties to have input into this process. This includes the clubs and owners who may not have the opportunity to be directly involved.

Option 1 - Establish formula in regulation (option preferred by the Department and the MAC)

130. Under this option, an empowering provision would be included in the Racing Act to allow the distribution formula to be set via regulations – a law-making action made under the delegated authority of an Act. Any amendments could be approved by the Governor-General on the advice of the Minister for Racing. This would reduce the time, effort and cost required to make changes to the formula.
131. Primary legislation is appropriate for significant policy changes, but not for an amendment of a calculation. We consider this is appropriate because regulations usually deal with matters of detail or implementation, matters of a technical nature, or matters likely to require frequent alteration or updating. The formula for distribution of funds falls into this description.
132. This approach would be similar to the distribution of net proceeds from class 4 gambling. Under the Gambling Act, the Governor-General may make regulations for the application and distributions of these proceeds. Since the commencement of the Gambling (Class 4 Net Proceeds) Regulations 2004 (SR 2004/365) there have been a number of amendments to the distribution, for example, the current minimum amount for distribution in Regulation was changed in 2014 and again in 2016.
133. This option is preferred over the status quo. This is because it provides greater flexibility to make further changes in the future should that be considered necessary, for example if there is a significant change to betting patterns, or new types of racing betting products are added. At this time it is anticipated that the MAC will recommend changes to the relevant distribution formulas for Bill No.2 if there is agreement from the codes. However, if this is not the case, this proposal will allow the changes to happen on a faster track than the current process.
134. We propose that the empowering provisions include a requirement for the Department to consult the racing codes about any proposed changes. This would manage the risk of uncertainty caused by not specifying the formula in the Racing Act and align with good regulatory practice in that it would support processes that produce predictable and consistent outcomes for regulated parties.
135. To align with what is being proposed for removing the formula for distributions to sports to regulation, we propose that another provision be included that the Minister must approve that the resulting distribution between the racing codes is fair and reasonable.

Option 2 – Formula not set in legislation and determined by racing codes

136. Under this option, the distribution formula would not be specified in either the Racing Act or in secondary legislation. The racing codes would make contractual agreements between their respective bodies and the NZRB (or its successor). This option would potentially be faster because it would remove the requirement of working through any Government processes (either changing primary or secondary legislation).
137. However, this option is not preferred because it would not provide a way to distribute funds should the codes be unable to agree. It would also be out of step with how distributions to sports codes take place. It would give little Government oversight of this process. Government oversight is particularly important here because of the statutory monopoly provided to the NZRB on betting on racing and sports. The Racing Act also requires the NZRB to distribute the profits from betting to the codes; if the codes are unable to agree on a distribution formula, this option would provide no opportunity for the Government to intervene.

3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?

138. The following criteria were developed to consider which option provided the best likely outcome, aligned with the overarching principles.

Transparency: is the process clear to interested parties? Do interested parties get to have a say?

Administratively simple: if change is required, is it a simple process? Does it create an administrative burden for any particular parties? It is an easily understood process?

Fairness: is this change fair to the racing codes? To sporting organisations? To other gambling providers who pay duty?

3.3 What other options have been ruled out of scope, or not considered, and why?

No other options were considered.

Section 4b: Impact Analysis

Table 3: Moving distribution formulas for racing codes from primary legislation to regulation

Section 16	No action (specifying the distribution formula in the Racing Act)	Option 1: Establish formula in Regulation	Option 2: Remove from legislation
Transparency	0	0 Process to make changes is clear, with requirements for consultation. Consistent with how other, similar distribution schemes treat formulas.	- Less external scrutiny – process may not be transparent, public or accessible.
Administratively simple	0	+ Easier process to make changes to the distribution formula.	+ Easy and fast to make change, as long as agreement is reached.
Government oversight	0	0 Still requires Government oversight and consultation but removes requirement for parliamentary scrutiny.	-- Government would not have an oversight role under this option.
Overall assessment	0	++ Easier for industry to make changes to distribution formula. Less Government resource required to make change, but still retains Government oversight.	- No transparent process and no government oversight but would enable quick changes if all Codes are in agreement.

Key:

- ++ much better than doing nothing/the status quo + better than doing nothing/the status quo 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo -- much worse than doing nothing/the status quo

Section 5b: Conclusions

5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

139. The Department considers that the options to establish the formulas in regulation for payments to both the racing codes and sports codes are the best options to achieving the overarching objectives, and the specific criteria that the options were assessed against.

Distributions to Racing Codes

140. The specific changes recommended for moving the distribution formula for racing codes from primary to secondary legislation are:

- a replacement provision providing for the necessary formula (or formulas) to be prescribed in regulations. Any formula provided for in regulations would continue to specify a minimum amount.

Distributions to Sporting Codes

141. The specific changes recommended for moving the distribution formula for NSOs from primary to secondary legislation are:

- a replacement provision providing for the necessary formula (or formulas) to be prescribed in regulations. Any formula provided for in regulations would continue to specify the amount or amounts to be distributed from surpluses.

5.2 Summary table of costs and benefits of the preferred approach

Affected parties (identify)	Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	Impact \$m present value, for monetised impacts; high, medium or low for non-monetised impacts	Evidence certainty (High, medium or low)
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Additional costs of proposed approach, compared to taking no action			
Regulated parties	Not applicable	-	-
Regulators	Not applicable	-	-
Wider government	Not applicable	-	-
Other parties	Not applicable	-	-
Total Monetised Cost	None	-	-
Non-monetised costs	None	-	-
Expected benefits of proposed approach, compared to taking no action			
Regulated parties	If changes are required, it can be done relatively quickly through regulation, with Ministerial approval.	Low	Medium
Regulators	Does not change regulators' role.	-	-

Wider government	Reduced costs as less government resource required to make changes to formula once it is specified in regulation.	Low	High
Other parties	Not applicable	-	-
Total Monetised Benefit	Not applicable	-	-
Non-monetised benefits	Faster processes with reduced government administration.	Low	Medium

5.3 What other impacts is this approach likely to have?

142. If it is simpler to change the formula, it is possible there will be greater pressure to change the formula more often. In relation to the distribution to racing codes, there is an indication of a desire in the industry to make the distribution formula, once set, not changed often.

5.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?

143. We consider that the preferred options identified for both initiatives canvassed in this section are compatible with Government's expectations for the design of regulatory systems.

C. Betting on new sports

Section 2c: Problem definition and objectives

2.3 What is the policy problem or opportunity?

144. Current legislation constrains what betting products the NZRB can offer. These legislative settings make it difficult for NZRB to be competitive, as offshore operators are not subject to the same constraints. It also presents a lost opportunity for NZRB when New Zealanders bet offshore. This situation is unable to be addressed without changes to the regulatory system.
145. Simultaneously, offshore operators are able to take bets from New Zealanders but are not required to contribute the same level of duties or taxes, nor meet New Zealand's regulatory requirements to minimise harm and contribute to communities. As a result of this, offshore operators are also able to offer better odds, which can make them more attractive to potential customers.
146. The discharged Bill sought approval to remove existing regulatory barriers to extend the sports which NZRB can provide betting products for. The Department is proposing in Bill No. 1 that the NZRB is permitted to offer betting products on sports not represented by a qualifying domestic NSO, provided an agreement is in place with Sport NZ.
147. This proposal received support from the majority of those that submitted on the Bill through the Select Committee process. The Bill was discharged last year to allow consideration of broader reform of the racing industry as recommended by the Messara Report.
148. Recommendation 8 of the Messara Report recommended approving a suite of new wagering products to increase revenue for the racing industry. Specifically, the recommendation sought agreement to:
 - Conduct in-the-run race betting;
 - Remove restriction on betting on sports where no agreement with an NSO or no NSO exists – with the proviso that this is for the sport when it is played outside of New Zealand¹⁴;
 - Conduct virtual racing games; and
 - Remove legal restrictions in s33(3) of the Gambling Act that prevent Wagering NZ from acquiring class 4 gaming venue licences.
149. The proposal below relates to Messara's recommendation relating to removing the restriction on betting on sports where no agreement with an NSO or no NSO exists. It does not address the other components of Messara's recommendation 8. Any further consideration of new wagering products will be deliberated on prior to the introduction of Bill No. 2.

¹⁴ Note that this is different from the change regarding when sports can be bet on where there is no NSO that is being proposed in this Bill. Messara's recommendation for changes to when betting on sport can occur will be considered as part of Bill No. 2.

There is an opportunity to remove regulatory barriers that currently restrict NZRB from conducting betting on sports where there is no NSO

150. Currently, if the NZRB wishes to offer bets on sports, it can only do so through an agreement with a NSO, and then distributes revenue from betting back to that NSO, as per a distribution formula currently in the Racing Act. The role of NZRB, through the current regulatory framework, is ensuring that NSOs receive a proportion of sports betting profits and that domestic sport integrity is not compromised. NZRB being required to have an agreement with the relevant NSO was a response to concerns from some sports codes about the possible negative impacts of legalised bookmaking on the integrity of domestic sport.
151. The policy intent was that the relevant NSO would have the opportunity to disagree with the taking of bets if they had concerns. Where there was agreement, benefits from betting would flow back to the NSO in commission payments.
152. This approach provides limitations for what sports the NZRB can offer betting services. Not all sports are represented in New Zealand by an NSO (for example, sports that have limited participation or no formal organisation in New Zealand). The approach being proposed in this RIA does not meet the full description of Messara's recommendation, which was to allow betting on all sports where no agreement with an NSO or no NSO exists – with the proviso that this is for the sport when it is played outside of New Zealand. Further consideration will be given to this recommendation as part of Bill No. 2.

Previous consideration

153. A proposal for regulatory change to enable an extension of the sports that the NZRB can provide betting products on was set out in the 2017 Regulatory Impact Statement: Offshore Racing and Sports Betting. A summary of the case for conducting betting on sports where there is no NSO is summarised below.

Conduct betting on sports where there is no NSO

154. The previous RIA noted that offshore operators are not required to have betting agreements with New Zealand NSOs. It considered that removing the requirement for a sport to be represented by an NSO before the NZRB may offer bets on it would enable the NZRB to compete on a fairer basis with offshore operators because it would be able to offer a similar product range.

The change would enable NZRB to offer bets on a broader range of sports

155. This change would enable the NZRB to more easily participate in new sports betting markets. This would help to avoid situations such as where offshore operators could offer bets on Mixed Martial Arts but the NZRB could not because there was no qualifying domestic NSO.

It will likely mean only a small increase in the number of additional sports people can bet on

156. Consideration was given to whether this would impact the integrity of sport or increase harm from gambling. The previous RIS noted it is unlikely that the overall number of sports on which bets are offered will increase significantly because the majority of sports which are not represented by an NSO are likely to be of limited interest to bettors and, on that basis, the NZRB would not offer bets on them. The

NZRB already chooses not to offer bets on many of the lower profile sports that already have NSO representation. For these reasons, it concluded that the risk of increasing gambling harm is therefore considered to be manageable.

157. Permitting the NZRB to offer bets on sports which do not have a New Zealand NSO could be achieved with comparatively simple amendments to current legislation. The majority of the administrative and compliance activity would fall to the NZRB. However, in the public sector, Sport NZ would need to administer any non-NSO betting agreements with the NZRB and distribute any additional revenue that bets on these sports may generate.

This change will benefit a broader range of domestic sport than currently

158. Where there is interest in sports that have no qualifying New Zealand NSO, the NZRB will under the proposed change be able to take bets, which in turn will generate revenue that can be distributed by Sport NZ for the benefit of domestic sport in general. While this change will slightly increase Sport NZ's role and would carry some administrative costs, it was considered that this was outweighed by the potential for a wider range of sports being able to benefit from betting revenue.
159. We are proposing that these changes be transferred from the discharged Bill and have not completed the remainder of the template for this proposal.

What happens if no action is taken?

160. If changes are not made to the regulatory regime to enable the proposed extension, offshore operators will continue to have an advantage over the NZRB by being able to offer a broader range of betting products.

2.4 Are there any constraints on the scope for decision making?

161. The discharged Racing Amendment Bill 2017 would have enabled betting on sports where there is no agreement with a NSO. The proposal has been taken directly from the discharged Bill and a summary of the main points from the previous RIA provided. The Department has assessed the advice from the previous RIA and considers that the analysis remains relevant and fit for purpose.

2.5 What do stakeholders think?

2016 consultation on proposed changes to the Racing Act 2003

Conduct betting on sports where there is no NSO

162. Thirty-three submitters supported this proposal or offered conditional support (racing industry representative, racing club, individual, offshore gambling operator, NSO). Reasons for support, if provided, included that enabling the NZRB to offer betting on a broader range of sports would enable the NZRB to compete on a more even basis with offshore operators and not increase the risk of gambling harm. Conditional support was offered on the basis that funding to racing should not be affected and that gambling harm risks should not be allowed to increase.
163. Five submitters opposed this proposal (gambling harm support, racing club, racing industry representative), mainly because of concerns about the increased risk of harmful gambling behaviour.

The MAC's position

164. The MAC strongly supports the approval of new wagering products which give the industry the ability to provide betting products on sports not represented by a qualifying domestic NSO (where there is an agreement in place with Sport NZ).
165. The change will generate valuable revenue for the industry, help return it to a financially sustainable position and make it internationally competitive.
166. International operators are already offering this product in the market place to New Zealand customers, which in turn results in lost revenue not only the racing industry, but also the Government, in the form of tax and duties. This also sees transactions taking place outside the problem gambling network.

Key Stakeholder Agency

Ministry of Health

167. Ministry of Health considers that there is a low risk of increased gambling harm from the proposals in these papers. Increasing the number of sports that can be wagered on could lead to increased expenditure on gambling, which is linked to increased levels of harm. However any increase from this is likely to be low, and manageable within current regulations, assuming responsible marketing and good gambling harm minimisation practices are in place at the point of purchase.

Section 3c: Options identification

Please note this section is not applicable. For more information please see pages 24 to 27 of the 2017 *Regulatory Impact Statement: Offshore Racing and Sports Betting*.

Section 4c: Impact Analysis

Please note this section is not applicable. For more information please see pages 24 to 27 of the 2017 *Regulatory Impact Statement: Offshore Racing and Sports Betting*.

Section 5c: Conclusions

5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

168. A legislative change is proposed that will enable the NZRB to offer betting products on sports not represented by a qualifying domestic NSO, provided an agreement is in place with Sport NZ.
169. This change was part of the discharged Bill and was supported by the majority of submitters through the Select Committee process. Policy considerations were worked through as part of that process.
170. Legislative amendments to the Racing Act allowing for the introduction of this new wagering product will enable the NZRB to meet market demand. It will help the NZRB to be on a more 'equal playing field' with comparable overseas jurisdictions such as Australia, which already allow for betting on a wider range of sports. It will also have a positive impact on domestic sports in New Zealand through increased distributions to sports.

171. The financial position of New Zealand racing stands to be assisted by any potential new revenue stream. Allowing for NZRB to provide betting products on sports where there is no agreement with a NSO is unlikely in isolation to have a significant impact on the long-term viability of the industry. The recommendation outlined in this RIA are intended to be considered as one part of the wider reform.

5.2 Summary table of costs and benefits of the preferred approach

Not applicable

5.3 What other impacts is this approach likely to have?

Not applicable

5.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?

172. The Department considers this is compatible with Government's expectations for the design of regulatory systems.

D. Offshore charges: Information Use Charge and Point of Consumption Charge

Section 2d: Problem definition and objectives

2.3 *What is the policy problem or opportunity?*

Offshore operators gain from NZ Racing but do not contribute to it.

173. The 2015 Working Group found evidence to suggest that an increasing number of New Zealanders are betting online with offshore operators¹⁵. This represents a lost opportunity. Significant sums of money are leaving the New Zealand economy rather than staying in New Zealand's racing and sports industries.
174. Alongside contributing to there being lower levels of revenue returned back to the New Zealand economy, and not contributing to the costs involved in producing the activities they are involved in, offshore operators aren't contributing to the social good of New Zealand that the regulatory framework requires of New Zealand gambling providers (such as contributing to communities and having a focus on harm minimisation).
175. The racing industry is in immediate need of additional revenue streams to improve its financial health. A potential means of offsetting the loss of betting profits offshore would be to introduce charges payable by offshore operators which would be returned to the racing industry.

Offshore charges require offshore operators to contribute to the costs involved in racing

176. Offshore charges would require offshore operators to pay a charge to use New Zealand racing and sports information in their betting products, and/or pay a charge for the bets they take from New Zealand residents.
177. The two offshore charges being proposed are:
- an information use charge – a charge payable by offshore operators using New Zealand racing and sports information which is similar to copyright charges for the use of intellectual property; and
 - a point of consumption (POC) charge – a charge which is akin to a tax that would be imposed on offshore operators who accept bets made by New Zealanders.
178. Similar charges have been implemented across most of Australia's states and territories, and other international jurisdictions including the United Kingdom and Ireland.

¹⁵ See: Offshore Racing and Sports Betting Working Group – Final Report October 2015
<https://www.beehive.govt.nz/sites/default/files/Working%20Group%20-%20Final%20Report%20October%202015.pdf>

Offshore Racing and Sports Betting Group Report

179. In a report released in October 2015, the Offshore Racing and Sports Betting Working Group (the Working Group) estimated that around \$58 million per annum of gross betting profit was being lost offshore. Further, the Working Group considered that many offshore operators use New Zealand racing and sports information for betting purposes, but are not contributing to the costs of producing the activities from which they are profiting.
180. The Working Group recommended the implementation of offshore charges. They estimated that the maximum potential value of both the offshore charges was approximately \$16 million per annum. The Department, however, found that the methodology and findings of the various studies used to arrive at these estimates varied significantly and that the resulting figures were subject to a large margin of error (a point that the Working Group acknowledged).

The Racing Amendment Bill – introduced 31 July 2017

181. The discharged Bill provided the initial framework to establish both the information use and POC charges in regulations. It was recognised at the time that implementing the charges would not have been a fast process as there would have been a substantial amount of regulatory and operational work needed before the collection of revenue could begin.

The Messara Report's recommendations for offshore charges

182. Recommendation 10 of the Messara Report seeks to introduce offshore charges in legislation as soon as possible. The Messara Report also provided an additional 16 sub-recommendations relating to the introduction of offshore charges which were based on the content of the previous Bill.
183. While the Messara Report calls for offshore charges to be introduced as soon as possible, it states that it would be most appropriate to delay their implementation until final decisions have been made regarding the preferred structure of racing and betting administration in New Zealand.

What happens if no action is taken?

184. If settings remain the same, then offshore operators will continue to have a competitive advantage over New Zealand based gambling providers. Offshore operators would continue to have reduced fiscal responsibility, contributing lower levels of revenue back to the New Zealand economy, not having to meet the social responsibility of those operating within the New Zealand regulatory framework, and not contributing to the costs involved in producing the activities they are profiting from.

Previous Consideration

185. Previous consideration of the introduction of offshore charges was considered in the *Regulatory Impact Statement: Offshore Racing and Sports Betting (2017)*. A summary is provided below.
186. This RIA has not reconvened the possible options, but rather has taken the proposals for introducing offshore charges directly from the discharged Bill. The Department has

also noted any changes that the Messara Report has proposed that are different from what was set out in the discharged Bill.

Information Use Charges

187. This introduces a requirement for offshore operators to pay an information use charge to use New Zealand racing and sports information in their betting products (which is similar to copyright charges for the use of intellectual property).

This is a well-established principle internationally

188. The previous RIA acknowledged the principle (well-established in many countries) that gambling operators should make a financial contribution towards the racing industry given the degree of mutual interest between betting and racing. The payments that the NZRB makes to New Zealand racing and sports codes perform a similar function in this country but do not extend to offshore operators.

189. The original proposal was that an information use charge would apply to bets that offshore operators take on New Zealand racing and sporting events. The charge would be payable regardless of whether the bettor was located in New Zealand or any other country. It was recognised that this kind of regime would rely on offshore operators voluntarily electing to enter into such agreements with the designated body.

The previous RIA considered the fairness of such a charge

190. The RIA considered whether the introduction of an information use charge would provide a fairer basis for competition between the NZRB and offshore operators. It considered that the establishment of an information use charge would be in line with some of the underlying principles of the Gambling Act and Racing Acts – that a portion of the proceeds from gambling activity should benefit the community and, more specifically, that profit from racing and sports bets should be paid to those industries in New Zealand.

191. It acknowledged that a similar regime is already in place across Australia with charging structures, in general, falling into the range of 1.5 percent of betting turnover for standard races up to 3 percent for premier races. The NZRB already has agreements with Australian TABs that provide reciprocal access to race information in each country. Fees averaging 3 percent of turnover apply in both directions.

192. The online-only gambling operators based in Australia do not pay equivalent charges to the NZRB, nor do gambling operators based in other jurisdictions, even though they profit from the use of New Zealand products.

Charges are less common for sporting events

193. Information use charges are less common in the case of other sporting events. There is a risk, therefore, that seeking to charge for the use of New Zealand sporting information could be viewed by other countries as out of step with international precedents, which could attract criticism and possibly reciprocal action. The RIA considered the risk of this was likely to be low due to New Zealand's small betting market (approximately 0.4 percent of global betting expenditure). If reciprocal action does take place however, its impact could be significant.

Any charge needs to be compatible with existing international trade agreements

194. If a system of information use charge or charges is adopted, it will be important that it is implemented in a way that is compatible with New Zealand's obligations under international trade agreements. The main agreement in this respect is the Closer Economic Relations (CER) Agreement with Australia. To meet the requirements of the CER it will be necessary to ensure that any charges applied to Australian gambling operators do not result in less favourable treatment overall than that to which a domestic operator, in this case the NZRB, is subject. This issue was raised by submitters representing several Australian based gambling operators.

It considered risks regarding gambling harm and integrity would be low

195. The RIA also considered whether introducing an information charge would result in gambling harm or risk the integrity of racing or sporting events. It did consider the possibility that offshore operators would cease offering bets on New Zealand racing and sports. This could result in New Zealanders moving to be with other offshore operators which may be in less regulated jurisdictions offering better odds. However, this was considered to be a fairly low risk as the Department considered that many bettors would choose the NZRB due to its familiarity and comparative ease of accessibility. It was also not considered that introducing information use charges would impact on the integrity of sporting or racing events.

The RIA acknowledged there would be some implementation costs

196. The RIA noted that the successful collection of any charges would rely to a large extent on voluntary compliance by offshore operators. The experience of regulators in Australia shows that it is possible to secure voluntary compliance for these types of charges. If adopted, information use charges will need to be implemented in a fashion that ensures:

- that it is simple for offshore operators to calculate and certify the amount that they owe; and
- that interaction with the relevant bodies in New Zealand (whether government or industry) is straightforward and kept to the minimum necessary.

197. Even if the processes created by any legislation and compliance system in New Zealand are streamlined, it was recognised that offshore operators will still bear costs associated with setting up and monitoring systems to identify and pay the amount of information use charge that they owe. However, the Messara Report has noted that this will not be as much of an issue as it was in 2017, as similar charges have already been implemented across Australia, so the infrastructure required already exists.

198. The principle of simplicity applies equally to the bodies in New Zealand that will be responsible for administering the charges. It is likely that establishing and operating a system of information use charges will carry additional operational costs for the organisation(s) that are involved.

The cost and benefits were estimated based on likely compliance scenarios

199. The vast majority of the NZRB's exports are to Australia. Extrapolating from the information known about the amount of bets taken on New Zealand races and sports events by Australian TABs, the Working Group estimated that \$300 million is turned

over by Australian online bookmakers on New Zealand racing and around \$60 million on sports events taking place in New Zealand.

Likely costs versus returns

200. Based on these estimates, applying an information use charge of 2 percent of turnover (the amount suggested by the Working Group) would result in revenue of \$5.7 million per annum for racing bets and \$1.1 million for sports (after 5 percent withholding tax). At that time, the Department considered outcomes based on different enforcement scenarios (from the most basic enforcement scenario costed at \$590,000 per annum, through to the most active one at \$3.9 million per annum) and different compliance scenarios (from low compliance through to high compliance). It estimated a range of likely revenue to be between \$1.8 to \$6.2 million per annum after costs.
201. The Department has recently re-estimated that enforcement costs (staff and other operating expenses) for collecting both the information use and POC charges could range from approximately \$2 million per annum (in a basic receipting and processing scenario) up to in excess of \$3.7 million per annum (in a scenario where there needs to be more active compliance management). Note these figures are estimates only and assume that the information use charge is likely to be delegated. More concrete costings will be enabled once decisions have been made about the operating environment.
202. Subsequent work by NZRB¹⁶ indicates likely revenue from the information use charge would be \$6.6 million per annum based on 2% of estimated turnover¹⁷. Taking into account the Department's updated enforcement costs, this would provide for a range of revenue from \$2.9 million to \$4.6 million per annum.
203. While the Department is unable to concretely quantify the likely amount of revenue from an information use charge, the evidence to hand indicates a broad range of possible outcomes. On balance the Department still considers that the benefits (in this case, the revenue to be gained) will outweigh the costs involved in collecting the information use charge.

International experience suggests compliance costs will be at the lower end

204. Based on international precedent, the previous RIS considered it reasonable to expect the compliance costs to be at the lower end of the range. However, this is not guaranteed and there may need to be a more active (and therefore more expensive) enforcement period in order to establish, and possibly even maintain, an information use charge system.
205. Another risk the previous RIS considered is the possibility that other countries might apply equivalent information use charges in respect of their domestic sports events.
206. Implementing an information use charge has a chance of providing a new source of revenue for investment in New Zealand racing but it is unlikely that this on its own will be significant enough to impact on the long-term viability of the racing industry.

¹⁶ The Department has not been privy to the underlying data which the NZRB has used, so it is unable to provide any commentary regarding the quality of the data and the subsequent results.

¹⁷ Note this does not take into account any information use charge for sports betting revenue.

207. The table below provides a summary of the analysis of policy options for the Information Use Charge from the previous RIS.

Table 4: Summary of the analysis of policy options for the Information Use Charge

Fairness: does the option provide a fairer basis for competition between the NZRB and offshore operators?	Minimisation of harm: will the option result in an overall increase in gambling harm and/ or risk to the integrity of racing or sports events?	Ease of implementation: would the option involve any significant administrative complexities that could affect its successful implementation and operation?	Cost/Benefit: are the likely costs (if any) of implementing this option likely to be outweighed by the expected benefits to the racing and sports industries in NZ ?
<p style="text-align: center;">+</p> <ul style="list-style-type: none"> • Would address the fact that NZRB is required to pay majority of its profits to NZ racing whereas offshore operators pay no equivalent despite profiting from betting on NZ events. • There are international precedents, e.g. in Australia. • Charge will need to be implemented in a way compatible with international trade agreements and at level that is fair in comparison to what the NZRB pays. • Would retain ban on offshore betting advertising in NZ. However, ban has more limited impact than in the past. 	<p style="text-align: center;">/</p> <ul style="list-style-type: none"> • Rather than pay an information use charge, some offshore providers could choose to stop accepting bets from NZ residents. This could encourage some bettors to seek other, less well regulated operators elsewhere online. This is considered to be a low risk for a minority of bettors because the NZRB will remain more familiar and is easy to access. 	<p style="text-align: center;">-</p> <ul style="list-style-type: none"> • Successful collection of charges will rely on voluntary compliance by offshore operators. Systems will need to be as simple as possible. • Familiarity with similar charges in other countries, plus desire by large companies to be “good corporate citizens” is likely to support compliance. • NZRB has existing experience in administering similar reciprocal payments with Australian TABs. • Enforcement of outstanding debts in foreign courts, if necessary as a last resort, may be difficult and expensive. 	<p style="text-align: center;">+</p> <ul style="list-style-type: none"> • The Department estimates enforcement costs could range between \$2m (basic enforcement) to over \$3.7m* (more active enforcement) per annum. • Based on Working Group estimates, an information use charge could deliver up to \$4.6m for racing and sports combined) after costs. • However, lower end of cost range/ higher end of revenue range is considered more likely for this information use charge because of the “ease of implementation” elements detailed in the column to the left. • If other jurisdictions were to implement similar charges for their sporting events it is possible that the costs could be greater than the income from NZ events. This is considered a low risk.

*note this reflects the most recent estimates provided by the Department.

Point of Consumption Charge

208. This would require that offshore operators pay a charge, akin to a tax, when they take bets from New Zealand residents. The previous RIS noted that the majority of bets placed by New Zealanders are on overseas events so implementing an information use charge (as outlined in the section above) would only address part of the issue that offshore operators present. This charge would cover bets that offshore operators take

from New Zealand residents and would apply regardless of whether the bet is on a New Zealand event or an international one.

209. Not all bets placed with an offshore operator would attract both an information use and a consumption charge. Bets placed by New Zealanders with offshore operators on overseas events would not attract an information use charge.

This approach differs slightly from other approaches internationally

210. Offshore operators would continue to be under no requirement to comply specifically with New Zealand's domestic regulatory requirements. With the exception of GST, they would not be required to pay New Zealand taxes and they would remain subject to the ban on advertising by gambling operators based outside of New Zealand. This differs from approaches taken by other countries, which in some cases, require offshore operators to be licensed and comply with that countries regulatory and tax requirements. This is because licensing offshore operators would remove the statutory monopoly that the NZRB currently has.

The proposed approach is fair and meets international trade obligations

211. Any charges applied to offshore operators must be fair and align with New Zealand's international trade obligations (the assessment presented here applies equally to the proposed information use charge as well as the proposed consumption charge). Since October 2016, offshore operators that sell more than \$60,000 per annum of services to New Zealand have been required to pay GST (this relies on voluntary compliance, albeit supported by international tax treaties and common practice), but they are not required to pay other New Zealand levies and duties.
212. Under the CER, offshore operators do not need to be treated in exactly the same way as the NZRB but they cannot be treated in any way that is unjustifiably restrictive or discriminatory. The charges should be designed so that they help to level the playing field rather than simply decreasing the competitiveness of overseas suppliers.
213. However, the Department does not consider that the impact of these differences would negate the financial advantages enjoyed by offshore operators by virtue of them not having to make payments to New Zealand racing and sports.
214. The Department's analysis found that if charges of 2 percent of turnover are introduced (as recommended by the Working Group), these will still represent a significantly smaller contribution to New Zealand racing and sports than the NZRB is required to make. It is important to note that no decision has been made at this time on what rate the charges will be set at.

Risks regarding gambling harm and integrity were considered to be minimal

215. The same arguments apply here as for the information use charges. Some offshore operators may choose to withdraw from the New Zealand market, which might lead to those New Zealanders that are particularly keen to bet offshore to move to gambling operators in less tightly regulated jurisdictions. This is considered to be a fairly low risk, however, with the greater likelihood being that most of these bettors would choose the NZRB rather than risk other options.

The cost of implementation may reduce the likelihood of compliance

216. As would be the case with an information use charge, if a POC charge is adopted, it is likely that any establishing legislation would need to contain provisions requiring any offshore operator to disclose, on request, information on the amount of relevant betting. This would help to ensure that the total amount payable is calculated at the correct level.
217. Offshore operators will still bear costs associated with setting up and monitoring systems to identify and pay the amount of POC charge that they owe. For example, the task of identifying and recording which bets originated from New Zealand based customers may be challenging. If these administrative processes prove to be particularly difficult or expensive, the likelihood of offshore operators paying a consumption charge voluntarily may be diminished.
218. The Working Group assumed high levels of voluntary compliance, but the Department considered it was difficult to determine the likelihood of this, as there was not an equivalent example.

Consideration needs to be given to which New Zealand laws offshore operators comply with

219. Another important factor when considering the ease of implementing a POC charge concerns the status under New Zealand law of the bets that New Zealand residents make with offshore operators. As previously mentioned, the issue of New Zealanders gambling online (which gave rise to the concept of the POC charge) applies more broadly than just to racing and sports betting. Seeking payment of a POC charge for bets placed by New Zealand residents with offshore operators requires a choice to be made about the extent to which New Zealand law does or does not regulate these bets because by its very nature a POC charge relates to an activity being 'consumed' in New Zealand. It treats gambling through offshore operators differently from other parts of New Zealand's regulatory framework for gambling.
220. Under the Gambling Act and Racing Act, the NZRB is the sole authorised provider of racing and sports betting in New Zealand, through its TAB brand. There is a specific prohibition on remote interactive gambling (e.g. over the internet) unless it is conducted by the Lotteries Commission or authorised under the Racing Act, which is the authority under which the NZRB operates its online betting service.
221. It would be possible to progress legislation that would enable a POC charge while leaving the status of offshore betting unchanged in the Gambling Act. However, unless the relevant definitions are altered, the current status of offshore operators will continue. The imposition of a POC charge will not change their legal status or the status of the bets. This could arguably result in an awkward balance between the two Acts.
222. For example, the previous RIA considered that the Department would be the most appropriate organisation to administer a consumption charge if it were adopted. However, because of the circumstances described above, this would create a situation where the Department was collecting a charge in respect of gambling activity which it did not authorise. It considered that taking this sort of dual approach could prove to be an additional barrier to encouraging voluntary compliance by offshore operators, who may argue that direct regulation of their activity under the Racing Act should be

matched with direct regulation (i.e. authorisation) of their activity under the Gambling Act, plus removal of the current ban on them advertising in New Zealand.

The costs (and resulting benefits) were unable to be accurately estimated

223. Based on the review of available studies conducted by Infometrics (2015 report), the Working Group estimated that, after winnings had been paid, the total betting losses from offshore betting by New Zealanders in 2015 was \$58 million, with an overall turnover of \$518 million.
224. Using a two percent charge, the Working Group, based on suggested annual growth of 11.5 percent expected returns to range from \$9.8m in the initial year to \$16.9 million in 2020.
225. The NZRB undertook some analysis and have an updated estimated turnover of \$1,200 million per annum, estimating revenue in the first year at \$24 million (also based on a two percent charge).¹⁸
226. The Department estimated enforcement costs, noting that the more complex and demanding the enforcement activity turns out to be, the more expensive it will become. In the most active scenario for which the Department has prepared estimates (where enforcement costs would be at the highest end of estimates – which the Department has updated to \$3.7 million). It was suggested that this would result in net revenue after costs (based on full compliance) of \$6.1 million in the initial year or taking into account the NZRB’s figure, this would be \$20.3 million in the initial year.
227. However, it was noted that there were significant margins for error alongside uncertainty regarding the extent to which voluntary compliance will be achieved, and that it was possible that the returns from any consumption fee would differ substantially from the returns estimated by the Working Group.
228. Implementation of a consumption charge has a chance of providing a new source of revenue for investment in New Zealand racing. If it brings in more money than it costs to administer, it would assist the long-term viability of the industry, simply by providing an additional source of income for investment. However, the projections for the estimated revenue from a consumption charge are subject to uncertainty and the administration costs are likely to be high.
229. The fact that offshore operators do not currently make any payments to New Zealand racing and sports provides offshore operators with a financial advantage which is not available to the NZRB. The ban on offshore operators advertising in New Zealand offsets this advantage to an extent but, given the high profile of offshore operators online, the ban has less impact now than it did when it was implemented in 2003. As long as any charge is set at an appropriate level (not exceeding the equivalent payments made by the NZRB), it is reasonable to argue that it would help to create a more even basis for competition between NZRB and offshore operators.
230. The table below provides a summary of the analysis of policy options for the POC charge from the previous RIA.

¹⁸ The Department has not been privy to the underlying data which the NZRB has used, so it is unable to provide any commentary regarding the quality of the data and the subsequent results.

Table 5: Summary of the analysis of policy options for the Point of Consumption Charge

Fairness: does the option provide a fairer basis for competition between the NZRB and offshore operators?	Minimisation of harm: will the option result in an overall increase in gambling harm and/ or risk to the integrity of racing or sports events?	Ease of implementation: would the option involve any significant administrative complexities that could affect its successful implementation and operation?	Cost/Benefit: are the likely costs (if any) of implementing this option likely to be outweighed by the expected benefits to the racing and sports industries in NZ ?
<p style="text-align: center;">+</p> <ul style="list-style-type: none"> • Would address the fact that NZRB is required to pay majority of its profits to NZ racing whereas offshore operators pay no equivalent despite profiting from betting on NZ events. • Charge will need to be implemented in a way compatible with international trade agreements and at level that is fair in comparison to what the NZRB pays. • Would retain ban on offshore betting advertising in NZ. However, ban has more limited impact than in the past. 	<p style="text-align: center;">/</p> <ul style="list-style-type: none"> • Rather than pay a consumption charge, some offshore providers could choose to stop accepting bets from NZ residents. This could encourage some bettors to seek other, less well regulated operators elsewhere online. This is considered to be a low risk, relevant to a minority of bettors because the NZRB will remain more familiar and is easy to access. 	<p style="text-align: center;">--</p> <ul style="list-style-type: none"> • Likely to face greater resistance from offshore operators than the information use charge, which could discourage voluntary compliance. • Incompatible with current provisions in the Gambling Act. Applying a charge to these bets is likely to bring this activity within the scope of the Gambling Act, which in turn would require authorisation of these operators on a similar basis to the NZRB. This would be a significant change to NZ gambling framework and is a much more fundamental change than was envisaged by the Working Group. 	<p style="text-align: center;">+ *</p> <ul style="list-style-type: none"> • The Department estimates enforcement costs could range between \$2m (updated) (basic enforcement) to over \$3.7m* (more active enforcement) per annum. • Based on Working Group estimates, an information use charge could initially deliver, after costs, \$5.9m (active enforcement) to \$9.2m (basic enforcement). • * The positive marking for this criterion reflects the potential for this charge to become a significant revenue stream. However, the Working Group estimates are subject to significant margins for error and assume high levels of voluntary compliance. Income could therefore differ substantially from the estimates presented here.

*note this reflects the most recent estimates provided by the Department.

The Department recommends point of consumption charges be considered as part of work on online gambling.

- 231. The Department does not support a POC charge in Bill No. 1. In its RIS for the discharged Bill, the Department outlined various policy issues that could inhibit the successful implementation of a POC charge. Some of the Department’s issues with the introduction of a POC charge at that time included: significant variation in the projections of possible revenue, the level of voluntary compliance by offshore operators, the cost of administration, the perception of double taxation (with GST), and difficulty for offshore operators in complying with requirements.
- 232. The Department acknowledge that times have changed since the Working Group’s recommendations in 2015 and that POC charges have since been, very recently,

implemented across the majority of Australia's states and territories. This means that there are now various regulatory frameworks in place relating to the administration and enforcement of POC charges which New Zealand might be able to use as a basis if they were to be introduced here.

233. Notwithstanding these developments, the Department recommends a POC charge be considered in the context of the review of online gambling under the Internal Affairs portfolio. This would look at how this charge might best fit in New Zealand's overall system for regulating (and minimising the harm of) gambling. The Minister of Internal Affairs will be releasing a public discussion document on the subject in 2019.
234. The online gambling work being carried out by the Department will look at the full range of options to better regulate the online environment without disrupting the New Zealand gambling framework. Some of the options to be considered include: licensing, blocking, and charging. All of these mechanisms are currently in operation in other jurisdictions and New Zealand needs to consider the options best suited here. An option that improves the regulation of online gambling is likely to benefit the racing industry as well.
235. Looking at POC charges through this lens would allow assessment of existing regulatory frameworks in other jurisdictions that have already established these charges (e.g. Australia, the UK, and Ireland). This would ensure that if POC charges were introduced here, the necessary regulatory and operational frameworks would be tailored to the New Zealand market while also ensuring they fit within the wider gambling system.

Designated Authority for offshore charges

236. The previous RIA proposed that the Department be the designated authority to administer the collection of offshore charges, with the ability to delegate its responsibilities to an organisation or organisations in the racing industry to administer the collection of the charge or charges. This was also recommended in the Messara Report.
237. In the case of information use charges, being able to delegate this authority would take advantage of the industry's existing experience in managing contractual agreements with offshore betting operators. It would also recognise that revenue from any charges would be distributed to New Zealand racing and sporting organisations.

Updated information on offshore charges

238. The Department acknowledges that times have changed since the Working Group's recommendations in 2015 and the subsequent introduction (and withdrawal) of the Bill. The online gambling market is continually evolving and POC charges have now been implemented across the majority of Australia's states and territories, as well as other international territories such as the UK and Ireland.
239. To better understand the potential economic impacts of the offshore charges, the MAC requested financial estimates from the NZRB of the potential revenue that might be collected from offshore charges. The analysis that the NZRB provided estimated that over \$30 million stood to be earned through offshore charges per annum (as compared to the \$16 million estimated by the Offshore Working Group in 2015). The NZRB's estimates for each charge were:

- \$6.6 million per annum for the information use charge; and
- \$24 million per annum for the POC charge.

240. To come up with these figures, the NZRB analysed anonymised credit card data from ANZ which categorises transactions (deposits) by New Zealanders through a gambling Merchant Code. Based on ANZ being roughly one-third of the New Zealand credit card market, and NZRB analysis of which deposits were with offshore betting organisations, the data showed that \$139 million was deposited by New Zealanders into the top 10 offshore organisations in the 12 months ending 31 October 2018. This has grown 67 percent in last 18 months (annualised growth of 47 percent).

241. The Department has not been privy to the underlying data which the NZRB has used, so it is unable to provide any commentary regarding the quality of the data and the subsequent results.

242. NZRB also noted that POC charges are well established internationally, including across a number of Australian gambling jurisdictions. The table below provides further information on the POC charges:

State / Country	Status
South Australia	The South Australian Government introduced 15% POC on net wagering revenue on 1 July 2017.
Queensland	The Queensland Government introduced 15% POC on net wagering revenue on 1 2018.
Australian Capital Territory (ACT)	The ACT Government introduced a 15% POC on net wagering revenue on 1 January 2019.
Western Australia (WA)	The WA Government introduced a 15% POC on net wagering revenue on 1 January 2019.
New South Wales (NSW)	The NSW Government introduced a 10% POC on net wagering revenue on 1 July 2019.
Victoria	The Victorian Government introduced a 8% POC on net wagering revenue on 1 January 2019.
Ireland	Ireland requires offshore bookmakers to pay 2% betting duty (turnover) for accepting bets from Irish-based customers. This increased from 1% on 1 January 2019.
United Kingdom (UK)	The UK has implemented a 15% POC tax (called the Remote Gaming Duty) for accepting bets from UK-based customers irrespective of where the online operator is based. This is due to increase to 21% as at 1 October 2019.
France	France has in place a 6.5% fee to return benefit of taking bets on French racing. France also introduced a 1.8% levy for the right to accept bets on French sports.

Location of punter – point of consumption charges

243. The Department is proposing that the amended legislation include a clause which specifies that for the purposes of the point of consumption charge the location of a bet should be determined based on the bettor's home address (rather than where the bet originated). This approach is used in most Australian states and was recommended in the Messara report.

2.5 What do stakeholders think?

2016 consultation on proposed changes to the Racing Act 2003

Information Use Charge

244. Thirty-nine submitters supported the introduction of an information use charge (racing club, racing industry representative, individual, gambling harm support, NSO, offshore gambling operator). The main reasons for support were because the proposal would ensure that offshore operators could no longer "free ride" on New Zealand racing and sports products and improve integrity if wagering information was provided on request.
245. Four submitters opposed this proposal (individual, online wagering provider, online wagering industry representative). Some of the submissions noted that charging a fee for sports information could result in a net loss to New Zealand if other countries implemented similar arrangements in response. Some individual submitters considered that sports information was readily available publicly and not owned by the NZRB and therefore a sports fee should not be charged.
246. One of the offshore operators indicated that it would be content to pay a 1.5 percent fee to use event information if it was allowed to advertise in New Zealand but suggested that a lower rate would be fairer if the ban on advertising is retained.

Point of consumption charge

247. Thirty-five submitters supported the introduction of a consumption charge (racing club, racing industry representative, individual, gambling harm support, NSO). The main reason for support was because a consumption charge would help level the playing field between the NZRB and offshore operators and increase revenue for the racing industry. Some submitters stressed the need for strong enforcement mechanisms and low fee rates to ensure compliance with the charging regime.
248. Five submitters opposed the introduction of POC charges (individual, offshore gambling operator, online wagering industry representative). Offshore gambling operators expressed the following concerns:
- The risk that the charge could discriminate against offshore operators in a way that was inconsistent with New Zealand's free trade agreements, including the CER with Australia.
 - Without a strong non-discriminatory enforcement regime, compliant operators would be disadvantaged, as some operators may continue to provide services to New Zealand customers without paying the fee.
 - The need to ensure compliance would have to be balanced against ensuring that the fees were not set so high as to cause operators to cease taking bets from people in New Zealand.

- The objective of ensuring customer protection for New Zealanders would be compromised if reputable operators withdrew from the New Zealand market leaving it open to less reputable operators.
- Operators should be licensed and/or allowed to advertise in New Zealand in return for paying any charges. In effect, this would mean opening the New Zealand market to full commercial competition rather than limiting racing and sports betting to one domestic provider, the NZRB, as is the case now.

Public submissions on the recommendations of the Messara Report

249. Public consultation was undertaken on the recommendations of the Messara Report in September and October of 2018. Regarding recommendation 10, which recommended introduction offshore charges, 62 submissions were received. 56 supported outright the introduction of the information use charge (which are commonly referred to as Race Field legislation in Australia) and POC legislation. Only one submission opposed the recommendation, and an additional five submissions provided other comments, including the request for further analysis and discussion.
250. There was a general consensus for urgency in introducing this legislation, with the Governance bodies NZRB, NZTR, HRNZ and GRNZ all strongly supporting recommendation 10. A common sentiment expressed by submitters was their view that the decision to withdraw the 2017 Racing Amendment Bill had cost the industry. In contrast, two submissions commented that the withdrawal of the Bill ensures appropriate consideration of the legislative changes required, as one stated "in order to introduce complete and harmonious legislation".

Response to related sub-recommendation

251. Ten submissions made reference to the role of Designated Authority, which is described within a sub-recommendation stating 'The role of Designated Authority in terms of the Betting Information Use Charges should be allocated to the three Codes of Racing and Sport NZ. The role of Designated Authority in respect of the Consumption Charges should be allocated to the Department of Internal Affairs or such other Department as is appropriate'.
252. Three submissions supported the role of Designated Authority for Betting Information Use Charges being given to the three Codes. A further two submissions also supported this, but noted the Codes should have the ability to appoint another group to collect fees on their behalf, and Wagering NZ should also be a Designated Authority.
253. One submission supported the sub-recommendation, but stated the Department's involvement should be limited to the enforcement and audit of contributions.
254. Four submissions from sports organisations opposed the suggestion that Sport NZ undertake this role. A sporting organisation noted "the fact that it is inappropriate that Sport NZ undertakes the designated authority role demonstrates the lack of understanding by the review of the structure of NZ sport and the lack of diligence the review undertook in determining the effect the recommendations would have on the sports concerned."

The MAC's position

255. The MAC strongly supports the introduction of both offshore charges in Bill No. 1 as it believes they will bring New Zealand's racing industry into line with its Australian counterparts while providing it with a substantial new revenue stream that will help ensure it is financially sustainable. The MAC are also generally in support of the Messara Report's 16 additional recommendations for the introduction of offshore charges (for example, the three racing codes being the designated authority for the information use charge, and the Department being the designated authority for the POC charge).
256. One of the key reasons for the MAC's support of offshore charges (besides the potential economic benefits for the industry) is that the majority of major offshore operators which are operating in the Australasian market are already complying with both offshore charges. Australia now has both information use and POC charges in effect across most of its states and territories, and the major offshore operators are compliant. This, the MAC believes, highlights the fact that the necessary frameworks for offshore operators to identify, collect and pay the POC charge already exist and are successfully being used.
257. The MAC believes that since most major offshore operators that are commercially active in Australasia already have regulatory frameworks in place for complying with offshore charges, implementation of the charges in New Zealand could be a smoother process than previously believed. This, the MAC believes, negates the majority of concerns raised by the Department (particularly those related to the POC charge). It could also mean that the indicative timelines for the eventual distribution of revenue to industry could be significantly advanced.

Section 3d: Options identification

Please note this section is not applicable. For more information please see pages 24 to 43 of the 'Regulatory Impact Statement: Offshore Racing and Sports Betting'.

Section 4d: Impact Analysis

Please note this section is not applicable. For more information please see pages 24 to 43 of the 'Regulatory Impact Statement: Offshore Racing and Sports Betting'.

Section 5d: Conclusions

5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

Information Use Charge

258. The Department recommends the introduction of the information use charge. In its RIA for the discharged Bill, the Department discussed examples of equivalent legislative approaches in other countries, notably Australia, and concluded that this approach can be successful in certain circumstances.
259. The previous RIA notes the risk of low compliance but suggests that the experience in Australia indicates that this is unlikely to be the case and can be further mitigated by ensuring that any charge is set at a level which is not excessive.

Point of consumption charge

260. The previous RIS did not recommend the introduction of a POC charge. The reasons for this included the significant variation in the projections of possible revenue, the level of voluntary compliance by offshore operators, the cost of administration, the perception of double taxation (with GST), and difficulty for offshore operators in complying with requirements.
261. The Department acknowledges that since its last consideration POC charges have now become more common, particularly in Australia and that these may provide regulatory frameworks for New Zealand to consider.
262. Notwithstanding these developments, the Department does not recommend the introduction of a POC charge at this time, but recommend instead that it be considered in the context of the review of online gambling under the Internal Affairs portfolio. This would look at how this charge might best fit in New Zealand's overall system for regulating (and minimising the harm of) gambling. The Minister of Internal Affairs will be releasing a public discussion document on the online gambling review in 2019.
263. The online gambling work will look at the full range of options to better regulate the online environment without disrupting the New Zealand gambling framework and consider options including: licensing, blocking, and charging. All of these mechanisms are currently in operation in other jurisdictions and New Zealand needs to consider the options best suited here. An option that improves the regulation of online gambling is likely to benefit the racing industry as well.

5.2 Summary table of costs and benefits of the preferred approach

Not applicable

5.3 What other impacts is this approach likely to have?

Not applicable

5.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?

264. The Department considers this is compatible with Government's expectations for the design of regulatory systems.

E. Repealing the betting levy paid by NZRB

Section 2e: Problem definition and objectives

2.3 What is the policy problem or opportunity?

266. The Government recognises that the racing industry needs urgent reform to ensure its viability and sustainability. The Messara Report states that the racing industry, as a whole, is in a loss-making position, with owners' losses exceeding the NZRB profit.
267. The Messara Report recommends repealing the betting levy (otherwise known as the Totalisator Duty) currently paid by the NZRB to the Crown under s4 of the Gaming Duties Act 1971. The betting levy is currently 4% of betting profits.¹⁹
268. The Messara Report recommends that these funds from the repealed betting levy are instead distributed to the racing codes based on their respective contribution to the New Zealand economy. The Messara Report argued that repealing the betting levy would contribute to the revitalisation of the racing industry. This revitalisation would generate employment opportunities and increase the racing industry's contribution to the New Zealand economy.
269. The betting levy's original purpose was to generate revenue for the Government from gambling profits. The Messara Report estimated the betting levy generated \$13.2 million per annum. Treasury forecasts that the betting levy is expected to generate between \$14-15 million per year for the financial years 2018/19 to 2022/23. Other New Zealand Gambling entities also pay duties, as set out in Table 6.

Table 6: Duty rates paid by New Zealand gambling providers

Gambling entity	Rate of duty	Name of duty
Class 4 gambling (non-casinos)	20% of class 4 gaming machine profits	Gaming machine duty
Casinos	4% of betting profits	Casino duty
Lotto NZ	5.5% nominal value of all tickets represented in a lottery draw	Lottery duty
New Zealand Racing Board	4% of betting profits 20% of class 4 gaming machine profits	Totalisator duty Gaming machine duty

270. Repealing the levy is expected to annually provide an additional \$14-15 million to the racing and sports codes (which will reduce Government's revenue by the same amount). The Minister for Racing has sought approval for funding through Budget 2019 to enable a Crown contribution to cover the loss of funds collected through the betting levy. This will be confirmed through the Budget 2019 process.

¹⁹ This was last reduced in 2006, from 20 percent of betting profits to four percent, with the aim of improving the economic performance of the racing industry and avoiding further decline.

271. If this change proceeds, the Department proposes that the NZRB should set aside a proportion of these profits for reduction of gambling harm and that the regulated distribution formula should determine the appropriate quantum, taking into account the amount to be distributed to the racing and sports codes.
272. This section of the RIA provides options for how these funds can be distributed. Government intervention is required as the repeal of the betting levy requires legislative change.

2.4 *Are there any constraints on the scope for decision making?*

273. This option analysis assumes that a decision has been made to redirect the betting levy back to the racing industry through the Budget 2019 process.
274. We are aware of potential arguments that such a change might be inequitable for other New Zealand gambling entities. Further information is set out in Section 5.4 below.

2.5 *What do stakeholders think?*

Public submissions on the recommendations of the Messara Report

275. The NZRB, racing codes and sports codes support the repeal of the betting levy. They all have an interest in how the funds from the repealed betting levy are distributed.
276. Public consultation was undertaken on the recommendations of the Messara Report in September and October of 2018. 104 submissions were received on recommendation 11, which sought the repeal of the betting levy. 41 submitters supported the repeal of the betting levy outright, and a further 52 submissions appeared to provide qualified support. Three submissions opposed the recommendation outright, and a further eight provided additional comments or suggestions.
277. Of those supporting the recommendation, little comment was provided beyond a clear statement of support. The 52 submissions that provided qualified support came from sports codes. These submitters generally stated a more equitable approach was required. For example, one stated ‘sport should receive a proportionate share of the retained funds based on the percentage of net betting revenue on sport outside of racing’.
278. The other suggestions came from racing bodies, clubs and codes. GRNZ and HRNZ suggested that the betting levy should be distributed on a “gross betting revenue basis” between the codes.

The MAC’s position

279. The MAC strongly supports the repeal of the betting levy. It believes it is in the Government’s interests to revitalise the racing industry which in turn will lead to increased employment, exports, and a general increase in the industry’s already significant contribution to the New Zealand economy.
280. The racing industry, taken as a whole, is in a loss-making position, with owners’ losses greatly exceeding NZRB profit on an annual basis.
281. If adopted, this strategy would be of enormous assistance in creating positive momentum for the significant reform programme the industry has in front of it. If adopted this strategy would also send a clear message of Government support for the

racing industry and its recognition of the importance of the industry to the New Zealand economy.

282. The MAC prefers Option 2 below (discussed in Section 3e) as it provides the greatest flexibility to establish an effective and fair distribution formula and it also gives the industry the ability to react in a more timely manner to a dynamic and ever changing betting environment.
283. The MAC also supports sports codes receiving the portion of the levy generated from sports betting.

Key Stakeholder Agencies

284. Inland Revenue and Treasury have been identified as key stakeholder agencies. Inland Revenue has the role of collecting the duties from New Zealand Gambling entities. Treasury has an interest as the Government's advisor on financial policy.

Inland Revenue

285. The Inland Revenue prefers Option 2 below (discussed in Section 3e) - Repeal the betting levy and create a new distribution mechanism for this component of the NZRB's additional surplus. It believes this option will allow for the betting levy to be redistributed to both the racing and sports codes and that it will be relatively straightforward to implement.

Treasury

286. The Treasury does not support the repeal of the betting levy. The Treasury has commented that the proposals in this paper will have significant fiscal implications for the Crown, driven primarily by the proposal to repeal the betting levy. The betting levy was last reduced in 2006 – from 20 percent of betting profits to 4 percent – with the aim of improving the economic performance of the racing industry and avoiding further decline.
287. Foregone revenue is significant. The amount paid to the Crown from the betting levy has increased annually for several years. It is projected to be approximately \$14-15 million annually over the next four years (a total of \$57 million over the forecast period).
288. It is not clear that the repeal of the betting levy would contribute to revitalising the racing industry in a cost-effective way on the basis of the information currently available. However, this work may provide greater clarity as it progresses.
289. Repealing this duty may also set a precedent for the repeal of other of duties in the gambling sector and elsewhere.
290. However, if the Government chooses to repeal the betting levy, then Option 2 below (discussed in Section 3) is the preferred Treasury option. This option allows for further detailed work, and strikes a balance between transparency of distribution method, enabling sports codes to be included alongside racing codes, and being administratively simple.

New Zealand Gambling entities

291. It is likely that Lotto NZ, New Zealand casinos and Class 4 gaming providers will not support the repeal of the betting levy if they are still required to pay it. They currently

pay gaming duties and are likely to argue that the repeal of the betting levy is inequitable.

Section 3e: Options identification

3.1 What options are available to address the problem?

292. This RIA sets out three options for the repeal of the betting levy and/or redistributing its funds to the racing and sporting codes while retaining a proportion for the reduction of gambling harm.

Option 1 – Repeal of the betting levy: NZRB to then distribute its additional surplus annually through the s16 distribution formula of the Racing Act

293. Under this option, NZRB would no longer pay the betting levy. Instead of a 4% charge being remitted to the Government, it would contribute to NZRB's profits and be distributed through s16 of the Racing Act. A proportion of this would be retained for the reduction of gambling harm.

294. Repealing the betting levy is expected to have very minor administrative impacts for the Inland Revenue. It would require an amendment to the Gaming Duties Act 1971 and minor changes to Inland Revenue's gaming duty collection mechanisms.

295. S16 does not allow for the distribution of these additional profits to the sports codes. S57(1)(d) of the Racing Act instead prescribes a statutory minimum for payment to sports codes as part of any agreements with the NZRB for sports betting. NZRB profits are calculated after these payments have been made. Therefore, this option would not result in sports codes receiving any additional funds from the repeal of the betting levy. Under this option the betting levy would be repealed from 1 July 2019.

Option 2 – Repeal the betting levy: Create a new distribution mechanism for this component of the NZRB's surplus

296. This option would have NZRB distribute the repealed betting levy revenue directly to the racing and sports codes through a future determined distribution formula. This, unlike Option 1, would enable sports codes to benefit from the repeal of the levy. This option broadly aligns with the Messara Report's recommendation. Like option 1, a proportion would be retained for the reduction of gambling harm.

297. The MAC is currently considering possible distribution formulas. It will provide a recommended formula in its final report to Government by 30 June 2019.

298. If this option is chosen, legal provisions would be made to set the distribution formula in regulations. This is aligned with how the Department proposes to treat the distribution formulas for both the racing and sports codes. It is expected that the formula would provide for 4% of annual betting profits to be redistributed to the racing and sports codes. Under this option the betting levy would be repealed from 1 July 2019.

Option 3 – Continue to collect the betting levy. Government to distribute it back to the racing industry

299. This option would not repeal the betting levy. Instead, the betting levy would continue to be collected from NZRB and paid to the Crown. A mechanism would then be

developed for it to be redistributed to the racing and sports codes as well as retain a proportion for NZRB to use towards reducing gambling harm. This option would require a new appropriation through the Budget process.

300. This option would provide for strong government oversight. However, it creates administrative complexity. This is because the Government would be required to collect the betting levy from the NZRB before distributing it back to the racing and sports codes.
301. This option would enable sports codes to be included in any future distribution formula. It would also allow a new frequency for revenue distribution to be developed. However, this option may result in future Governments deciding to use the betting levy revenue for other purposes. The possibility of this occurring may cause funding uncertainty for the racing and sports codes.

3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?

302. The following criteria were developed to consider which option provided the best likely outcome, aligned with the overarching principles.

Transparency: is the process clear to interested parties? Do interested parties get to have a say?

Administratively simple: if change is required, is it a simple process? Does it create an administrative burden for any particular parties? It is an easily understood process?

Fairness: is this change fair to the racing codes? To sporting organisations? To other gambling providers who pay duty?

3.3 What other options have been ruled out of scope, or not considered, and why?

303. No other options were considered.

Section 4e: Impact Analysis

Table 7: Options for diverting the betting levy back to NZRB.

	Option 1: Repeal and distribute through s16	Option 2: Repeal and create new distribution mechanism	Option 3: Continue collecting levy. Government distributes
Transparency	+ Transparent as funds distributed using the existing mechanism.	+ Transparent as new distribution formula that would be set in regulation.	+ Provides for strong government oversight.
Administratively simple	+ Funds distributed through existing s16 formula.	+ Simple as the distribution formula would be set in regulations. This would be consistent with how the Department is proposing other formulas be treated. However, work required to design new distribution formula.	- Complex as the levy would continue to be collected and Government would redistribute it through a yet to be determined formula.
Fairness	0 The s16 distribution formula would mean NSOs would not benefit from the levy being repealed. New Zealand's other primary gambling providers are likely to see the repeal of the betting levy as inequitable.	+ Includes sports codes in distribution. New Zealand's other primary gambling providers are likely to see the repeal of the betting levy as inequitable.	0 Includes sports codes in distribution. May result in uncertainty for the racing and sports codes as future Governments may reallocate the appropriations for other purposes. New Zealand's other primary gambling providers are likely to see the repeal of the betting levy as inequitable.
Overall assessment	+	++	0

Key:

++ much better than doing nothing **+** better than doing nothing **0** about the same as doing nothing

- worse than doing nothing **--** much worse than doing nothing

Section 5e: Conclusions

5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

- 304. The Department considers that, subject to the approval of the Budget bid to enable a Crown contribution to cover the loss of funds collected through the betting levy, the preferred option is Option 2 – Repeal the betting levy and create a new distribution mechanism for this component of the NZRBs surplus.
- 305. The Department considers this option will directly contribute to the objective of supporting the racing industry’s ability to operate on a sustainable financial basis by providing increased income back to the industry while also providing an increased focus on the reduction of gambling harm.
- 306. This option best meets the criteria set out in Section 3.2 above. It supports a transparent process by setting out a distribution formula in regulation, which then ensures there will be consultation and Ministerial oversight. It is relatively administratively simple, because a specified distribution formula will be created in regulations. It is fair for the racing and affected sports sectors, in that all of the parties whose codes and sports are bet on (which in turn contributes to the betting levy) will benefit from the subsequent redistribution of revenue. Having the distribution formula in regulation will also be consistent with how other distribution formulas are being treated.
- 307. The key stakeholders are the NZRB, the racing codes and NSOs. They are in support of this proposal.

5.2 Summary table of costs and benefits of the preferred approach

Affected parties (identify)	Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	Impact \$m present value, for monetised impacts; high, medium or low for non-monetised impacts	Evidence certainty (High, medium or low)
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Additional costs of proposed approach, compared to taking no action			
Regulated parties	Pressure from New Zealand Lotteries Commission, casinos and other and Class 4 gaming providers for similar treatment to remove the duties they pay (estimated to be approximately \$238 - 253 million per annum, including NZRBs contribution).	Between \$0 to \$253 million per annum dependent on Government decisions.	Low
Regulators	NZRB may need to undertake some changes to its distribution processes.	Exact amount unknown but expected to be minimal.	Medium
Wider government	A reduction of \$14 - \$15 million per annum to Crown Accounts leading to pressure to increase other areas of general taxation.	\$14 - \$15 million per annum.	High
Total Monetised Cost	-	Between \$14 million to \$253 million.	-
Non-monetised costs	-	Low	-

Expected benefits of proposed approach, compared to taking no action			
Regulated parties	Racing codes and NSOs will receive estimated additional revenue of \$14 - \$15 million per annum.	\$14 – 15 million per annum.	High
Wider government	The repeal of the levy may contribute to the ongoing health of the racing industry, This, over time, may increase the racing industry’s contribution to the New Zealand economy but this is unable to be quantified.	Unknown	Low
Total Monetised Benefit	-	\$14 – 15 million per annum	-
Non-monetised benefits	-	<i>Low</i>	-

5.3 What other impacts is this approach likely to have?

Repealing the betting levy may be perceived as inequitable by other gambling providers

308. Repealing the betting levy or redistributing it back to the racing industry could be seen as inequitable by New Zealand’s other primary gambling providers. The New Zealand Lotteries Commission, casinos and other and Class 4 gaming providers are likely to argue that the racing industry should not be given special treatment. These providers did not make any submissions on the Messara Report. However, they may campaign to have the applicable duties removed from their profits.
309. In addition, the 4% betting levy rate on NZRB betting profits is already comparatively low when considered against the 20% duty charged on class 4 gaming machine profits. The levy on NZRB betting profits was reduced from 20% to 4% in 2006. Repealing this levy altogether may further increase other gambling providers belief that they are being treated unfairly.
310. The impetus behind repealing the betting levy is that the racing industry has significant risks to its ongoing viability. This is not the case for other gambling activities in New Zealand.
311. Inland Revenue have also advised that any reduction in overall gaming duty may increase pressure to increase other areas of general taxation. However, the short-term reduction in Government revenue from the possible repeal of the betting levy may be offset in the long-term through a revitalised racing industry.

5.4 Is the preferred option compatible with the Government’s ‘Expectations for the design of regulatory systems’?

312. The decision to repeal and/or redistribute the levy may not be considered proportionate, fair and equitable in the way it treats regulated parties. This is because it preferences the NZRB over other New Zealand gambling providers who are still required to pay gaming duties.

Section 6: Implementation and operation

6.1 How will the new arrangements work in practice?

313. This RIA presents a suite of proposals for Bill No. 1 which, subject to Cabinet approval, will be passed by 1 July 2019. These changes represent the first steps in a program of reform which aim to get the racing industry to a sustainable, financially viable 'future state'. The implementation and operational considerations of each of the key proposed arrangements for Bill No. 1 are outlined below:

Transitional Governance Arrangements

314. The proposals contained in this RIA are, for the most part, focused on setting up the transition from the current industry state to the proposed sustainable industry state proposed in the Messara Report. This transition will be managed through the formation of a transitional entity RITA. RITA will be responsible for overseeing the implementation of most of the changes that are being sought through the process to reform the racing industry.

315. RITA will have significant accountability to the Minister for Racing. Its Board members will be appointed by the Minister. Accountability and governance aspects of RITA have been designed to ensure that the transitional entity can do its tasks effectively and include Ministerial oversight and regular reporting on progress.

316. Government, and the MAC, are working closely with the sector and ensuring that they are kept informed. Communication throughout the reform process will continue to be key to ensure that key stakeholders are kept informed and understand the changes.

Changes to legislative settings for distribution of racing and sports funds

317. To enable these changes, regulations will need to be drafted. Nothing will be required from the regulated parties - the NZRB and Sport NZ – as a result of this change.

Extension of sports which NZRB can provide betting products on

318. The NZRB will be permitted to offer betting on sports where there is no NSO but an agreement is in place with Sport NZ as a result of changes to the Racing Act. This will require the NZRB, should it choose to, to ensure its systems are able to deliver these products to consumers.

Offshore charges

319. Offshore charges will require a considerable amount of work to operationalise and implement. The Department will lead work on this, anticipating that these charges will be able to be introduced in late 2020. The offshore charges will require the implementation of a separate set of regulations that will be made under the amended Act. It could take six to 12 months for the regulations to be developed and implemented. Further work that would need to be completed includes:

- rates will need to be set for each of the charges; and
- a range of other administrative measures will need to be put into place to facilitate the collection and enforcement of the charges.

Betting levy

320. Should Government agree to it, there will be a transitional period between the repeal of the betting levy and the creation of the new distribution formula. During this period the repealed levy funds will be treated as part of NZRBs overall betting profits and, therefore, will be distributed to the racing codes through the existing s16 formula.

6.2 What are the implementation risks?

321. The reforms are taking place within an ambitious timeframe. There is an inherent risk that there will not be enough time to effectively implement all these proposals. There is also a risk that BAU may be disrupted if there are not clear lines of responsibility and if the racing industry is unclear or disagrees with changes being made to support an improved future state. The Department has engaged a Programme Manager to support the work required to deliver the reform of the industry.

322. The specific risks relating to implementation include:

- the speed of which RITA can be set up;
- the level of support, and cooperation, from the racing industry for the proposed changes;
- the ability to retain industry capability and expertise; and
- the transparency of changes being made and how they impact on stakeholders.

323. The main issues identified through consultation relate to the diversity of industry views about the formula for distribution of the surplus from betting activity, as well as uncertainty about the final form of cooperation among the racing codes. The racing codes have over many years had differing and often conflicting views about management of industry issues, how to share a range of sources of revenue, and how to apportion costs fairly.

324. To mitigate these risks, a focus of this work is on change management. That includes having the right people with the right skillset in RITA to support a successful transition, alongside Crown control throughout the transition period to ensure that the transition process is on track.

325. One of the particular objectives of the transition process is to assist in resolving whether codes will seek alignment or agreement through Racing NZ as entity, or whether cooperation will be through agreed processes on how codes can reach necessary agreements on contentious issues.

326. Another way to mitigate risk is the Department's external communications strategy. This will focus on keeping the racing industry, and the broader New Zealand public informed of these changes.

327. A second Bill is being developed, which the Department anticipates will be introduced in late 2019. This will provide an opportunity to address any issues identified as part of the ongoing policy work.

Section 7: Monitoring, evaluation and review

328. The racing regulatory system is highly devolved to the racing industry. The framework has limited central government control and oversight. NZRB has a dual role as both the industry's main policy body and as the provider of race and sports betting via its TAB brand. It has a statutory responsibility to develop policies that are conducive to the economic development of the racing industry and the economic well-being of those who derive their livelihoods from racing.

System-level monitoring and evaluation

329. From a system level of monitoring, this information could be sourced from the NZRB (or its future form Wagering NZ). The NZRB produces annual reports outlining their financial statements and financial trends. The information in the financial reports would provide a better annual assessment than an assessment by the Department.

Implementation and operational issues

330. The changes proposed within this RIA are focused on the first step of a range of changes required to bring about the desired future state in the racing industry. For example, further work, including as part of a second Bill in the latter half of 2019, will provide further detail about the final form of governance arrangements in the racing industry but at this time, no decisions have been made.

331. In terms of operational issues, any key service design and operational changes are expected to take place in 2020, subject to the passage of relevant legislation in 2019.

332. As part of the MAC's Terms of Reference, they will scope the operational decision points (whether technical, legal, financial or process orientated) for racing reform that do not require legislative change. These could also result in operational changes. RITA will be charged with leading this work.

New data collection and extra data to be collected

333. Given that the racing reforms will require a phased approach some of the impacts will not be realised in the immediate to long-term. Therefore, how they will be monitored, reviewed and evaluated will be considered as part of subsequent policy work. The Department anticipates that the future state will see more industry responsibility for monitoring performance.

334. The RITA, once established, will be required to report regularly to the Minister for Racing on its progress, throughout the transition period. These will include progress updates, to ensure that the transition is proceeding according to plan. RITA will also be required to make periodic progress updates to the racing industry.

335. At this moment there are no plans in collecting new data as these racing proposals are still in the early stages of reform. However, there may be mechanisms, systems and processes in place to collect new data in the future, if appropriate. These will be subject to decisions from the Minister for Racing and Cabinet.

336. There is no scheduled time for another racing review after this one. Any broad structural reviews will be subject to the decisions of the Minister for Racing and Cabinet.

Appendix A: Messara Report Recommendations

The Messara Report proposes the following 17 recommendations:

1. Change the governance structure, so the NZRB becomes Wagering NZ 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.
2. Establish Racing NZ as a consultative forum for the three Codes to agree on issues such as entering into commercial agreements with Wagering NZ, approving betting rules and budgets for the integrity bodies, equine health & research, etc.
3. Change the composition and qualifications for directors of regulatory bodies.
4. Request that a Performance and Efficiency Audit of the NZRB be initiated under section 14 of the Racing Act, with particular, emphasis on the operating costs of the NZRB.
5. Amend the Section 16 distribution formula of the Racing Act to a more equitable basis for fixed 10-year terms.
6. Initiate a special review of the structure and efficacy of the RIU and allied integrity bodies, to be conducted by an independent qualified person.
7. Begin negotiations for the outsourcing of the TAB's commercial activities to an international wagering operator, to gain the significant advantages of scale.
8. Seek approval for a suite of new wagering products to increase funding for the industry.
9. Confirm the assignment of Intellectual Property (IP) by the Clubs to the Codes.
10. Introduce Race Field and Point Of Consumption Tax legislation expeditiously. These two measures will bring New Zealand's racing industry into line with its Australian counterparts and provide much needed additional revenue.
11. Repeal the existing betting levy of approximately \$13 million per annum paid by the NZRB, given that the thoroughbred Code is a loss maker overall, with the net owners' losses outweighing the NZRB's net profit.
12. Clarify legislation to vest Race Club property and assets to the Code regulatory bodies for the benefit of the industry as a whole.
13. Reduce the number of thoroughbred race tracks from 48 to 28 tracks under a scheduled program. This does not require the closure of any Club.
14. Upgrade the facilities and tracks of the remaining racecourses with funds generated from the sale of surplus property resulting from track closures to provide a streamlined, modern and competitive thoroughbred racing sector capable of marketing itself globally.
15. Construct three synthetic all-weather tracks at Cambridge, Awapuni & Riccarton with assistance from the New Zealand Government's Provincial Growth Fund. Support the development of the Waikato Greenfields Project.
16. Introduce robust processes to establish traceability from birth and the re-homing of the entire thoroughbred herd, as the foundation stone of the industry's ongoing animal welfare program.
17. Increase thoroughbred prizemoney gradually to over \$100 million per annum through a simplified three-tier racing model, with payments extended to tenth place in all races.

A link to the Review of the New Zealand Racing Industry by John Messara can be found [here](#).