

Racing Industry Reforms Bill No. 2- Regulatory Impact Assessment

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. The first tranche of changes to commence reform were made through the Racing Reform Act 2019.

This Regulatory Impact Assessment (RIA) addresses proposals requiring legislative change which are designed to implement the remaining reforms. Specifically, this RIA relates to the set of proposals covered in a suite of Cabinet Papers titled:

- Overview of the Final Racing Industry Reforms;
- Governance of the New Zealand Racing Industry;
- Utilising Racing Industry Property to Support Industry Revitalisation; and
- New Products and Strengthened Harm Prevention and Minimisation for TAB NZ.

The sum of the proposals set out in this RIA build on the changes made through the Racing Reform Act 2019 and take the steps needed to reverse the decline of the racing industry. It does this in a number of ways. The proposals to restructure the governance of the industry ensure it can make the hard, commercial decisions that are required to enable a sustainable industry. The property proposals empower the industry to consider how best its property assets can be capitalised to support quality racing products and infrastructure. The wagering proposals provide opportunities for TAB NZ to introduce new products (and increase its revenue) balanced with the need to ensure that harm to New Zealanders is minimised.

These proposals, taken individually, will not fully achieve the vision the Messara Report set out. For example, changing the governance structures without enabling the property proposals will not enable better quality racing infrastructure. Increasing revenue through new wagering products will not, without governance changes, lead to racing codes investing more in infrastructure. It is necessary that the proposals be introduced together to achieve the successful reform of New Zealand's racing industry.

Governance Arrangements

The industry needs to make hard decisions to ensure it is sustainable in the long run; the proposed changes give the industry the ability and incentives to make these decisions. This section provides options on the most appropriate organisational form of the entities within the racing industry, the TAB NZ, the racing codes, racing clubs, and the integrity system. The preferred options include the transition of the Racing Industry Transition Agency (RITA) to TAB NZ, as a standalone betting operator with RITA's racing functions devolving to the racing codes. It also includes the creation of the Racing Integrity Board (RIB), an independent entity that will oversee all integrity activities, including the adjudication, investigation and prosecution functions. In addition, it considers the need for the Minister for Racing to influence the racing ecosystem in future.

Racing Industry Property

This section provides options that are intended to maximise the contribution that racing industry property can make to supporting the racing industry, to ensure long-term industry viability. Two key objectives have been identified which have guided policy development related to property and are intended to guide the industry in the future. These are that *the value of racing industry property should be retained in the industry, and racing property should be used for maximum industry benefit.*

The Department of Internal Affairs' (the Department) approach has been that reform should seek to minimise the extent of intervention necessary to deliver the required reform outcomes. After analysis the Department has agreed with the Ministerial Advisory Committee for Racing (MAC) position that one of the most intrusive proposals of Messara (i.e. to vest all club property in the industry) would be an over-reach and is not necessary. However, the least intrusive option, a negotiated Future Venue Plan (FVP) process, where agreement is reached between codes and clubs, on its own is unlikely to achieve the outcomes the reforms seek to achieve. The least intrusive measure that will deliver the required outcomes is still a significant statutory response that will impact on property rights of racing clubs.

9(2)(h) [Redacted]
[Redacted]
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[Redacted]
[Redacted]
[Redacted]

New Wagering Products

While current legislation limits what products TAB NZ can offer, New Zealand customers can access a large range of wagering and gambling products through offshore gambling operators. Offshore gambling operators do not have to adhere to the same regulatory requirements and restrictions that TAB NZ does, nor do they contribute as much to New Zealand's economy. The proposals in this section consider the introduction of new products as a way to increase revenue for the racing industry, balanced with the Government's responsibility to minimise harm from gambling.

How to read this report

This RIA analyses 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) cover all proposals.

List of abbreviations

Organisation, Legislation, Titles, Name, etc:	Shortened language to be used:
Department of Internal Affairs	"The Department"
Future Venue Plan	"FVP"
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 Reform Act 2019	“Racing Reform Act”
Racing Reform Bill 2019 No. 2	“Bill No. 2”
Racing Industry Transition Agency	“RITA”
Racing Integrity Unit	“RIU”
Racing New Zealand	“RNZ”
Sport New Zealand	“Sport NZ”

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Racing Industry Reforms Bill No. 2

Advising Agency	Department of Internal Affairs
Decision sought	<p>Agree to the creation of TAB NZ with appropriate governance and accountabilities as the sole betting provider for racing and sports; the transfer of racing functions and related accountability requirements from the Racing Industry Transition Agency (RITA) to racing codes; the creation of the Racing Integrity Board (RIB); the creation of reserve powers for the Minister for Racing to intervene if necessary.</p> <p>Agree to update the purpose of the Racing Act to include that racing property should remain in the industry, and be used for maximum industry benefit; changes to wind-up provisions of racing clubs; the introduction of legislative provisions to support commercial negotiations between race clubs and codes, including a statutory process to decide on the use of surplus assets if agreement cannot be reached.</p> <p>Agree to update the purpose of the Racing Act to strengthen its focus on harm minimisation; the scope of new wagering products can be considered within the Act; the introduction of an approval mechanism to consider rules for new wagering products; provide TAB NZ exclusive rights to Intellectual Property in the Australian and New Zealand market.</p>
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?

In April 2018, the Minister for Racing advised Cabinet of his concerns regarding the decline of the racing industry and threats to its ongoing viability as a major industry and important contributor to New Zealand’s social and cultural fabric. An industry expert, John Messara, was commissioned to assess the racing industry and his report (the Messara Report) concluded that these threats included:

- competitive inroads into the betting industry from offshore;
- a governance structure that did not sufficiently focus on driving commercial activities that support the industry; and
- the large number of racing venues and the challenge of upgrading facilities and addressing chronic underinvestment.

The Minister for Racing initiated a reform programme based on the recommendations of the Messara Report, with ambitious timeframes. The Government committed to reform the industry to address these issues recognising that it is in the Government’s interests to revitalise the racing industry. Increased employment opportunities, support for provincial communities and an increase in the industry’s contribution to the economy, will increase the Crown’s taxation revenue from the industry. The racing industry’s importance to the New

Zealand economy, including provincial communities and businesses, reinforces the case for government intervention.

The New Zealand Labour Party and New Zealand First Coalition Agreement includes a commitment to support the racing industry. The Government has “agreed to the overall intent of the Messara Report as providing the best approach to delivering a New Zealand Racing Industry that is financially sustainable, internationally recognised and competitive” [CAB-19-MIN-0168.02 refers]. The Racing Reform Act 2019, that came into force on 1 July, was the first step of a programme to reform the racing industry structure, governance, operations and funding in order to make the industry sustainable and support its continued significant contribution to the New Zealand economy. The changes that resulted from the Racing Reform Act were:

- the reconstitution of the New Zealand Racing Board (NZRB) as the Racing Industry Transition Agency (RITA), which is responsible for managing the transition phase and the existing functions of the former NZRB;
- providing the ability to collect revenue from offshore betting operators;
- progressively repeal the totalisator duty (betting levy); and
- removing distribution formulas to racing and sports codes from legislation and create powers to set the formulas in regulation.

The remaining reforms are addressed in a suite of Cabinet papers that seek policy decisions for the Government’s final legislative response to the Messara Report. These decisions will inform the Racing Reform Bill No. 2, and include:

- the future state organisational form and governance arrangements of the racing industry, to enable a racing ecosystem that is fit for purpose;
- enabling racing industry property to be utilised for the benefit of the industry as a whole;
- strengthening the Racing Act’s focus on harm prevention and minimisation; and
- introducing an approval mechanism to comprehensively consider rules for new products.

The Minister for Racing has given tight timeframes for these reforms, given the state of the industry and Messara’s analysis calling for urgent action. The Racing Reform Act initiated a transition period. However, it is this next phase, which builds on the changes made through the Racing Reform Act, that will achieve the desired results. Given these timeframes and government support for the Messara Report, the Department has limited its consideration of ways to ensure the future viability of the racing industry to the Messara recommendations or similar alternatives that achieve the outcomes sought.

Future State

The Department has approached consideration of reform proposals with the view to whether they will deliver the following desired future state.

1. **Overall reforms:** 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?

The industry is facing significant challenges. Through a combination of generational change, a loss of social licence, and competition with other forms of entertainment, the racing industry is in decline. In addition, industry assets are not managed appropriately, or utilised to their full potential. The current structure of the industry means it does not have the ability to respond to these challenges. RITA currently does not have the ability to adapt to the strong international online gambling market as the Racing Act restricts what products RITA can offer. In the 16 years since the Racing Act was passed technology has developed significantly and the legislation does not reflect this new market. This restriction allows New Zealand consumers to gamble with offshore providers who are not bound by New Zealand's regulatory system, in particular relating to minimising gambling harm.

The industry is also unable to respond to the challenges that the highly devolved governance structure has created. The Department considers that the racing industry is built on two foundational elements: a strong community focus, and a commercial focus. However, the tension between these two elements could be seen as a significant contributor to industry decline. Clubs act as silos and in many cases their actions benefit the local interest, to the detriment of the wider industry.

This decline of the wider industry, over time, will lead to negative impacts on local communities. There is recognition in the industry that rationalisation and better use of significant assets is required. Messara noted the racing codes' plans for the reduction of venues that will receive races. However, codes are unable to utilise these valuable yet highly underutilised assets, for the benefit of the wider industry, unless agreement can be reached with the relevant club. Messara recommended legislation be amended to clarify that racing clubs are part of a wider industry, and their assets should remain within that industry.

Previous attempts at reform have failed to address this property issue. Negotiated solutions between codes and clubs would require no regulatory measures and are normally preferred. However, the Department recognises that the Government has already committed to a reform and revitalisation of the racing industry. Further, the Department acknowledges that negotiated solutions regarding venues provides no certainty of decisions being reached that would enable industry revitalisation. Therefore, if the Government wants to provide that certainty, then some form of regulatory support appears necessary. That proposed support raises concerns regarding intrusion into property rights of clubs (and to an extent the interests of some local communities) which government must balance against the needs of the industry and the wider social and economic benefits that are expected to result. The property-related statutory powers provided through these reforms are intended as a 'backstop', to be utilised only when negotiations fail to reach agreement.

The Department considers that these reforms provide the industry with the most appropriate tools to counter the challenges it faces.

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, some racing clubs and industry participants – owners, trainers, jockeys and breeders. National Sporting Organisations (NSO) and 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. Wider beneficiaries include the individuals and communities that derive enjoyment from the racing industry.

The new proposed governance structures provide that the sole betting operator for racing and sports, TAB NZ, is independent from the industry at a decision-making level. This will allow the TAB NZ to focus on its success as a commercial entity, with its key function being the maximisation of profits, subject to ensuring the risk of problem gambling and underage gambling is minimised. Proposed changes to the racing integrity system also provide it with independence from the racing industry, which the Department considers is an important component in growing confidence in the racing product.

The racing industry will benefit from changes regarding industry property; assets will be retained in the industry and will be used more effectively. Clubs that own retained venues will benefit, to varying degrees, from decisions made by the codes regarding prioritisation and level of investment; in addition, these clubs will benefit as modernised venues will require less maintenance. The overall industry will benefit over time as more appropriate venues and upgraded tracks will provide for an increase in betting and non-betting revenue. As thoroughbred racing clubs own the majority of the racing venues, thoroughbred clubs will receive the most benefit. However, all clubs will benefit, as some venues are shared by more than one code, and betting profits are distributed to all racing and sporting codes.

An approval mechanism to introduce new wagering products will provide an increase in revenue by giving the industry the ability to increase profits in an environment where betting preferences have shifted to lower-margin products. It will also increase the onus on TAB NZ to create the safest possible products, by requiring that harm minimisation is prioritised.

Where do costs fall?

Direct costs associated with these reforms will largely fall to the industry. These include costs associated with:

- transition of RITA to TAB NZ, and formation of the Racing Industry Board (RIB);
- progressing with the Future Venue Plan (FVP), specifically the cost to appropriately assess each venue to determine if it is beneficial to retain or declare surplus. These will be shared by codes and clubs; and
- potential legal challenges to outcomes from the FVP, for relevant codes and clubs.

Additional costs to codes may result when codes do not act in the collective interest. Codes will be jointly and severally responsible for collective action of the industry. Where a code is not acting in the collective interest the Minister will be able to appoint a Commissioner and all codes will be levied for the associated costs. This potential cost will act as an incentive for all to work together to reach agreement.

Codes and clubs will bear the cost of the proposed statutory process to resolve the utilisation of surplus property when agreement cannot be reached by negotiation. Where a club has a venue declared surplus and is then vested in the code against its wishes, it will bear the cost of the asset loss, although these assets would not have been retained if the club was wound up. Clubs with surplus venues will bear the cost of any non-land assets they own that become redundant once a venue is surplus and has been transferred or sold, unless they sell, re-purpose or transfer assets to support their racing at retained venues.

Any costs that arise from clubs whose venue is declared surplus, related to their relocation to an alternative venue, may be provided from the funds realised from the sale of the surplus venue, if they do not have sufficient funds to relocate. Indirect costs may arise for club members and members of the public, relating to the need to travel further to attend race meetings because their nearest venue has closed. A further indirect cost would be if any existing clubs decided to discontinue because they no longer had a 'home' venue.

Communities surrounding venues declared surplus will be negatively affected, given these venues may have been used for non-racing purposes. There is a cost to individuals or groups who are required to travel further to an alternative venue, and a potential increase in costs for rental of the alternative venue. There is also a social cost regarding potential loss of opportunity to volunteer or participate in activities based at the venue, particularly if no suitable alternative venue can be found. The proposed new wind-up provisions will also impact on potential future gains for charities and incorporated societies, who will no longer benefit from the dissolution of a racing club.

Indirect costs may fall to communities and individuals if wagering proposals result in increased harm as a result of gambling activities. This risk is both recognised and addressed via strengthened harm prevention and minimisation measures. This is being achieved by increasing the onus on TAB NZ to create the safest possible products, by requiring that harm minimisation is prioritised both through:

- updating the purpose of the Racing Act to strengthen its focus on harm prevention and minimisation; and
- introducing an approval mechanism to consider new rules that will include a requirement to explicitly set out how harm will be minimised and prevented.

TAB NZ is mostly self-regulating. It is in TAB NZ's best interest to be seen to be adhering to requirements in the delivery of its existing products to enable it to continue to be positioned to seek to expand its product offering over time.

Costs to government are expected to be minimal. Budget sensitive

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

The racing industry has failed to achieve success from past initiatives to revive the industry. In addition, there is a risk that by not implementing the full package of recommendations proposed by Messara, the racing industry will be unable to realise the full benefits Messara estimated. The Department considers these reforms, through the Racing Reform Act and the proposed second Racing Reform Bill, are of a significant scale to achieve real benefits for the industry.

Timing

Reforms of the magnitude as that being undertaken in New Zealand's racing industry would normally entail a longer policy development process than has been the case. For these reforms, a longer time period was not deemed appropriate because the Messara Report confirmed that intervention was required immediately to address the decline of the racing industry. This risk was mitigated to some degree through the expert advice of John Messara, who has form in having transformed the New South Wales racing industry, and further through the Ministerial Advisory Committee for Racing (MAC¹), whose range of skills were deployed to consider the Messara Report and how to operationalise it. Budget sensitive

Governance proposals

There is a risk associated with the transfer of responsibilities from RITA to the racing codes, specifically that the codes will not be adequately prepared to take on the new functions within the timeframe given. This would result in the codes failing to carry out their responsibilities in the way intended, or not at all. In addition, the changing functions of the codes, clubs and TAB NZ may result in some teething problems as the new roles are bedded in. This raises the risk of poor decision-making as the entities become familiar with their new responsibilities.

It is the intention of the reforms to give the codes the power to make the tough decisions for the industry, with limited government involvement. The risk associated with this degree of autonomy is mitigated by the ability for government intervention through the proposed Ministerial powers.

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

Property proposals

There is a risk that the proposal to give codes the power to wind-up a club that is not racing will be found to be inconsistent with NZBORA. The wind-up of a club by a code may be seen as contrary to natural justice, as the code is both the decision-maker and the body that will benefit from making the decision, as the property owned by the club will vest in the code. The actual conflict of interest is limited to the fact that the code will control which venues are refurbished with the proceeds from wound-up clubs and is partly mitigated by the codes having clear prioritisation criteria for venue projects, to provide the optimum return for the industry. Codes are 'owned' by their members, the clubs, which can exercise control through governance and votes at Annual General Meetings.

It should be noted that the proposed transfer of property from a race club to its parent code is a transfer from one incorporated society to another. Both organisations are not-for-profit entities, so the transferred property will continue to be used for not-for-profit purposes within the racing sector.

9(2)(h)



Unintended impacts might also include less or lost engagement from current volunteers involved in venues that might be declared surplus; with this there is a risk that the affected communities are not adequately consulted and do not have the ability or opportunity to voice their concerns. The FVP negotiation process involves the club directly, whose members come from the affected community. It is the club's responsibility to consider whether there are non-racing interests in the venue (given their knowledge of who uses the venue), and if they should be involved in the process. The Minister has the ability to specify the conditions of the FVP process if community interests are not sufficiently recognised. The statutory process includes an independent reviewer who can consider the venue's value to the industry, club and community.

There could be lower racing participation by members of communities that have traditionally only attended local venues which might be rationalised under the reform proposals. These risks exist under the status quo option because, if as expected by Messara, more and more smaller venues fall into disrepair and lose races then volunteers and members of local communities will experience similar impacts to those of the reform proposals, though those impacts might not be felt in the short or even medium term.

If clubs from venues that would be rationalised can continue racing at better, more fit for purpose, venues, then the volunteers that operate and support those clubs would still have opportunities to provide services. If, as anticipated, overall racing volume increases there will be an expanded need for club volunteers to support racing activities. Some members of local communities might need to travel further to participate at the retained venues, but as racing volume increases there will be more opportunities for them to attend races, and for owners, more opportunity to bring additional income back to their community. The communities closest to the retained venues will also have increased opportunities to participate without added travel.

Racing communities are often clustered around racecourses, therefore there might be some migration of service industries, including stables and trainers. If these services remain in situ, they will experience higher logistics costs, however this may be offset by the increase in prizemoney to owners, which will in turn benefit these connected services. Communities with venues that might be surplus may lose some economic activity as well as events that form part of the broader local event calendar. There is no clear mitigation for that impact other than communities developing replacement events at alternative venues.

Wagering proposals

The potential revenue to be realised via additional wagering products and by the TAB NZ 'winning' customers who currently use offshore betting operators cannot be determined. This uncertainty creates a number of risks. Firstly, the TAB NZ may not be able to create the additional revenue needed to support revitalisation of the industry. The reforms will create an environment that enables TAB NZ to be successful and the Department considers the risk that it will not generate sufficient new revenue is moderate to low.

More wagering products and more wagering overall is one of the expected results of the reform, however this brings a risk that harm increases. This is an acknowledged tension between increasing competitiveness while minimising harm arising from gambling. The reforms seek to balance this tension in favour of minimising harm measures such as increasing the onus on TAB NZ to create the safest possible products, by requiring that harm minimisation is prioritised. The proposed approval mechanism for new wagering products would require new products to be approved by the Minister for Racing, based on a set of criteria that include considering gambling harm.

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

With the exception of those related to property, the proposals are consistent with the Government's 'Expectations for the design of regulatory systems' 9(2)(h)

The Department's support for these options are based on proportionality; the preferred options have the lowest adverse impact while enabling the wider reform objectives to be achieved.

Mechanisms are included to minimise the impact on clubs and communities with surplus venues, including allowing for a negotiated process and only if that fails would a statutory intervention be considered. The proposals include some offsetting measures such as the ability for codes to agree on distributions to clubs to allow them to race at retained venues and to communities if they have a valid interest in a surplus venue.

The regulatory regime and associated processes related to property are expected to be the most contentious. Transfers of assets without compensation within a sector have precedents, including in the health and local government sectors. However, those examples related to the transfer of public property, not private property.

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 MAC examined the Messara Report's proposals and its findings are set out in its Final Report on the Review of the New Zealand Racing Industry.

The Department has a high level of certainty regarding the problem identification by Messara. The Department has less certainty regarding the balance of costs and benefits at a local level but is more confident regarding the balance (if not quantum) of benefits and costs at a regional and national level. Overall, the Department considers the benefits both outweigh and justify the costs regionally and nationally but locally there may be clubs and communities for which the benefits do not outweigh the costs at least in the short and medium term.

Quality Assurance Review Agency

Department of Internal Affairs

Quality Assurance Assessment

Partially meets

Reviewer Comments and Recommendations

The RIA sets out the basis for reforms of the racing industry founded on three key elements: governance reform, new wagering products and property proposals.

Governance reform is largely based on the recommendations of the Messara report, in devolving responsibilities to the racing codes so that TAB NZ can have a commercial focus on increasing income from wagering. The governance reform is intended to provide an industry which operates without the need for government intervention but retains Ministerial powers to take action if necessary. It will be important for the legislation to clearly set out the principles which will determine whether and when Ministerial intervention is necessary or desirable.

The new wagering products are intended to narrow the gap between TAB NZ and offshore providers, and the RIA notes that the expected benefits are uncertain and the evidence certainty for them is low.

The property proposals are also largely based on the recommendations of the Messara report. The RIA notes that the proposals involve interference with the property rights of racing clubs. This raises issues under the New Zealand Bill of Rights Act 1990, including whether such interference can be justified, and a risk of litigation. Time constraints have limited the ability to fully investigate the impacts on the clubs concerned and their associated communities. The limitations affect the assessment of likely benefits and the evidence certainty that net benefits will accrue. Cabinet has noted that care needs to be taken to shift the industry balance towards a commercial focus while still acknowledging its community underpinning and it is important that implementation of the reforms meets both these objectives. Stakeholders were consulted on similar proposals in the Messara report, which attracted widespread negative comment. The alternative proposals set out in this RIA have not been consulted on publicly and engaging openly with stakeholders throughout the process will be critical to the prospects of success for the reforms.

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 indicated. The analysis and advice have been produced for the purpose of seeking final decisions by Cabinet to proceed with policy changes that will continue the process of reforming the New Zealand racing industry. This RIA analyses options for a new governance model that will deliver the desired racing ecosystem, options to resolve a number of property issues that are contributing to the decline of the industry, and options to introduce new wagering products.

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, have also been examined 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 on the proposed reforms agreed that fundamental sector reform is required.

Ministerial Advisory Committee for Racing/RITA

In December 2018, the MAC was established with the purpose of supporting racing industry reform 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. The MAC was 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.

The MAC gathered and analysed a wide range of inputs and carried out engagement, investigation, and analysis about the effects of specific proposals. It consulted with the three racing codes and the NZRB (prior to the transition to RITA) on the transfer of responsibilities from the NZRB to the codes and what is required in order for this to happen, the role (if any) an organisation such as Racing NZ should play, the options for outsourcing and the assignment of Intellectual Property. The MAC also engaged external analysis on the integrity functions of the racing industry.

The MAC provided advice to the Minister for Racing through an Interim Report in February 2019, and a Final Report delivered in June 2019². The MAC's views on the specific proposals contained in this RIA have been taken into account. As of 1 July 2019, RITA has been consulted on the proposals within this RIA.

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. In April 2019 Cabinet “agreed to the overall intent of the Messara Report as providing the best approach to delivering a New Zealand Racing Industry that is financially sustainable, internationally recognised and competitive” [CAB-19-MIN-0168.02 refers].

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 MAC were subsequently tasked, through their Terms of Reference, with the scoping up of a detailed plan to operationalise the Messara Report. The MAC examined the proposals that Messara made about restoring the racing industry to sustainability and viability and considered how to operationalise the recommendations. The Department has consulted with the MAC, and subsequently RITA, throughout this process. The Department has taken their views, as industry experts, into account in the development of the options to address the identified problems.

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 and RITA.

² The MAC Final Report is yet to be released. The MAC Interim Report is available at [https://www.dia.govt.nz/diawebsite.nsf/Files/Racing-Review/\\$file/Interim-Report-of-MAC-on-the-Review-of-the-New-Zealand-Racing-Industry.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Racing-Review/$file/Interim-Report-of-MAC-on-the-Review-of-the-New-Zealand-Racing-Industry.pdf)

The Department is satisfied that in broad terms Messara has correctly identified the causal factors for the decline of the industry. The Department also agrees that without significant action the decline will continue. The Department is less sure how serious the decline will be and whether the industry might, without intervention, arrive at a position where it can function sustainably. The Department has a higher degree of confidence that non-intervention will result in a smaller racing industry, with fewer and more run-down venues and lower overall participation in racing activities. The Department therefore agrees with Messara's proposition that intervention is necessary to prevent the industry declining.

Scope of this RIA

This RIA covers proposals that form the Racing Reform Bill No. 2 (Bill No. 2).

Limited understanding of financial implications

At this time, the Department is unable to accurately quantify the broader monetised benefits of the changes being proposed in this RIA. The monetised benefits from the property proposals are subject to commercial decisions from the industry, therefore the Department cannot pre-empt these decisions. However, the implications in terms of capital transactions are substantial. The uncertainty both of financial costs and benefits is a risk factor that must be considered when assessing the suite of proposals and the case for intervention.

Timing

Because of 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.

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 year³ in value-added contribution to the New Zealand economy. It consists of:
 - RITA (as at 1 July 2019⁴)
 - 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)⁵
 - Racing Integrity Unit
 - Judicial Control Authority
 - New Zealand Laboratory Services.
2. RITA, established in 2019 under the Racing Reform Act, has the role of administering all racing and sports wagering in New Zealand via the TAB (the NZRB's betting brand)⁶. 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. RITA also has functions relating to racing industry development as well as managing the transition to the new racing industry structure.
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.

³ IER (February 2018) *Size and Scope of the New Zealand Racing Industry*. Commissioned by the NZRB.

⁴ Any reference to RITA that concern the period prior to 1 July 2019 refer to the NZRB.

⁵ All figures listed are from the 2018 *Size and Scope of the New Zealand Racing Industry* Report.

⁶ In addition to administering all racing and sports wagering in New Zealand, as of 1 July 2019 RITA is also responsible for transitional governance as the industry prepares for the new future state.

4. The Department considers 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 a cost to the whole industry that draws on revenue that the industry should be applying to improving prize money.
5. Previous attempts at reform have failed to effectively manage these tensions – including the governance changes made in 2003⁷. For example, in reviews in 1965 and 1970 (with the McCarthy Royal Commission on Racing), the number of small clubs 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”⁸. Despite these reports, a reduction in the number of racing venues has been strongly resisted and has not been achieved. The Minister has a view that change has not happened through lack of a ‘dislodgement event’ to initiate it. Messara identified an industry in a critical state and prescribed a significant response.

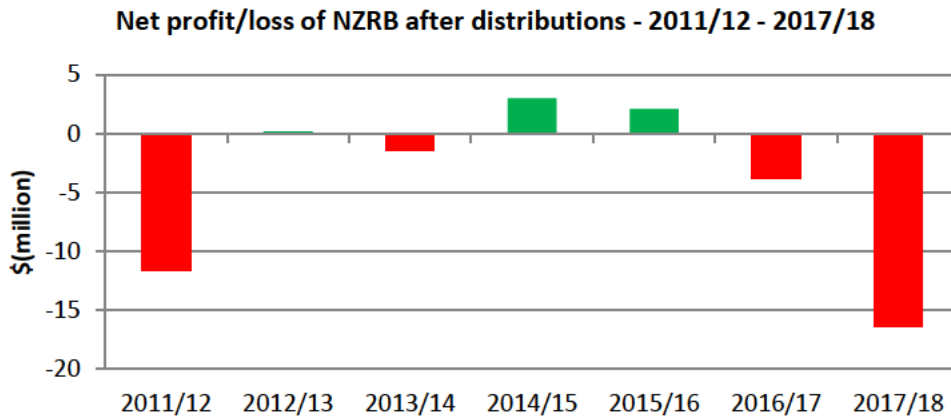
What the data shows

6. Figures from a 2010 NZRB-commissioned report⁹ indicated that racing generated around \$1.6 billion in economic value. This is the same value as reported for the 2016/17 year, reflecting a loss of value in real terms of around 11 percent.
7. After providing for distributions, the NZRB 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 codes. 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 NZRB’s strategic initiatives. These initiatives included several that required legislative changes, for example, the offshore charges that were included in the withdrawn Racing Amendment Bill 2017. These initiatives will be delivered in part, with the Racing Reform Act, and with the wagering product changes planned for Bill No. 2.

⁷ 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.

⁸ Quoted in the Messara Report, page 44.

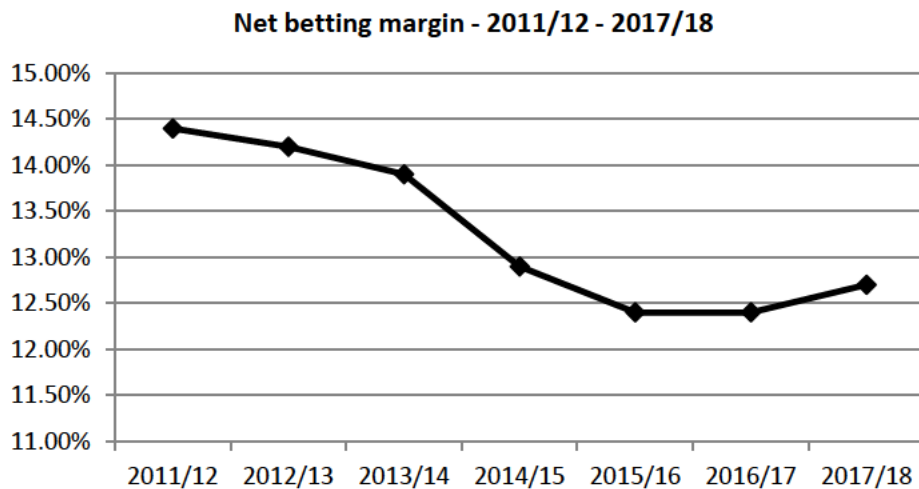
⁹ IER (February 2010) *Size and Scope of the New Zealand Racing Industry*. Commissioned by the NZRB.



- 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. Despite this, 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

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



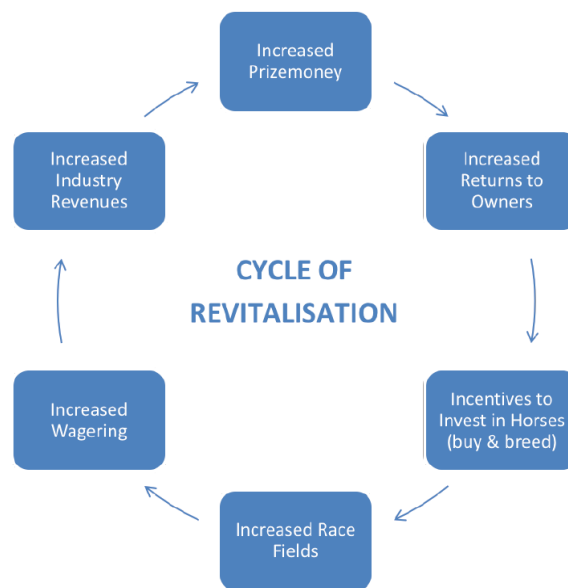
- The main reason for this has been a shift in customer preferences, away from comparatively high-margin totalisator (tote) betting on races and towards lower margin fixed odds betting on sports events. This declining net betting margin directly impacts how much money can be distributed to the three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

The Messara Report

- 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.
- 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 in August 2018. It found the racing industry was in a state of serious decline. It notes 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 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% of costs 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, with 1,701 submissions received. The majority of submitters providing feedback on the package of proposed reforms agreed that fundamental sector reform is required including the industry's main governance bodies: NZRB, NZTR, HRNZ and GRNZ. Opposition was largely directed towards specific recommendations, as opposed to general statements of opposition towards the package of proposed reforms. The recommendation relevant to the proposals within this RIA that received the greatest level of opposition was the recommendation to vest race club property to the codes.

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 was 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 do this the MAC gathered and analysed a wide range of inputs and carried out engagement, investigation and analysis about the effects of specific proposals. The MAC provided advice to the Minister for Racing, as set out in its Final Report. The MAC considered 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 increased public participation in racing 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, possibly 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 noted above, previous reforms have taken place to address the decline of the racing industry, but the magnitude of change required to get it 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 and further decline will occur making any eventual intervention harder and with the associated losses in the interim.

Racing Reform Bill No. 1

23. The Government has taken a phased response to the Messara recommendations. The passing of the Racing Reform Act in June 2019 set up the governance structure required to transition the racing industry to a financially viable future state, through the reconstitution of the NZRB to RITA. It also introduced new revenue streams for the industry. This included extending what sports RITA could provide bets on, progressive repeal of the totalisator duty (betting levy), and the introduction of offshore charges. When implemented fully these changes will go some way to re-establishing the industry's financial sustainability, however further reform is needed to fully realise the racing ecosystem Messara envisaged.
24. The remaining Messara recommendations that require legislative change are considered in this RIA. The proposals are intended to create a sustainable racing ecosystem where: the successor to RITA can offer a broader range of betting products in order to better compete with overseas betting operators; the racing codes take a strong industry leadership role with control of the racing functions; and some racing clubs are resourced to better manage their assets and create high-quality racing products.
25. In turn, these changes will deliver worthwhile investment opportunities for owners and participants, and quality products and experiences for consumers. However, the full benefits described by Messara require the package of recommendations to be implemented in full. A number of these recommendations have been implemented through Bill No 1, and others will be implemented through the passing of Bill No. 2 and through industry-led initiatives. Through the passing of Bill No. 2 TAB NZ could decide to outsource in the future, a key decision Messara stated has the potential to provide a one-off injection of funds for the industry, however this would require Ministerial approval. As a result, the realised benefits will not be to the level Messara stated, however given the majority of the recommendations are to be implemented, the benefits are expected to be of a sufficient level.

Objectives guiding the reform of the racing industry

26. The Department worked with the 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.
27. The Government noted these principles [CAB 19-MIN-0168.02 refers], and this framework was used as a guide for the Department's analysis of the proposals in this RIA. The Department identified specific criteria for some individual proposals to ensure that option analysis is fit for purpose. The Department also considered the impact of

the reforms on natural justice and where relevant, what was the minimum intervention needed to achieve the reform objectives.

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

28. 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, and an important part of New Zealand's social and cultural fabric. 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.¹⁰ The racing industry is particularly important to many rurally-based businesses, as well as a focal point for many provincial communities.

Principle 2: New Zealand has a reputation both domestically and internationally, for delivering high performing animals that attract investment

29. Changes to the industry will have a flow-on effect to this principle. Better utilisation of racing industry property, specifically the modernisation of racing venues, will result in an improved racing product, which will lead to increases in stakes for owners and in turn attract investment to the breeding industry. An effective integrity system is also central to the reputation of the racing industry.

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

30. 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.
31. The entities which exist include the three racing codes, the racing clubs, the wagering body (currently part of RITA) 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.
32. 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.

Principle 4: Consumer: The New Zealand betting provider is internationally competitive and both meets and exceeds the expectations and requirements of the New Zealand consumer

33. The future viability of the racing industry relies on increased betting revenue on racing and sporting events. This can be realised through introduction of new products, through an appropriate approval mechanism, and reducing racing venues to fund the required upgrades for retained venues.

¹⁰ IER (February 2018)

34. A strong and independent integrity system is also central to the future viability of the industry; the consumer must have confidence in the racing product.

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

35. 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).
36. The racing industry and its functions are governed by the following statutes:
- Racing Act 2003;
 - Gambling Act 2003;
 - Anti-Money Laundering and Countering Financing of Terrorism Amendment Act 2017; and
 - Animal Welfare Act 1999.

The Racing Act

37. 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; and
 - promote the long-term viability of New Zealand racing.
38. 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 Gambling Act

39. 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; and
 - gambling is authorised and conducted by trusted and reputable providers.
40. 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; and
 - facilitate community involvement in decisions about the provision of New Zealand racing.
41. 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 harm can, and often does, extend beyond gamblers to encompass family members, whānau, friends, employers, colleagues and whole communities.
42. 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

43. The Gambling Act and Racing Act operate together at the centre of New Zealand’s statutory framework for regulating gambling. The Department acknowledges there are significant but potentially competing objectives in these Acts. One is that the future success and sustainability of the racing sector relies, in the main, on revenue from betting as its main income stream. The other is 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.
44. 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 and the allocation of funding from the progressive repeal of the betting levy introduced in the Racing Reform Act. The Department also recognises that gambling harm has a disproportionate impact on Māori communities.

RITA’s role

45. The racing regulatory system is highly devolved to the racing industry, with limited direct central government control and oversight. RITA has a dual role to promote and enhance the racing industry and is 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. RITA has a transitional role designed to enable industry to develop towards a new sustainable structure which has a dedicated betting operator (TAB NZ), as well as devolving industry development roles to the racing codes and reforming the integrity bodies to achieve a more effective integrity system.

Agencies involved in the racing regulatory system

46. The Department has policy responsibilities under the racing regulatory system. It 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.
47. The Department works with the Ministry of Health which funds and co-ordinates problem gambling harm services.
48. The Ministry of Justice administers the Anti-Money Laundering and Countering Financing of Terrorism Amendment Act (AML/CFT) 2017. RITA began complying with the AML/CFT Act from 1 August 2019. This requires RITA to have AML/CFT measures in place when it provides accounts to customers for gambling or betting and carries out cash transactions above a specified threshold.
49. Inland Revenue collects the totalisator duty (the betting levy) paid by RITA. The Racing Reform Act 2019 introduced a progressive repeal of the betting levy, reducing by a third each year over a three-year period. Revenue from this is forecast to be approximately \$10 million in the 2019/2020 financial year.

A. Governance Arrangements

50. The aim of the proposals is to ensure the long-term sustainability of the New Zealand racing industry following the transitional period implemented by the Racing Reform Act 2019.
51. Decisions sought in relation to governance are:
 - i. the functions and appropriate organisational form, governance and accountability for TAB NZ, the racing codes and clubs;
 - ii. the ability for the Minister for Racing to establish an entity (for example Racing New Zealand (RNZ)), to discharge any collective functions of the codes, if required;
 - iii. the creation of the Racing Integrity Board (RIB), to undertake adjudicative and investigative functions; and
 - iv. provisions for the Minister for Racing to intervene if necessary.

Section 2a: Problem definition and objectives

Proposed governance of entities in the racing industry in the future

52. The problem is how to structure the entities in the racing ecosystem to support industry sustainability in the future. The range of options relate to the organisational form, governance and accountability of key entities: the TAB NZ, racing codes, racing clubs and the integrity system.
53. The proposals do not cover options to organise the industry differently from the entities proposed in the Messara Report. The structure proposed by Messara, which has been subsequently endorsed by the MAC, RITA and the Government, is not up for review or reconsideration. This structure aims to focus the betting operator on maximising profits for the industry, subject to ensuring the risk of problem gambling and underage gambling is minimised, with racing functions devolving (from RITA) to the codes. In addition, the proposed future state empowers the industry to operate in a commercial framework, therefore limiting government involvement.
54. The proposals for the organisational functions, form, governance and accountability will support the proposed new directions envisaged in the Messara Report, through a more efficient structure with one entity focused on growing betting revenue, and others focused on providing the highest quality racing product.
55. The only element which has a structure not explicitly specified in the Messara Report is the proposed approach to the integrity system. The options relating to integrity have been developed as a result of the Messara recommendation to undertake a review of the integrity system, which has now been completed. This section considers options for the future structure and operation of the integrity system – which currently includes the Judicial Control Authority (JCA), the Racing Integrity Unit (RIU) and the New Zealand Racing Laboratory Services Ltd.
56. Finally, it also discusses some proposals for regulatory powers for the Minister for Racing. These are designed to support resolution of significant and critical issues which the industry might not be easily able to resolve on its own.

57. The problem to be addressed in this section is how, given the structure already agreed by Government, to best govern the racing industry and the entities within it, in a way that contributes to long term industry growth and sustainability. Given the racing ecosystem (described in the next paragraphs) and the entities which have already been selected, there are decisions required on organisational form, governance and accountability of the entities.

The racing ecosystem – how the new structure works

58. The proposed new racing industry ecosystem places the racing codes at the centre of the system. The racing codes would have the functions of developing their part of the industry, as well as setting the racing rules and monitoring their implementation. They would continue their roles of registering horses, jockeys, trainers, and in ensuring racetracks are kept up to safe standards and are effectively run and maintained. A diagram of the way the proposed racing ecosystem would work is at page 49. The racing codes determine the industry development and its future direction, and they determine how industry funding, primarily sourced from the TAB NZ, is passed on to the racing clubs.
59. The proposed new structure also establishes the TAB NZ as a betting operator only. This is seen as the best way to give that entity a very specific focus on making the best of its betting functions, without any competing objectives such as future industry planning and setting industry strategic direction.
60. The system also includes the proposed approach to making the integrity system more effective in achieving system objectives. The option presented in the racing ecosystem diagram is the one that is recommended in section 5a after considering different options, including the status quo. The option proposed is to establish the RIB as an independent entity, which has a separate stream of funding and oversees all integrity activities.

The NZRB racing functions are devolved to the codes

61. The Government has agreed to the overall approach recommended by the Messara Report. This is to devolve the betting functions of the former NZRB to TAB NZ and devolve racing functions to the codes. The former functions of the NZRB have already been transferred to RITA as part of the transitional arrangements implemented by amendments to the Racing Act in 2019. These functions will, in turn, devolve to TAB NZ (betting) and the codes (racing rules and industry development) in the second Racing Reform Bill proposed to be introduced later in 2019.

What are the desired outcomes of these reforms as they relate to organisational governance?

Current State

62. In its current state the industry has many governance roles filled by representatives of stakeholders, who are not always individuals with the full set of appropriate skills to move the industry forward. Those in governance roles can also be expected to represent the interests of their appointing organisations, even where these might conflict with the interests of the organisation on which they are appointed. The proposals in this RIA are based on directors being appointed based on their skills rather than as stakeholder representatives.

Future State

63. In its future state the industry will comprise:
- i. the TAB NZ solely focused on maximising betting income, subject to ensuring the risk of problem gambling and underage gambling is minimised. It will be able to compete effectively with overseas betting operators by having additional product offerings;
 - ii. the racing codes taking a industry leadership role designed to improve industry focus and racing product quality. They will also undertake measures to ensure racing clubs are well managed, and have access to well maintained, high-quality facilities; and
 - iii. the integrity system which will be more independent from the industry, streamlined and with assured funding.
64. The proposed future state is compared with existing key functions in the following diagram.

Functions	Structure in 2018	Transition	Future
Change management	N/A	RITA	N/A
BAU Betting	NZRB		TAB NZ
BAU Racing			Codes
BAU Integrity	JCA/RIU	JCA/RIU	RIB
Residual functions	N/A	N/A	TBC

Purpose of governance reforms

65. Given its state of decline, the racing industry needs to be able to make hard decisions to assure its sustainability. It also needs to be able to support a self-sustaining future which does not require further government intervention. It is therefore important that there are incentives on all entities to encourage the efficient use of assets and resources. The governance and accountability proposals are designed to support effective decision-making, which will enable the range of other initiatives contained in the package of proposals presented to be implemented and the benefits realised.

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

66. As indicated earlier, the starting point is the recommendations of the Messara Report, along with any further views from the MAC. In its development of the Racing Reform Act, the Government made decisions on the future structure of the industry, including TAB NZ, and expanded roles for the racing codes. These represent explicit constraints on the range of options considered. However, in the course of our analysis and generation of options and their assessment, we have considered some other approaches which are variations on the Messara recommendations, and which have the potential to contribute to improved decision-making and governance in the industry.

2.5 What do stakeholders think?

67. Public consultation was undertaken on the recommendations of the Messara Report in September and October 2018. The relevant recommendations to the governance arrangements are:

- i. Recommendation 1: Change the governance structure, so the NZRB becomes Wagering NZ¹¹ with racing responsibilities devolved to the individual Codes. This will sharpen the commercial focus of TAB operations and improve the decision-making and accountability of the Codes; and
- ii. Recommendation 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.

68. The NZRB and thoroughbred racing both strongly supported recommendation 1. HRNZ and GRNZ both supported it in principle. Out of 115 submissions received, 46 submissions supported outright the new governance structure, and a further 56 submissions appeared to provide qualified support. Five opposed the recommendation, and a further eight provided additional comments, largely concerning the current performance of the NZRB. Out of the 17 racing clubs that submitted, all expressed their support.

69. A further 50 submissions from the sports sector appeared supportive, in that they did not oppose the creation of Wagering NZ but suggested an alternative structure to the new governing body. These submissions stated the Messara Report did not recognise the sports sector as a key stakeholder, and the increasing financial contribution sports betting provides to NZRB. Some submissions also noted the added value of having an individual with sporting expertise within Wagering NZ. To remedy this, they proposed Wagering NZ be comprised of an independent Chair, representatives from the three racing codes, a representative from the sports sector, and three independent members (or a variant of this structure).

¹¹ The name 'Wagering NZ' has not been adopted – the entity has been named TAB NZ.

70. 43 submissions were received for recommendation 6. 41 submissions supported this recommendation outright, and two opposed it. A number of submissions noted they “strongly support” the Messara Report, and that a well-functioning RIU was required to keep the industry transparent. One submission stated the rationale was robust as “a sound integrity system and strong animal welfare protocols are fundamental to the sustainability of racing and wagering and the wider community’s support for the industry”. The two submitters who opposed noted they did not understand the potential benefit(s) of reviewing the RIU. 16 out of 17 racing clubs that submitted expressed their support.
71. Since the release of the Messara Report, a review of the racing integrity system has been undertaken by Mr Malcom Burgess MNZM, former Assistant Commissioner of Police, on behalf of RITA. RITA is currently seeking industry views on the recommendations of this review. The Minister has agreed to the overall direction of this review.

Section 3a: Options identification

3.1 What options are available to address the problem?

72. The range of options considered in this section are described in the following table. An abbreviated analysis is undertaken in cases where the risks, costs and benefits are minor.

Table 1: Options considered by the Department

Entity	Element	Options	Comment
TAB NZ	<i>Organisational form</i>	<ul style="list-style-type: none"> • Crown owned entity • Statutory body (status quo) • Incorporated society • Private company 	Full analysis of options is contained in Table 2
	<i>Governance</i>	<ul style="list-style-type: none"> • Mix of representative (codes) and independent members (similar to NZRB) • Skills-based board (status quo - as applied to RITA) 	Abbreviated discussion of advantages and disadvantages
	<i>Accountability</i>	Single option considered	Reporting to Minister/Parliament
Racing codes	<i>Organisational form</i>	<ul style="list-style-type: none"> • Statutory body • Incorporated society • Private company 	Abbreviated consideration of options – recommendation is to retain the form as an incorporated society.
	<i>Governance</i>	<ul style="list-style-type: none"> • Status quo (representative board selected by members) • Skills-based board • Two independent directors (Messara recommendation) 	Discussion of options – no statutory intervention proposed, except backstop power to intervene if governance seen as failing. Proposed to encourage appointment of two independent directors

Entity	Element	Options	Comment
Racing codes	<i>Accountability</i>	Engagement with stakeholders, reporting of SOI, annual plan and annual report – to stakeholders, minister, other entities.	Discussion of options. Supports reporting to Minister/Parliament
Racing clubs	<i>Organisational form and governance</i>	<ul style="list-style-type: none"> • Statutory body • Incorporated society • Private company 	<p>Racing codes can require improved governance by racing clubs through registration requirements – statutory provision not needed</p> <p>Discussion - Status quo organisational form (incorporated society) supported</p>
Racing NZ	<i>Whether statutory provision is needed</i>	Messara Report recommended that Racing NZ be set up	Discussion of whether Racing NZ needs statutory mandate. Recommended not to refer to Racing NZ in legislation. Provision for regulatory backstop – power to establish any entity that is able to undertake collective functions for the industry.
Integrity system	<i>Structure and organisational form and operation</i>	<ul style="list-style-type: none"> • Status quo • Burgess Report proposals 	<p>Status quo inadequate based on Burgess Report analysis</p> <p>Burgess Report proposals supported</p>
Regulatory powers	<i>Ministerial oversight</i>	<p>Minister appoints boards of TAB NZ and RIB</p> <p>Table in Parliament planning documents of TAB NZ, RIB and racing codes</p>	Discussion of rationale
	<i>Ministerial intervention</i>	<p>Minister can intervene to ensure adequate funding is in place for RIB</p> <p>Provide for regulations to allow resolution of issues among racing codes</p> <p>Provide for resolution of disputes between racing codes and TAB NZ</p>	Discussion of rationale

TAB NZ

Messara and the Government agree that betting functions will devolve to TAB NZ

73. All wagering and betting functions are to be carried out by the TAB NZ, and all racing functions are to be carried out by the racing codes. The functions as already determined by the Government, for the TAB NZ will be to:

- i. generate revenue from the conduct of racing and sports betting;
- ii. determine the racing calendar in conjunction with the racing codes and issue betting licences; and
- iii. have regard for gambling harm minimisation.

Organisational form of TAB NZ

74. The TAB NZ will be the sole commercial betting operator in New Zealand for racing and sports. It will be a specialist provider of betting services. To achieve this commercial orientation there are four different organisational form options that have been considered. These options are compared in Table 2 below.
75. Comparatively, the transition to a statutory body corporate, which the previous NZRB was and RITA is currently, would minimise costs and not require ongoing oversight by the Government. A statutory body, as an organisational form, has been demonstrably workable as shown by the NZRB, which included the TAB functions, since 2003. This form also avoids the need to resolve the issue of ownership of TAB NZ. Under this option, the entity is a corporate body established under statute, and is exempt from tax. This is appropriate for an entity that is designed to serve the industry, and not be profitmaking for its own shareholders. Profits are transmitted to the industry via funding distributions.
76. The option of a private company has some potential benefits in that it is an organisational form that incentivises efficiency. As a private company, TAB NZ would have a greater capacity to access funding sources that can be applied to growing its business. On the other hand the transition to a private company would require resolution of issues relating to its ownership, across the racing codes, which would be very complex to finalise in a way that is acceptable to all parties.
77. Another option is to form the new TAB NZ into a Crown entity. There are some benefits to this organisational form, in terms of direction from the Minister/government. However, it may not carry strong incentives for efficiency. It involves considerable additional cost to the Crown in terms of monitoring and reporting on its activity. It also potentially carries a liability on the Government, if it were to become insolvent or make losses.
78. The option of making the TAB NZ an incorporated society is not supported. This is due to the minimal incentives for efficiency and commercial orientation, from this organisational form. Further, the change from a statutory entity to an incorporated society would involve transition costs.

Conclusion

79. There are some benefits from each of the organisational structures, including a private company and a Crown entity. However, the statutory body corporate is considered the best option. It minimises transaction costs and transitional issues and is able to provide a secure basis for sustainable future development through maximised returns to the industry.

Outsourcing

80. Messara recommended the former NZRB should progress full operational outsourcing of all domestic wagering, broadcast and gaming operations, to a single third-party wagering and media operator of international scale, under a long-term arrangement with the NZRB (TAB NZ) holding the licence and contracting all operational activities to the selected outsourced operator.

81. This was not a factor in the analysis of organisational form options of the TAB NZ, however the Department considered whether the legislation should make any change to TAB NZ board decision-making powers. The NZRB explored options for outsourcing the TAB betting functions and established several partnership arrangements as joint ventures. This is permitted under section 7(2)(a) of the Racing Act, which provides the Agency with full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction, with the full rights, powers and privileges to do so.
82. The Department considers that long-term commercial success will require the industry to take tough decisions. In the post-transition environment, the Minister for Racing will be less closely involved, so it could be useful to be more explicit about the expected actions of the TAB NZ board and set out some express powers as a guide. This would also enable the Minister to set some limits on decision-making without being drawn into individual decisions.
83. RITA sees the benefit of providing the TAB NZ board with the same wide discretion, particularly given the commercial focus of the new entity. That said, if there was to be some constraint on the decision-making, their preference would be that it be tightly specified to limited matters of significance and agreed by the Minister for Racing.

Governance of TAB NZ

84. The two options considered in relation to governance of TAB NZ are:
 - i. that the board of TAB NZ should be (1) similar to the board of the NZRB previously, and (2) following the Messara recommendations, to have three representatives of racing codes, and an independent chair plus three other independent directors. This would mean the board would have a total of four independent directors, plus three directors representing the three racing codes; or
 - ii. that the board should have directors appointed entirely on a skills basis rather than any being appointed as representatives. In this case, the board would be appointed to reflect the range of specialist skills needed by the board, to govern TAB NZ.
85. Under Option two, skills required would include business, economics, marketing, legal, racing, sports administration, betting/wagering and gambling harm minimisation. These skills reflect that the TAB NZ is an entity that is established to operate as a commercial betting operator, aiming to generate surpluses for the benefit of the racing and sports sectors. This approach could mean that if industry organisations (such as the racing codes) nominate appointees to the board, they would be selected on the basis of their skills, not be dependent on the organisation that nominated them, and be appointees of the Minister.
86. There is a concern that in cases where board directors are appointed by another organisation they act more in the interests of the organisation that appointed them than in the interests of the organisation for which they are appointed. This is a significant failing of the system by which the three racing codes each nominated a director for appointment to the board of the NZRB.

87. While the desire of the racing codes to substantially control entities such as the NZRB is understood, it is also a concern that these arrangements have tended to result in the NZRB avoiding the resolution of significant industry issues – due to the perceived need of appointed directors to avoid deciding on any issues that negatively impact on their own member organisations – even if such decisions are necessary for achieving overall racing industry growth and development.
88. It is therefore recommended the board of TAB NZ should follow Option 2. It should be made up of the individuals who bring the best mix and range of skills relevant to their roles in governance for TAB NZ and not for the entity that selected them or nominated them. The members of the board would be appointed by the Minister for Racing. The racing codes and Sport NZ would be asked to nominate individuals who they consider had the required skills. However, all appointees would be accountable to the Minister, and none would be seen as direct code appointees.

Accountability of TAB NZ

89. As a statutory corporate body, the TAB NZ would not have shareholder owners. However, it has important roles on behalf of the racing industry, including as a significant source of funding. It is therefore proposed there should be a requirement for TAB NZ to consult on its business plans and strategies with its stakeholders, across the racing industry. It is proposed the TAB NZ would consult the racing codes on its proposed business plans, statements of intent (SOI) and annual reports. The SOI, business plan and annual report would be provided to the Minister, once finalised, and the Minister would table these in Parliament so that they are public documents available for all.
90. The Department considers these documents do not need to be approved by the Minister when tabling them in Parliament; this is consistent with the accountability requirements for RITA. The betting functions transferring to TAB NZ will also include the current reporting requirements associated with these functions. Currently, the Minister's role is confined to presenting documents for tabling in the House. This reflects the principle that the industry should primarily be accountable to itself, whilst maintaining the view that TAB NZ should provide a degree of transparency, through Parliament, to its stakeholders. If the Minister had concerns regarding the transparency or accountability of TAB NZ, the Minister could apply pressure to the board of TAB NZ through the power of appointing the board.

Racing codes

Proposed functions of racing codes

91. The proposed functions of racing codes suggested by Messara and RITA are, broadly speaking, to:
- i. develop policies conducive to the overall economic development of the racing industry;
 - ii. undertake research development and education for the benefit of New Zealand racing;

- iii. undertake licensing, registration and oversight, as appropriate, of trainers, jockeys, drivers and apprentices, owners and investors, horses and greyhounds;
- iv. set rules for racing to be followed by clubs at race meetings;
- v. monitor animal welfare in the industry;
- vi. register race clubs, approve constitutions, and determine which clubs will be approved and be eligible to be issued with a race meeting licence to conduct a race meeting at their venue; and
- vii. distribute funds to racing clubs.

Functions of RITA devolved to racing codes

92. The current system is one in which RITA carries out industry management and oversight functions that will in future be devolved to codes. Codes, in implementing new roles have several options. One of these is to establish some joint ventures to achieve a unified approach to management across the industry.
93. In terms of any statutory description of codes functions there are several options. The Department proposes the revised legislation should have a broad description of the codes' functions as described in paragraph 91 above. The assignment of functions to racing codes has been proposed by Messara and subsequently endorsed by MAC, RITA and the Minister for Racing. As such these are not reconsidered here. They are taken as given.

The organisational form of racing codes

94. Given the wider range of functions of codes that is proposed in future, it is appropriate to consider the form that codes might take.

Discounted option

95. The Department considers the option of establishing the racing codes as Crown entities is not appropriate. The codes do not manage Crown owned assets, nor are they in control of substantial assets for which government oversight or control is necessary or desirable. Accordingly, the Crown entity option is not considered further.

Options considered

96. The primary roles of the racing codes are to support their respective industries. They are currently all set up as incorporated societies. The range of organisational forms we have considered include the following:
- i. statutory entity – as for example the NZRB previously, or RITA currently;
 - ii. incorporated society – which is the current organisational form of the racing codes; and
 - iii. private company – limited liability company established as a profit-making enterprise.

The current organisational form of racing codes is adequate

97. Moving to either a statutory entity or a private company structure would involve significant transitional costs and require resolution of complex issues associated with ownership and control of entities. It is critical that racing codes have close operational connections with their stakeholders, which include a range of industry participants – breeders, owners, trainers, jockeys, stable hands and those who service the industry – farriers, transport providers and others.
98. The incorporated society form provides an adequate organisational structure for the additional future functions the racing codes will undertake. This option has the added benefit of having little or no implementation costs. It also allows for a wide range of stakeholders to be included as “members” of the incorporated society. Accordingly, the current organisational form is supported.

Governance of racing codes

99. Messara, supported also by the MAC, proposed the codes should have at least two independent directors. It is important that directors of the racing codes have appropriate skills and be selected for these, rather than as “representatives” of a specific subset of members. The Department agrees, and considers directors should have business, financial, management and economic skills. During 2019, NZTR and HRNZ have both added independent directors to their boards and simplified some of their board appointment processes.

There are three broad options for the governance of racing codes

100. The Department has identified three options to improve governance of the racing codes. These options are assessed against the criteria identified above with the exception of “wider government impact” as codes do not directly operate within relevant policy regimes when compared with other entities in the racing ecosystem. These options are:
- i. the requirement for the boards of racing codes to include two independent directors. This option was originally proposed by Messara;
 - ii. the adoption of a skills-based appointments process; and
 - iii. representative boards appointed by varying processes set out by code constitutions (status quo).

Codes would benefit from a skills-based appointments process to their boards

101. The Department considers the codes should be encouraged to adopt a skills-based appointments process. This option would require the codes to determine which skills are collectively required, and ensure they be satisfied by appointments. While including independent directors is desirable, it is not considered necessary to include a specific provision in statute requiring racing codes to have them.

102. However, as the operation of the racing codes is critical to the successful operation of the industry, the Department proposes that if there is evidence of poor governance and mismanagement of a racing code board, the Minister should be able, through regulation, to set the appointment process for directors to a specific racing code. This provides an important backstop protection to address serious mismanagement if this is identified. This proposal is seen as a measure that is likely to only be required rarely and in exceptional circumstances.

Accountability of Codes

103. The racing codes are directly accountable to their industry members – including owners, trainers, jockeys and drivers. Accordingly, the codes will need to continue to engage with their stakeholders about their objectives. These stakeholders also will likely have roles in nominating some members of the board of the codes, even if they also have some independent skills-based directors as discussed above.
104. Currently RITA is the entity that has the function of managing industry development and approving racing codes SOIs and business plans. It would not be appropriate for the TAB NZ to carry out this approval function in the future, as it will not oversee industry development. The Department recommends the racing codes' SOIs and annual reports be submitted to the Minister for Racing to be tabled in Parliament to provide for public exposure and accountability.
105. The Minister would not have any role to “approve” the documents. This is consistent with the current requirements for RITA’s accountability documents. As this is a transfer of responsibilities from RITA to the codes, the Department recommends no change to the accountability requirements that go with these responsibilities. These documents should be shared with the TAB NZ and the other racing codes in their development phase, and their comments sought.

Racing Clubs

106. The reforms intend to pivot the racing industry to a commercial focus. The role of racing clubs in achieving this pivot requires careful management and support. The viability of clubs varies from those which have well-maintained tracks and facilities, hold substantial physical and financial assets and which hold multiple racing days each year, to some others that have less well-maintained facilities, fewer resources and/or are located in remote areas which cannot attract competitive fields and frequent racing.
107. There is a concern that the incorporated society organisational form is not ideal, especially for racing clubs which need to make serious efforts to manage sustainably in the future. We have assessed whether changes to organisational form is a realistic option.
108. The incorporated society organisational form may not be ideal, as a structure that would incentivise a more commercial focus. However, the reality is that all racing clubs are of this form. Transferring them all to another form, whether private company, statutory body corporate, or Crown entity, would require a massive and disruptive change process.

109. In practice, although all racing clubs are incorporated societies, the racing codes have significant levers (and will have more levers in future) to apply to racing clubs through agreements and funding arrangements. These should be sufficient to ensure that racing clubs are incentivised to manage their assets appropriately. In particular, it is expected that racing codes will strengthen the club registration process – which provides the codes with a mechanism to stimulate improvement in clubs’ operations. Section B: Racing Industry Property also discusses issues of the relationship between racing codes and racing clubs, in the event of the racing clubs being non-viable.
110. In terms of the organisational form, design issues need to be considered within the racing ecosystem in its entirety. The issues relevant to racing clubs include:
- i. concern about the quality of their governance – especially lack of governance skills and board appointees being seen as representatives of specific stakeholder groups; and
 - ii. concern about the ability of the board of a racing club to effectively manage physical assets and address issues of future viability.

Recommendation for the organisational form of racing clubs

111. In view of the potential issues involved in changing the form of racing clubs, it is recommended that changes in organisational form not be considered. The existing incorporated societies structure does not inhibit racing clubs being incentivised to operate more effectively via requirements from the codes relating to registration.

Governance of racing clubs

112. Messara recommended racing clubs be required to have two independent directors. RITA supports this but does not consider this should be imposed on racing clubs via legislation. RITA is of the view racing clubs can be encouraged to achieve this objective by racing codes through support and encouragement and by applying conditions for racing club registration. The Department agrees with the RITA position. It considers it would be unreasonable to require some smaller, volunteer run clubs to appoint two independent directors.

Racing New Zealand

113. Messara recommended the formation of a consultative forum called Racing New Zealand (RNZ). The intent is this entity would allow the codes to act collectively for the efficient operation of the overall racing industry. The MAC considered the potential role of RNZ, in conjunction with the codes, however noted further work is required on this matter. Therefore, RITA considers that there should be provision in the amended legislation to provide for RNZ or any other entity, to be established via regulations.
114. The Department considers the racing codes could jointly set up and operate a forum such as RNZ by agreement, independent from any government involvement, direction or regulation. However, given the preferences of the industry, the Department supports the addition of a provision within the Racing Act, which would allow the Minister for Racing to establish any entity to be set up to represent the codes’ collective industry interests.

Racing integrity system

Special Review of the Structure and Efficacy of the Racing Integrity Unit and Allied Integrity Bodies - Context

115. The current integrity system includes the Judicial Control Authority (JCA, established under the Racing Act), which undertakes all adjudicative functions for decisions made on race days and appoints members of appeal tribunals, which meet on non-race days. In 2011 the Racing Integrity Unit (RIU) was established, which monitors races across all codes (via their stewards) and employs investigators who look into rider and driver behaviour, and lays charges for contraventions of the racing rules.
116. Messara proposed that a well-qualified person be appointed to review the structure and efficacy of the RIU and allied integrity bodies. This was proposed due to some concerns raised by the industry that the existing integrity system requires substantial funding from the racing bodies and may not be fit for purpose. There were also concerns expressed by the industry and others in the community that animal welfare policies and monitoring of these could be improved.
117. That review was undertaken by Mr Malcolm Burgess. Mr Burgess reported to the MAC in June 2019. The Burgess Report made several recommendations to improve the performance and effectiveness of the racing integrity system.

Summary of the Burgess Report recommendations

118. The Burgess Report had the purpose of identifying areas for improvement and increased efficiency for the racing integrity system. Burgess recommended the establishment of one independent Racing Integrity Board (RIB) to provide governance of the stewarding, investigation and adjudicative functions. The RIB would oversee two separate operational units:
 - i. an operational arm which would undertake the roles of the current RIU; and
 - ii. an adjudicative arm which would undertake the roles of the current JCA.
119. The Burgess Report states that while the RIB should have independence in operational decision-making, a strong connection to the racing codes through effective engagement is important.
120. The Burgess Report recommends more race day functions of the current JCA be conducted by racing stewards to improve overall efficiency and reduce costs. This will require additional training and upskilling of stewards, as well as an amendment to the Racing Act and the respective rules of racing. For some existing JCA functions undertaken on race days separate arrangements may need to be designed.
121. Burgess also suggested that a specialist position be created to address the issues of fairness, integrity of decisions, the management of poor behaviour and visibility of women in the integrity system. This was a consequence of a recent NZRB survey that identified concerns among industry participants.

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

Options Assessment

Comparison of proposed approach with the current system

123. The current system has been the subject of criticism by the industry. Some industry participants consider the RIU is not effectively managed, and costs more than is necessary. Others consider the JCA and its tribunals are expensive overall, for what they do, and not fit for purpose – especially in relation to race day processes, which are expensive to operate at race tracks. The status quo does involve significant costs, and the Burgess Report concedes that it is difficult to assess the returned value of the current racing integrity system to the racing industry.
124. The Burgess Report proposes a different structure for the integrity system. It proposes that the JCA and RIU should be merged under a new Racing Integrity Board. This merger is seen as having potential cost savings and efficiency benefits and could be structured in a way that could provide assurance of operational separation between investigation/prosecution and adjudication. Comparison of the proposed new structure and the current integrity system is outlined in Table 3 (see section 4a).

The Department's view on the racing integrity system

The Department agrees with the Burgess Report

125. The Department agrees with recommendations of the Burgess Report and supports the overall intent to improve the efficiency and effectiveness of the racing integrity system. The Department notes that the operational detail of Burgess Report recommendations is yet to be finalised.

Trust in the racing integrity system relies on its independence from the industry

126. There is a concern the integrity system is currently too closely controlled by the racing industry. Specifically, the JCA is effectively appointed by the racing codes and RITA, and the RIU Board is appointed by its shareholders – also, the racing codes and RITA. The Department considers that overall confidence in the integrity system, from the perspective of both industry participants and bettors, could be enhanced through greater organisational independence from the industry as proposed in the RIB.
127. The RIB would be formed as a statutory corporate body (as is RITA). The Department recommends the codes and TAB NZ have the opportunity to nominate candidates for the board of the RIB, with the final decision to be made by the Minister. This will ensure there is an appropriate range of skills across the RIB board and no perception by industry that its nominees are its “representatives”. The RIB board should be selected based on skills and knowledge including investigatory, adjudication, disciplinary practices, monitoring and performance measures.

There may be concerns that the judicial and investigative arms are governed by a single board.

128. The current structure of the integrity system provides for separation between the judicial and the investigation and prosecution functions. This has some desirable elements, which are analogous to the wider public context, in which the police are structurally separated from the courts system.
129. Under the proposed RIB the judicial functions would operate under the same board as the investigation and prosecution functions. Additionally, the two arms would be established to be operationally separate from each other.
130. It is noted there are several entities, formed via statute, which contain both investigative and adjudicative functions. These include:
 - i. Financial Advisers Disciplinary Committee (overseen by the Financial Markets Authority);
 - ii. Teachers Disciplinary Tribunal (overseen by the Teaching Council);
 - iii. Building Practitioners Board (overseen by the Ministry of Business Innovation and Employment (MBIE));
 - iv. Plumbers, Gasfitters and Drainlayers Board;
 - v. NZ Law Society Standards Committees; and
 - vi. Real Estate Agents Complaints Assessment Committees (overseen by the Real Estate Agents Authority).

The integrity system should be funded by the TAB NZ

131. It is important the RIB is funded at an appropriate level to enable it to undertake its functions. In the past, there has been some pressure from the industry to constrain funding for the JCA and RIU. The funding has been provided from class 4 gaming revenue for several years. The Gambling Act 2004 requires that class 4 gaming funds received by RITA must be applied to purposes associated with racing – of which the racing integrity system is considered to be an appropriate recipient.
132. TAB NZ is the largest stakeholder in the integrity system as their business is most at risk. However, both racing participants and bettors would be less incentivised to engage with the industry should the integrity system be underfunded to the point of dysfunction. As a key stakeholder and commercial entity, the TAB NZ will be best positioned to scrutinise the costs of the integrity system going forward.
133. A legislative provision should be made which empowers the Minister to determine the level of funding that should be provided to the RIB, if a funding agreement cannot be reached between the TAB NZ and the RIB. This will allow the RIB and/or TAB NZ to appeal to the Minister if there is a breakdown in negotiations regarding the RIB's budget, In the event that this power is required, the Department will provide advice to the Minister.

Accountability of the RIB

134. The Department recommends the RIB consult on its SOI and annual business plan with TAB NZ and codes and submit them when finalised to the Minister for information and tabling in Parliament.

Conclusion

135. The Department agrees with the Burgess report option and supports the formation of the RIB to undertake adjudicative and investigative functions, and for it to be funded by TAB NZ.

What regulatory levers will the Minister have to influence the industry?

136. The recommendations proposed in this assessment provide the Minister with various mechanisms to influence the racing ecosystem and its operations. These range from business-as-usual Ministerial involvement, where this is already provided in legislation or regulations, to further legislative change to provide additional mechanisms. The Department proposes some backstop legislative and regulatory powers be provided to the Minister in the Racing Act to ensure any roadblocks to effective operation of key components of the ecosystem can be managed.
137. The complex issues of coordination and cooperation among the codes, in particular, may be exacerbated due to devolution of functions from NZRB/RITA. The industry will only thrive if collective action by the racing codes is able to occur. Some of the proposed powers are designed to provide strong incentives for codes to cooperate, and to ensure that roadblocks to collective action can be resolved, if necessary, by direct intervention.

The Minister will have business-as-usual involvement with the industry

138. Under the proposed changes to the Act, the Minister will have regular involvement in:
- i. appointment of the boards of the TAB NZ and RIB;
 - ii. tabling in Parliament of SOI and business plans of TAB NZ, RIB and the three codes; and
 - iii. ensuring that the racing integrity budget requirements are provided to the proposed RIB.
139. The Minister will be able to hold the board of TAB NZ accountable to both him/herself, through appointments, and to Parliament through the SOI and business plan reporting requirements. The codes and the RIB are also accountable to the Parliament through these requirements.

New backstop powers for the Minister

140. The Department recommends a backstop power for the Minister be created in the Racing Act, if a funding agreement cannot be reached between the TAB NZ and the RIB, after making reasonable attempts. The Act should empower the Minister to determine the level of funding to be provided to the RIB by TAB NZ. The Minister would determine this after consulting with the RIB, TAB NZ and the racing codes.
141. Currently, the Minister can make regulations to determine the distribution of funds from TAB NZ to the codes. The Department recommends two additional regulation making powers be included in the Racing Act. These powers would provide a backstop should there be a breakdown in the relationship between either the codes and TAB NZ or among the codes themselves.

Racing codes – Board mismanagement

142. If there is evidence of poor governance and mismanagement of a racing code board of directors, the Department recommends the Minister be able to set the appointment process for directors of the racing code by regulation. This would follow a process where the Minister first seeks a response from the code and weighs the evidence for and against making a decision to set the appointment process.

Racing codes – inability to agree on a significant issue

143. If the codes cannot reach agreement on an issue that has a significant effect on the collective good of the industry, the Department recommends the Minister be able to appoint a commissioner and levy the codes for the cost of resolving this disagreement via regulations. The decisions and recommendations of the commissioner would be binding on the parties involved. Having the codes levied for the cost creates an incentive for them to reach an agreement.

Racing Codes and TAB NZ – inability to resolve significant issues

144. If there is a breakdown in the commercial agreement between the TAB NZ and the racing codes regarding, for example, the use of racing intellectual property, betting rules or racing rules the Department recommends the Minister be able to set the terms of a commercial agreement by regulations, which would be binding on the parties.

145. Past experience has shown that mutually beneficial cooperative behaviour within the industry has been inconsistent. The creation of these powers creates costs for the government if they are exercised and creates some incentives on the parties to resist reaching agreement; the proposed arrangement levies costs on all parties, therefore creating incentive for collective action. The possibility of Ministerial intervention is therefore considered to have net benefits overall.

146. The following tables outline each of these proposed powers and compares them to the status quo.

Minister can intervene to determine the funding level for the RIB

Criteria	Status quo: negotiate agreements between TAB NZ and RIB	Proposed regulatory power: Minister can intervene to determine the funding level	Comments
Transparency	Low	High	RIB will need explicit funding assurance
Administrative simplicity	High	Moderate	
Government oversight	Minimal	High if used. Threat of intervention may lead parties to reach agreement	

Cost and benefits	Risk of non- agreement, standoff, or litigation, costs of non-resolution	Costs of regulatory intervention – benefit is funding resolved	Costs of Ministerial intervention assumed to be low. Substantial benefit of clear resolution of funding for integrity function.
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Minister can appoint a Commissioner to resolve code disagreement on a critical issue

Criteria	Status quo: racing codes need to find a way to reach agreement on a critical issue	Proposed regulatory power: Minister can appoint a commissioner to resolve code disagreement on critical issue	comments
Transparency	Low	High	Without government intervention codes may not reach agreement or reach an agreement that produces unfair outcome to one or more codes
Administrative simplicity	High	Medium	
Government oversight	Minimal	Medium	
Cost and benefits	Cost to industry of non-agreement may be high	Minor cost to government – commissioner cost levied on industry – benefit is independent resolution of significant issue	Costs to government are assumed to be minor, cost to industry less than \$50,000 per event. Benefits are enforced - agreement on an issue of significance for the industry

Minister can intervene to set the terms of commercial agreements between codes and TAB NZ, or among codes

Criteria	Status quo: Racing codes and TAB NZ fail to agree on commercial issues	Proposed regulatory power: Minister can intervene to set the terms of a commercial agreement between codes and TAB NZ, or among codes	Comments
Transparency	Low	High	
Administrative simplicity	High	Medium	

Government oversight	Minimal	Medium	Racing industry has poor record of cooperative behaviours. Without regulatory power prospect of litigation is very high
Cost and benefits	Non agreement has risks for future relationships and industry cohesion – attempts to resolve may include litigation and delays in taking action	Costs of advice to Minister and ministerial involvement. Benefit is commercial agreement is reached.	

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

147. The options relating to the organisational form and governance of entities have been assessed against several criteria which are linked to the key outcomes for the industry, as described in the table below.

Criteria	Description
Sustainability	Does the proposed option support the long-term sustainability of the industry as a whole? Does the proposed option support a step change in the industry to ensure its revitalisation?
Wider government impacts	Does the proposed option affect any existing government and community issues/concerns?
Feasibility	Is the implementation of the proposed option realistic? What are the implementation costs and obstacles?
Incentives for efficiency	Does the proposed option create the right incentives for the entity to allocate its resources efficiently?
Commercial orientation	Does the option align with the industry pivoting to a more commercial focus?

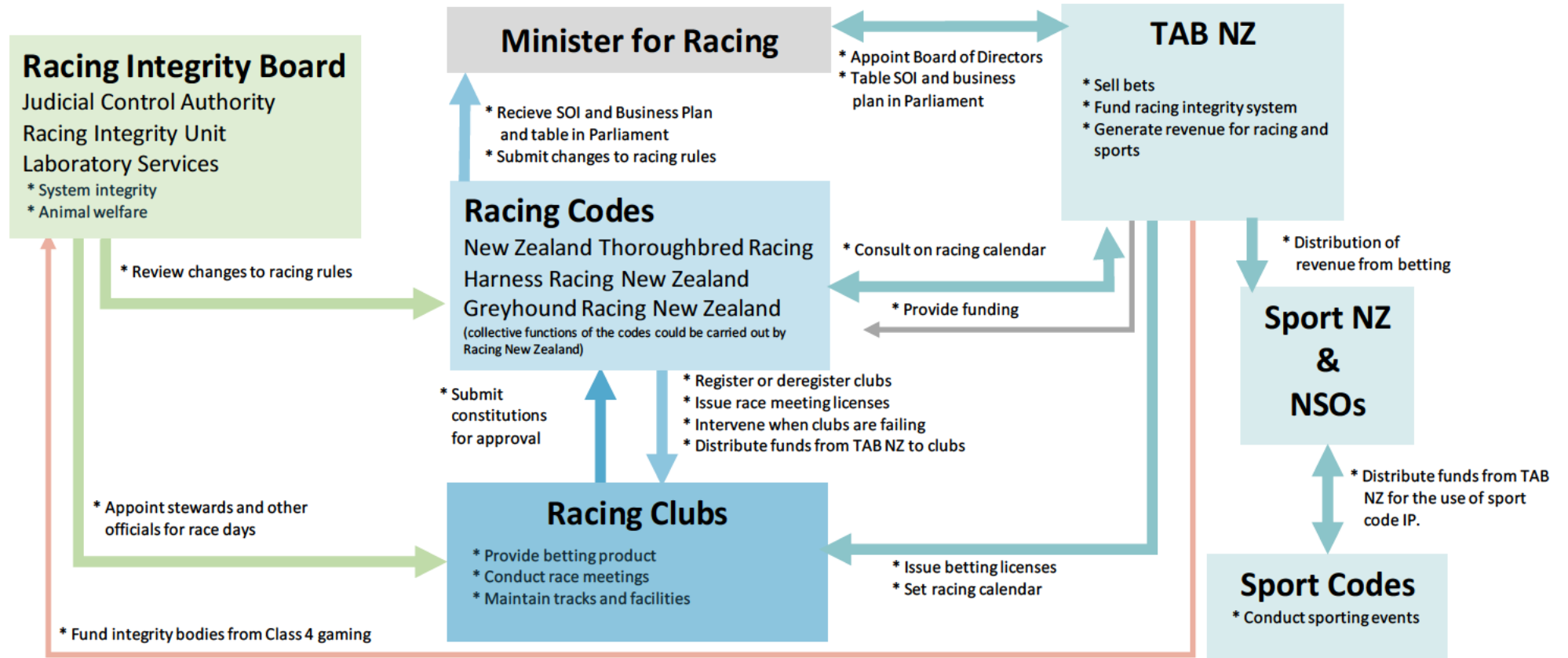
148. For regulatory initiatives, and in particular, the integrity system, the following criteria are applied.

Criteria	Description
Transparency	Does the proposed option provide a clear and comprehensive process?
Administratively simple	Is the proposed system simple in its components and operation?
Government oversight	What level of government oversight is needed – less oversight is rated as better +
Overall assessment	Summary of assessment

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

149. The options that were ruled out of scope or not considered are noted in the text where relevant.

Fig 1: The proposed Racing Ecosystem



Section 4a: Impact Analysis

Table 2: Options for the organisational form of TAB NZ

	Crown entity	Statutory body (Status Quo)	Incorporated society	Private company (ownership assigned to industry stakeholders)
Sustainability	<p>+</p> <p>Under this option the TAB NZ would continue to be the monopoly provider of betting services in New Zealand and continue to distribute revenue for the industry.</p>	<p>0</p> <p>Under this option the TAB NZ would continue to be the monopoly provider of betting services in New Zealand and continue to distribute revenue for the industry.</p>	<p>+</p> <p>Under this option the TAB would continue to be the monopoly provider of betting services in New Zealand and continue to distribute revenue for the industry.</p>	<p>+</p> <p>Under this option the TAB NZ would continue to be the monopoly provider of betting services in New Zealand and would generate revenue for its shareholders.</p> <p>Increased exposure to market forces may be a risk to sustainability. However, a stronger commercial focus could increase financial sustainability as well. Essentially this form increases risks, and expands potential for creating value, as well as increasing chances of losing value.</p>
Wider government impacts	<p>+</p> <p>As a Crown entity the Government would have a large amount of oversight and control over the TAB NZ. The TAB NZ would have to regard, or give effect to government policy (less so for an independent Crown entity).</p>	<p>0</p> <p>As a statutory body the TAB NZ would have regard to any government interest or policies that are required in its parent legislation or subsequent regulations.</p>	<p>0</p> <p>As an incorporated society, the TAB NZ's operations would be bound by the Incorporated Societies Act, its constitution, and existing policy regimes.</p> <p>For government to stipulate its functions, roles and responsibilities a statutory basis would be required</p>	<p>0</p> <p>As a private company the TAB NZ would be less obligated to consider government interests, however would still have to operate within the gambling regulatory framework.</p> <p>For government to stipulate its functions, roles and responsibilities a statutory basis would be required.</p>

Feasibility	- This option is a move away from the status quo which is a cost in its own right. Additionally, the formation and ongoing oversight of a Crown entity requires a significant level of government involvement, for example, the appointment of directors, and establishing Crown ownership.	0 This option would be relatively easy to implement as this is the current form of the TAB NZ.	- This option is a move away from the status quo which involves additional costs.	-- This option is a move away from the status quo which is a cost in its own right. Setting up the TAB NZ as a company would require determination and assignment of its ownership, which would be heavily contested.
Incentives for efficiency	- Crown entities have obligations under two pieces of legislation, the Crown Entities Act, and the entity's own enabling act. These may moderate incentives for efficiency.	0 The current form of the betting platform does not incentivise business strategies that are long-term, innovative or competitive. Its sole purpose is revenue distribution to the codes.	- Incorporated societies are non-profit entities and therefore do not have strong incentives for efficiency.	+ Whilst maintaining a statutory monopoly, this option exposes the TAB NZ to the market, incentivising good business decisions as a means to increase profits.
Commercial orientation	- As a Crown entity TAB NZ would be more obliged to have regard to Government policy when compared to other options.	0 The commercial orientation of a statutory body depends primarily on the mandate set out in its parent Act.	- Incorporated societies are non-profit organisations and generally lack incentives to act with a strongly commercial focus.	- A private company is the most commercially orientated option. This form provides for the most flexibility in operating the business of the TAB NZ and seeking to maximise profits, however these would then be liable for tax
Overall assessment	--	0	-	-

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

Table 3: Analysis of the options for the integrity system

	Status quo – existing integrity system	Proposed system RIB
Transparency	<p>0</p> <p>Clarity of separation between adjudicative and investigations function through delivery by different entities (JCA & RUI). Funding entity (NZRB / RITA) will no longer exist in current form</p>	<p>+</p> <p>Improved transparency between industry and integrity system. Funding mechanisms will be explicit in revised legislation</p>
Effectiveness	<p>0</p> <p>Not highly effective – adjudicative functions for race day issues carry substantial costs for minimal benefit. RIU funding and direction could be improved</p>	<p>++</p> <p>New processes and systems should improve effectiveness and reduce some costs. Funding transparency and backstop should result in improved funding certainty at appropriate level</p>
Administrative simplicity	<p>0</p> <p>Moderate</p> <p>Current system is simple in operation, but carries some costly elements (race day tribunals, and separate organisational structures and systems)</p>	<p>+</p> <p>Moderate</p> <p>Modifications to current system will involve transitional costs, but should assist in simplifying processes and reducing total corporate costs</p>
Government oversight	<p>0</p> <p>Minimal</p>	<p>+</p> <p>Minimal with regulatory backstop if funding issues cannot be resolved between RIB and TAB NZ</p>
Overall assessment	<p>0</p> <p>System is adequate but funding constraints mean its operational effectiveness is suboptimal.</p>	<p>++</p> <p>Improved outcomes at same or lower cost anticipated</p>

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 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?

150. The Department considers the following options for the racing industry entities will best support industry sustainability into the future.

- i. TAB NZ as a statutory body corporate, with a skills-based board of directors;
- ii. racing codes and clubs remain as incorporated societies; and
- iii. RIB established as single integrity body responsible for judicial, investigation and prosecution functions.

151. The Department considers the accountability requirements currently held by RITA, should transfer to TAB NZ and the codes, as RITA's responsibilities are to be divided between these entities. The proposals also include powers to make regulations to resolve issues within or among the entities, and the ability for the Minister to set up a new entity to represent the codes collective interests. These proposals empower the industry and lessen the level of government involvement, and provide the Minister for Racing with the ability to intervene, if necessary.

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)
--------------------------------	-------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------	------------------------------------------------------

Additional costs of proposed approach, compared to taking no action			
Regulated parties	Transition of RITA to TAB NZ, re-structuring of JCA and RIU into RIB	Costs of transition of RITA to TAB NZ and codes is \$3.5 million Formation of RIB, \$1 to \$2 million including changes to adjudication processes Benefit of change is medium to high	Medium
Regulators	Costs involved in appointing new TAB NZ board, RIB board, undertaking some backstop regulatory powers	Budget sensitive Benefits high	Medium
Wider government	Minimal impacts		
Other parties	N/A		

Total Monetised¹² Cost	<i>Transitional – organisational and industry (as stakeholder in process) and government (neutral as compared with status quo (which involves appointments to NZRB/RITA, and JCA))</i>	Budget sensitive	<i>Medium</i>
Non-monetised costs	<i>Industry engagement with change process</i>	<i>Low</i>	<i>Medium</i>
Expected benefits of proposed approach, compared to taking no action			
Regulated parties	Clarity of organisational structure and governance arrangements, improved racing ecosystem, backstop regulatory provision for situations where parties cannot agree (ongoing)	Benefits - high	High
Regulators	Clearly defined areas of regulatory engagement, limited BAU government involvement	Benefits - medium	Medium
Wider government	Minimal		
Other parties	N/A		
Total Monetised Benefit	<i>Racing ecosystem is lower cost overall and delivers increased financial benefits to the industry.</i>	<i>Medium - greater than estimated costs</i> Budget sensitive	<i>Medium</i>
Non-monetised benefits	<i>Racing ecosystem has improved system incentives and structure, integrity system is more effective, reduces costs to participants.</i>	<i>medium</i>	<i>High</i>

5.3 What other impacts is this approach likely to have?

152. There are some transitional and adjustment costs, especially for the reforming of the JCA and RIU into a single statutory entity. These are considered to be substantially offset by reduced operating costs and improved effectiveness of the integrity system in the future.

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

153. The preferred option has the clear objective of increasing the racing industry's sustainability and is low cost in fiscal terms. Most costs will be borne by the industry and with the data available these are not thought to be large in the context of the value of the industry. The proposals will increase market competitiveness with respect to offshore gambling operators.

¹² Any monetised costs and benefits derive from the total package of initiatives proposed in these reforms.

154. The reforms will empower the industry through more effective governance to make the decisions and take the actions needed to achieve sustainability with some backstops to resolve deadlocks and if needed.

B. Racing Industry Property

155. Decisions sought in relation to racing industry property are:
- i. to amend racing club wind-up provisions, to ensure racing industry property is retained in the industry, and used for maximum benefit; and
 - ii. to introduce legislative provisions to support commercial negotiations between race clubs and codes, including
 - i. a restriction on certain property transactions of clubs, without first obtaining code approval;
 - ii. agreements between code and club on the dispersal of assets arising from a surplus racing venue will override club constitutions; and
 - iii. a statutory power to resolve the utilisation of surplus property, when agreement cannot be reached between code and club.

Section 2b: Problem definition and objectives

2.3 What is the policy problem or opportunity?

The problem identified by Messara

156. Messara noted the racing industry is in decline and identified a range of underlying property issues threatening its financial viability, including:
- i. there are too many race tracks for the size of the country;
 - ii. many facilities are not fit-for-purpose and infrastructure development is required to resolve the accumulation of deferred property problems;
 - iii. there are barriers to utilising venues no longer required for racing, to benefit the wider racing industry; and
 - iv. there is a history of under investment in venue maintenance.
157. The impact of these issues means capital is poorly utilised and the fragmented ownership and governance at club level impedes change, to the overall detriment of the industry.
158. If these issues are not addressed the industry will go beyond a 'tipping point', where it will not survive. Messara calculated returns to (thoroughbred) owners at 22.9% of costs¹³. This level of returns will lead to decreasing investment and participation, which will in turn lead to fewer horses, fewer races, lower betting revenue and less employment. This will result in a reinforcing downward spiral that will inevitably lead to lower economic contribution nationally, regionally and locally.

¹³ These figures are based on prizemoney distributed and costs for Thoroughbred owners in 2016/17. Using the same methodology, return to owners in New South Wales was 48.1% (Messara p 5)

159. This will have broader ramifications for the communities surrounding racing clubs. These implications will not just be economic but also social and cultural as the industry becomes less and less viable. As discussed above, 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.
160. Messara compared racecourse utilisation intensity rates in New Zealand to those overseas, as evidence of the problem (specifically that there are too many race tracks for the size of the country). Messara made comparisons to Ireland, given the comparable population (and therefore market) and climate to New Zealand. Ireland held 357 race meetings on 26 racecourses in 2017, an average of 13.7 meetings per racecourse. In New Zealand, the average meetings per racecourse for the 2017/18 racing calendar was 6.7, with 321 planned meetings on 48 racecourses. 11 of the 48 thoroughbred racing venues were scheduled to hold one race meeting in the 2017/18 year.
161. The racecourse utilisation intensity rate is directly related to the quality of the racing venues in New Zealand. Upgraded tracks will allow more races to be run, therefore increasing betting revenue and income opportunities for owners. Additionally, modern facilities will enable an increase in non-racing revenue for clubs, through utilisation for conferences or community events. Messara's analysis of thoroughbred racing venues came to the same conclusion as earlier reports into the New Zealand racing industry¹⁴, that a reduction in the number of racetracks is necessary to reach and maintain the standard required. A higher standard is essential in order to address the declining numbers of attendees and punters.
162. Messara proposed that 20 of the current 48 venues used for thoroughbred racing be closed over a 5-year period and that the released capital be used to upgrade the retained venues. Messara estimated the cost of upgrading the tracks and associated facilities of the 28 retained venues to a desirable standard would be \$190 million¹⁵. Messara sought valuation indications from property developers and concluded the initial 16 venues he proposed for closure could realise an estimated \$150 to \$300 million if the land was rezoned for residential use, or other types of property development that could serve the community interest (current value with existing zoning is \$29 million). The proposed rationalisation of venues is therefore expected to fund all or most of the capital needs to modernise retained venues to the required standard.

¹⁴ The Reid Committee on Racing (1965) and the McCarthy Royal Commission on Racing (1970)

¹⁵ \$101.5 million on racing infrastructure and \$88.5 million on facilities infrastructure. If all 48 racecourses remain, this figure would rise to \$294 million (Messara, p56).

This presents an opportunity to realise the value of underutilised assets

163. Messara assessed the New Zealand market and concluded that modernised venues are essential to the revitalisation of the industry. Messara implemented a successful reform of racing in New South Wales; in addition, the MAC, as experts with knowledge and experience in the New Zealand market, agreed the quality of the venues must be lifted to enable the industry to be sustainable. Submitters to the Messara report also agreed that refurbishment was required. Refurbished venues will drive economic growth through:
- i. better race day on-course experience for the public;
 - ii. better televised product to support increased betting;
 - iii. less random race outcomes due to poor race track surface, which also supports increased betting income;
 - iv. reduced maintenance costs; and
 - v. improved venue income opportunities through ancillary activities such as conferences.
164. All clubs that continue to race will benefit from increased betting income. Any club based at a venue declared surplus will have the option to race at an alternative venue. The FVP negotiations may provide funds to enable a club to race at an alternative venue (e.g. for venue hire), if the club does not have enough resources of its own. Messara calculated that, assuming all recommendations are adopted, prizemoney to (thoroughbred) owners would double, and payments would be extended to tenth place, increasing the ability for owners to receive prizemoney. As an example, top tier races that currently have a maximum prizemoney of \$40,000 per race, would increase to a minimum of \$70,000, a minimum increase of \$30,000. In addition, the reforms aim to increase the number of top tier races from 46 to 155 per year¹⁶.
165. The closure of surplus venues will result in less maintenance costs for the industry, and greater use will be made of the venues being retained. Modernised venues will be fit for purpose and appropriately-sized for modern attendance levels. More frequent racing and more certain racing due to better maintained tracks will appeal to those who want to attend races and can make plans with less risk of cancellations due to track conditions. Community enjoyment and use of venues will therefore increase, which will lead to increased social benefits.
166. The level of infrastructure development identified by Messara requires commitment to making decisions on a national level. The codes are best placed to prioritise the retained venues for refurbishment in order to provide the most immediate benefit for the industry as a whole. However, the codes have no ability to control the sale or disposal of surplus venues no longer required for racing. The club that owns a surplus venue may prevent the value of the surplus venue being used to support industry sustainability by:

¹⁶ As noted in paragraph 25, some of the key Messara recommendations will not be implemented. While this will limit the benefits identified by Messara, the Department considers the prizemoney figures and increase in top tier races will not be dramatically reduced.

- i. keeping its venue, despite no longer racing;
 - ii. selling the venue and keeping the capital; or
 - iii. selling the venue and winding up.
- 167. The viability of the racing industry depends in part retaining assets within the industry, and better use of them. Current legislation (Racing Act 2003, Incorporated Societies Act 1908) and racing club constitutions provide that on wind-up of a club, their assets can go to a mix of the racing industry and not for profit community purposes outside the racing industry. Revitalising the racing industry cannot be achieved if existing capital is poorly used or lost from the industry.
- 168. Previous attempts at reform have failed to address the property issue and Messara recommended government intervention as current law does not support the industry to make the changes it requires for sustainability. Surplus venues are club assets and clubs may make decisions which ultimately do not support the needs of the industry.
- 169. Negotiated solutions between codes and clubs would require no regulatory measures and are preferred. The Department acknowledges that, as identified by Messara, negotiated solutions provide no certainty of decisions being reached that would enable industry revitalisation. In addition, the Department recognises the Government has already committed to a reform and revitalisation of the racing industry. Therefore, if the Government wants to provide that certainty then some form of regulatory support for the negotiated process appears necessary. That proposed support raises concerns regarding intrusion into property rights of clubs (and to an extent the interests of some local communities) which the Government must balance against the needs of the industry and the wider social and economic benefits that are expected to result.
- 170. The Department has identified two key objectives to guide realising the contribution of racing property to industry revitalisation:
 - i. *Objective 1 - The value of racing property should be retained in the racing industry* – the value of club property should be retained in the industry for revitalisation and not distributed for other purposes, unless this is necessary; and
 - ii. *Objective 2 - Racing property should be used for maximum industry benefit* – e.g. if a club has a venue that is no longer required for racing, the code should be able to determine how the surplus venue can best contribute to the revitalisation of the industry, including use of sale proceeds to refurbish retained venues.
- 171. Therefore, there are two main problems/opportunities that need to be considered:
 - i. how to ensure that racing property and other assets are retained in the industry (Objective 1) and used for maximum industry benefit (Objective 2); and
 - ii. how to ensure that surplus racing venues can be used for maximum industry benefit (Objective 2).

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

172. The Government has “agreed to the overall intent of the Messara Report as providing the best approach to delivering a New Zealand Racing Industry that is financially sustainable, internationally recognised and competitive” [CAB-19-MIN-0168.02 refers]. Given this decision, Messara’s successful implementation of reforms in New South Wales and the significant time constraints, the Department is limited to consideration of the Messara recommendations related to property, the views of the MAC and alternatives that could achieve similar outcomes. Significant government investment, or other potential ways to improve racing income through property, that would require the industry to be exempted from regulatory regimes that drive property-related costs (for example health and safety), are out of scope.
173. MBIE is currently proposing changes to the Incorporated Societies Act 1908. One change is to strengthen the dissolution provisions of incorporated societies, to ensure any funds remain for not-for-profit purposes. It is the intention of the changes proposed in this RIA, that the Racing Act provisions would override those within the Incorporated Societies Act relating to dissolution of clubs. However, these proposals are consistent with the intention of the changes to the Incorporated Societies Act, as the proposed changes to the wind-up provisions of clubs require funds to be transferred to the racing codes, which are incorporated societies, and therefore not-for-profit.

2.5 What do stakeholders think?

Public submissions on the recommendations of the Messara Report

174. Public consultation was undertaken on the recommendations of the Messara report in September and October of 2018. Two of the 17 key recommendations related specifically to racing industry property are:
- i. Recommendation 12: Clarify legislation to vest Race Club property and assets to the Code regulatory bodies for the benefit of the industry as a whole; and
 - ii. Recommendation 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.
175. 105 submissions were received on the recommendation to vest race club property and assets to the code regulatory bodies for the benefit of the industry as a whole. Thirteen submissions supported outright the transfer of race club property and assets to the code bodies; a further fifteen submissions appeared to provide qualified support. Sixty-nine submissions opposed the recommendation outright. Eight submissions provided additional comments without indicating any support or opposition, largely mentioning that further work and clarification is required.
176. Those in support focused on the importance of this recommendation for industry revitalisation, and the need to look at the wider industry rather than individual clubs. Submitters acknowledged there would be resistance, with one commenting one would “hope that parochial interests and historical attachments will be put to one side in recognition of the bigger picture”, and another noting “the carrot is always better than the stick”. One submitter commented that while every attempt should be made to reach agreement, legislation should be available as an option.

177. Opposition to this recommendation came from individual clubs opposed to the transfer of assets to the codes, and from individuals concerned about the recommendation in general. Of particular concern to many opposed submitters, were the legal implications.
178. A majority of those who opposed this recommendation believed this would amount to theft and would set an 'unwelcome' or 'dangerous' precedent. A number of submitters also posited that such a change would create resentment within the sector and legal challenges, therefore delaying any potential benefit. One submitter noted "Clubs will fight the proposal until they run out of funds leaving nothing left to be redistributed". A number of submitters also referred to potential issues regarding the Incorporated Societies Act 1908.
179. Fifty-three submissions were received on the recommendation to upgrade the facilities and tracks of the remaining racecourses with funds generated from the sale of surplus property. Twenty submissions supported the recommendation outright, and a further fourteen provided partial support, suggesting additional sources of funds for the upgrades. Thirteen submissions opposed the recommendation outright, and six submissions raised other comments or suggestions, including the suggestion funds should remain in the region they came from, and the required upgrades are urgent and cannot wait for other venues to be sold.

New Zealand Racing Board (NZRB)

180. The NZRB did not support the recommendation to vest racing club property with the code. It believed legally centralising ownership of venues would be controversial, and challenges to this move would stall any progress on achieving the perceived benefits. As of 1 July 2019, the NZRB became RITA, whose comments on the proposals are outlined below (see paragraph 221).

Racing code submissions

181. NZTR stated this recommendation requires further work before it could be supported. GRNZ believes this recommendation is a 'genuine and good faith attempt to respond to poorly placed capital and infrastructure holdings', however believes it will lead to lengthy legal challenges. HRNZ also believe legal challenges will stall any progress.

Ministerial Advisory Committee for Racing

182. The MAC supported the intention of the recommendation to vest race club property to the codes, however did not support the approach proposed by Messara. The MAC established the Industry Future Venue Plan Group, to develop an industry FVP and clear and transparent criteria to objectively measure if a venue is no longer required for racing. As of 1 July 2019, the FVP is being progressed by RITA and the codes.

Public consultation beyond the Messara Report

183. Given the time constraints, the Department has not consulted publicly beyond consultation on the Messara recommendations. The detail of the proposals in this RIA were not part of the Messara Report, therefore it is likely that submissions as part of the select committee process will address this. Iwi and hapū been not been consulted, as surplus venues are not proposed to come into Crown ownership, and Crown-owned land at venues declared surplus is not being considered for transfer to the codes.

Section 3b: Options identification

3.1 What options are available to address the problem?

184. Options have been identified for the problems/objectives identified in section 2.3.
185. How to ensure that racing property¹⁷ and other assets is retained in the industry (Objective 1) and used for maximum industry benefit (Objective 2), has been considered through the following options:
- i. Option 1: Legislation to specify when a club winds-up its assets transfer to the code; and
 - ii. Option 2: Legislation to specify codes have the ability to wind-up clubs that do not race.
186. These options are discussed in further detail below. The options are not mutually exclusive and both will contribute to the objectives.
187. How to ensure that surplus racing venues can be used for maximum industry benefit (Objective 2) has been considered through the following options:
- i. Option 1: The Messara recommendation to vest all race club property to the codes. The intention of this option was supported by the MAC. However, the MAC did not support this approach;
 - ii. Option 2: Legislative provisions to support commercial negotiations, according to new objectives in the Racing Act, creating a default position that surplus venues vest in the code unless payments to the club and/or community are warranted, including:
 - i. a restriction on club property transactions without first obtaining code approval;
 - ii. an agreement between code and club on surplus property overrides the club constitution; and
 - iii. a statutory process to resolve the utilisation of surplus property when agreement cannot be reached by negotiation.
 - iii. Option 3: The new ‘racing ecosystem’ and no intervention at individual surplus venues – commercial negotiations to progress within the new legislative state. This option would take the approach broadly proposed by the racing codes and the NZRB, in response to the Messara recommendation to vest all race club property to the codes.

¹⁷ In this RIA the word “property” primarily refers to freehold land at club-owned racing venues that have been assessed by the relevant code body to be no longer required for racing (i.e. surplus venues). However, on wind-up of a club, “property” refers to all net assets of the club including its freehold land, cash and investments.

Options to ensure that racing property is retained in the industry and used for maximum industry benefit

188. While the key component of Messara's 'cycle of revitalisation' (see page 22) is the reduction of venues, it does not require the closure of any club. A club whose venue is declared surplus has the option to race elsewhere, or merge with another club. The dissolution of racing clubs is currently rare, however with a reduction of racing venues there is the possibility that this becomes a more frequent occurrence. Currently when a club winds-up, assets can transfer to other incorporated societies or charities. The Department has considered two options related to the dissolution of clubs, that would best meet the property objectives identified above.

Option 1 – Legislation to specify that when a club winds-up its assets transfer to the code

189. This option requires that racing club assets, by default, are transferred to the relevant racing code when a club winds-up. A proportion of racing clubs currently provide for this in their constitutions. This will ensure that capital retained within the racing industry is available for industry revitalisation. It is consistent with the Incorporated Societies Act, which requires assets to remain for not-for-profit purposes. This option would result in the transfer of assets from one incorporated society (club) to another (code).

Option 2 - Legislation to specify codes have the ability to wind-up clubs that do not race

190. This option addresses the problem of underutilised assets at clubs that do not race. However, the creation of a power for a code to wind up a club that does not race would be a significant incursion of a club's rights of association and, due to the vesting of the assets, common law property rights. Funding from the wind-up of any club would be held by the relevant code and used to refurbish retained racing venues. The refurbishment of retained venues will benefit all clubs that race, the wider racing industry through increased betting revenue, the New Zealand economy and employment in areas surrounding the retained venues.

191. The decision to commence the procedures necessary to wind-up a club would sit with the code. The Department considered criteria that would need to be met for a code to exercise the proposed new power to wind-up a club that is not racing. These include:

- i. the code being satisfied that a club is no longer racing or will no longer hold races (because, for example, the club has indicated that it will not race);
- ii. the club is not registered for racing; and
- iii. the club does not meet, or is unlikely to meet, the criteria for registration, or refuses to register, or is unable to do so in a reasonable timeframe.

192. The Department considers the wind-up of a club by a code must occur following a process consistent with natural justice, including:

- i. the code informing the club that it intends to wind it up, including the reasons why it is considered not to be racing, and providing the club a reasonable time in which to respond;
- ii. the club having an opportunity to respond, providing any evidence that contradicts the code's reasons; and

- iii. a final decision by the code, with a right of appeal for the club to the High Court.

Options to ensure that surplus racing venues can be used for maximum industry benefit

193. It is expected that in most circumstances maximum industry benefit will be obtained by using the proceeds from the sale of a surplus venue to refurbish retained venues. In some circumstances the surplus venue may be retained by the code for training or to be sold at a later date.

Option 1 - The Messara recommendation to vest race club property to the codes

194. Messara identified there is an opportunity to address this problem by using the proceeds from the sale of venues no longer required for racing to finance the upgrading of retained venues. Recommendation 12 from the Messara Report stated, 'Clarify legislation to vest Race Club property and assets to the Code regulatory bodies for the benefit of the industry as a whole'. Specifically, this would require amending the Racing Act 'to provide for the vesting in NZTR¹⁸ of the ownership of freehold racecourse land and other net assets of Race Clubs' (Messara p74).

195. This option would address the problem by wholesale transfer of assets to the codes. The codes would then have the ability to sell or borrow against any freehold land no longer required for racing and use the proceeds to upgrade retained venues. This would not require the closure of any club as any club owning or is based at a venue declared surplus would have the opportunity to race at an alternative venue.

196. Public consultation on this recommendation was undertaken in September and October 2018. As discussed in section 2.5, there was strong opposition to the recommendation to vest all club property to the codes, however there was general agreement that venues retained for racing required significant upgrades.

197. A variation to this option would involve the transfer of assets of selected venues only. This would reduce the impact to a limited number of racing clubs and the communities connected to those clubs, however the Department discounted this option as it removes the ability for commercial negotiation to proceed. Specifying venues, and the transfer of the club's assets, in legislation would require Parliament to decide which venues are surplus and would not be consistent with empowering the industry to make those decisions.

¹⁸ The Messara Report focused on the Thoroughbred industry, however the recommendations encompass all three codes.

Option 2: Legislative provisions to support commercial negotiations

198. This option supports commercial negotiations between a racing code and a club whose venue is declared surplus, to determine the distribution of funds gained from the sale of the venue. The Department considers the FVP process itself does not require legislation. These are commercial negotiations, conducted in good faith between the codes and the clubs. The FVP process involves the codes assessing venues against criteria to decide which are still required for racing. The Department understands these criteria include past performance and future potential of a venue, and the level of community involvement with the venue. The relevant code will then engage with the club concerned.
199. This engagement will consider whether or not it is viable to continue racing at a venue, and if not, the benefits for a club if it chooses to continue to race at an alternative venue. Retained venues will benefit from code-directed investment for upgraded facilities and support an increase in prizemoney. As with Option One, this will not require the closure of any club. However, the closure of a club's local venue will likely mean increased travel time to an alternative venue. It is for a club to decide if they wish to continue at a new location. The Department cannot predetermine which venues will be declared surplus as a result of the FVP process. However, if we consider the proposed venue closures within the Messara Report, every region would retain at least one venue, which would minimise any additional travel time for racing participants.
200. There will also be a negotiated process to resolve any dispute about the use of funds from the sale of the club's venue. Where a venue is declared surplus, the code will consult with the club on the local community interest in the venue, to determine if any payment to the community is warranted. The club can engage with the local community if required.
201. However, it is important that certainty can be achieved regarding racing property in a timely manner. Legislative changes could support the negotiations or resolve the issue in the event that agreement cannot be reached. The Department has identified the range of possible outcomes of FVP negotiations and has considered the following legislative provisions in response to them (see Table 4).

Statutory restriction on club property transactions without code approval

202. This option requires legislation be amended to provide for a statutory restriction on club property transactions without the club first obtaining code approval. The restriction is designed to prevent property being disposed of outside the racing industry regardless of a club's constitution.
203. The Department considers that while a restriction would stop clubs from undertaking certain property transactions, clubs would still be able to undertake property transactions with the code's approval. This option is considered important to ensure clubs do not divert their assets away from the racing industry during the FVP negotiations.

Agreements made between code and club override club constitutions

204. On the passage of Bill No. 2, it is likely that the provisions in some club constitutions regarding the dispersal of surplus assets to other parties will not be consistent with the new wind-up provisions proposed for Bill No. 2 (a code can wind-up a club that does not race; on wind-up a club's capital should invest in the code body), or the objective that *the value of racing property should be retained in the industry*. This option provides for dispersal of assets to the industry following the FVP process, despite club constitutions.
205. If the FVP negotiations are successful, an agreement on the dispersal of assets may be contrary to a club's constitution. Legislation to specify that such agreements override the club's constitution, where the two are inconsistent, would enable these agreements to go ahead.

A statutory process to resolve the utilisation of surplus property when agreement cannot be reached by negotiation

206. It is anticipated there will be some opposition to the FVP process, and the codes will be unable to reach agreement with some clubs.
207. FVP negotiations may fail for one of the following reasons:
- i. a club disputes the decision to declare a venue as surplus; or
 - ii. a club disputes the proposed distribution of assets from a surplus venue.
208. When agreement cannot be reached between a racing code and club through the FVP process, the Department has considered the use of a statutory decision-making process to reach an outcome. All variations on this option have the following in common:
- i. the club has a venue that its code has determined to be no longer required for racing and the club wants to keep racing at an alternative venue;¹⁹
 - ii. the club and code will share the Crown's costs of the statutory process, on the basis of full cost recovery;
 - iii. the club assets the process would apply to are tracks and facilities at venues that have been declared surplus by the code (or the proceeds from the sale of such venues);²⁰
 - iv. the proposed statutory processes cannot be used in respect of any land that is council land or reserve land, as the club does not have freehold ownership;
 - v. a statutory process is used where negotiation has been attempted in good faith and failed to reach agreement between the club and the code;

¹⁹ If the club no longer wishes to race, the new wind-up provisions would apply rather than this statutory decision-making process.

²⁰ Other non-venue assets of a club are excluded from allocation under the proposed legislation, such as balance sheet reserves, shares and investments, and other parcels of land (although they may be considered when determining whether a club needs some proceeds from the sale of its venue in order to be able to race at another venue).

- vi. the decision-maker would have regard to the two property objectives when considering the transfer of surplus racing venues to the code and deciding the amounts, if any, to be paid to enable the club to race at another venue and/or to the community in respect of its interest in the surplus venue; and
- vii. no option requires land to be sold if retention is determined to be more beneficial, i.e. the land might be transferred to the code and retained for other industry purposes (e.g. training), or be sold at a later date.

209. The options for the decision-maker of the statutory process are:

- i. Option 2A: The Minister for Racing decides the allocation of surplus club property, having received independent advice;
- ii. Option 2B: An independent commissioner decides the allocation of surplus club property; and
- iii. Option 2C: The code decides the allocation of surplus club property.

Option 2A - The Minister for Racing decides the allocation of surplus club property

210. In this option, the Minister for Racing has a statutory power to recommend an Order in Council which allocates property to the code with payments to the club and community where this is warranted. The Minister will be required to appoint and take advice from an independent reviewer before recommending an Order in Council. The reviewer would need to consider whether the venue should be transferred to the code and whether any payments should be made to the club and the community. Any such payments may involve funding and/or be achieved in kind through the gifting of property, e.g. land, or other assets.

211. The club, code or the community could ask the Minister to consider recommending an Order, or the Minister could initiate the statutory process on his/her own initiative. The Minister may have regard to any of the following factors, or any other factors as they consider necessary:

- i. whether there has been an attempt at negotiation in good faith;
- ii. written submissions from the club and the code;
- iii. the new principles in the Racing Act; and
- iv. any other factors the Minister considers relevant.

212. The Minister may recommend that the Order in Council requires a payment to be made to the club and/or the community where appropriate.

213. The transfer of property would occur following the transfer date in the Order. This option is based on existing statutory models where there are provisions in legislation for how interests in land are dealt with, for example the Health Sector Transfers Act 1993.

214. The transfer of property would extinguish any trusts on it. 9(2)(h) [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

Option 2B – An independent commissioner decides the allocation of surplus club property

215. This option provides for an independent commissioner (appointed by the Minister for Racing) with a statutory power to make a binding decision on the allocation of club property between the code, club and community. This power could be invoked by the Minister or either party to the FVP negotiation.
216. The commissioner's role would be to review a written proposal produced by the code, a written submission by the club and make a substantive decision. Matters that the code's proposal should address would include:
- i. whether the club requires funding to enable it to race at another venue, ensuring that the club will have sufficient reserves to manage reasonably foreseeable risks; and
 - ii. any amounts the commissioner considers appropriate to be gifted to the local community in recognition of the community interest in the surplus venue.
217. The commissioner would produce a detailed written determination setting out the vesting of assets to be given effect to. This determination would take effect when it is published in the Gazette.

Option 2C - The code decides the allocation of surplus club property

218. In this option a broad statutory power would be established for the codes to make a binding decision on the allocation of property between code, club and community. In each case the code would be required to consider how much, if any, funding should be retained by the club to enable it to race at an alternative venue or be paid to the community in recognition of its interest.

Option 3: Commercial negotiations with no legislative support

219. Under this option the codes and clubs participate in the FVP process, and if agreement is not reached codes would be able to utilise levers the proposed governance arrangements provide them (as described in previous section). Codes provide clubs with the ability to participate in the racing industry, through a registration/licence system. Without a licence, clubs would be unable to hold races and therefore receive any distribution of funds from the code. In addition, codes would have the ability to approve club constitutions and any changes to them.
220. These powers however are limited; they provide incentives for clubs at retained venues to meet the standards that are specified by the codes. But these powers may be insufficient to address significant differences of opinion between the club and code. If a venue is declared surplus and no agreement can be reached, the club may lose its main source of income, limiting their ability to maintain their venue.

How has consultation affected these options?

221. RITA has been consulted on the proposed options and supports redistributing revenue from property no longer required for racing to fund infrastructure at retained venues. RITA considers it is important that a statutory process be included in the Racing Act, to resolve the utilisation of surplus assets when agreement cannot be reached by negotiation between the code and the club. RITA also supports the principles that the value of freehold racing property should be retained in the industry, and that property should be used for maximum industry benefit.

Consultation with the Ministry of Justice

222. The Ministry of Justice (MoJ) reviewed the proposals and indicated some of the options may limit clubs' rights under NZBORA. MoJ identified the right to be free from unreasonable search and seizure is relevant as the confiscation of real property may be seen as an unreasonable seizure. It was concerned that *Option 2C: Code decides allocation of surplus club property* may potentially breach natural justice as the code is both the decision maker and the body that will benefit from that decision. It considered *Option 2A: the Minister for Racing decides, or 2B: an Independent Commissioner decides*, would be more consistent with natural justice as the decision-maker would be more independent.

223. MoJ has also given a preliminary view that giving codes a power to wind up a club that is not racing is also likely to be inconsistent with NZBORA, specifically the right to natural justice and the right of association and peaceful assembly. Due to these concerns, there is a possibility of an adverse NZBORA report following its review that will occur when the Bill is introduced.

Department response

224. The actual conflict of interest is limited to the fact that the code will control which venues are refurbished with the proceeds from wound-up clubs and is partly mitigated by the codes having clear prioritisation criteria for venue projects, to provide the optimum return for the industry. It should be noted that the proposed transfer of property from a race club to its parent code is a transfer from one incorporated society to another. Both organisations are not-for-profit entities, so the transferred property will continue to be used for not-for-profit purposes within the racing sector.

225. The Department also considers the ownership structure within the racing industry does not reflect the relationships between codes and their clubs. The proposed future state, as seen in the Racing Ecosystem diagram in the Governance section of this RIA, more clearly defines this relationship. Clubs are registered with their code in order to qualify to receive races, and therefore distributions, that flow from TAB NZ to the codes, and then to the clubs. As noted by Messara, racing licences are a privilege and not a right. Racing venues only operate as a functional racing venue with the agreement of the relevant code which grants racing licences.

226. In addition, the racing industry also contributes significantly to the upkeep of venues, including nearly \$10 million over the last five years, on top of over \$600 million in distributions to clubs by the three racing codes. However, this investment is not sufficient to address the deferred maintenance at venues across the country. Messara highlighted the quality of thoroughbred racing venues across New Zealand are below standard; the current Racing Infrastructure Rating (1 = extremely poor, 10 = excellent)

for all 48 thoroughbred venues is 4.3, and the current Facilities Infrastructure Rating is 3.7²¹.

227. Given the historic inability to resolve the issue of the number of racing venues across the country, as detailed in section 2.1, and the inability for smaller concessions provided to the industry to reverse the identified decline, significant change is required. Option 2 limits the intrusion to a small number of clubs, however, given the implications to property rights of racing clubs the Department has considered a safeguard to the risk that codes do not act in good faith during negotiations. This includes that the Racing Act contain provisions to enable the Minister for Racing to prescribe in regulations a process and criteria that codes must apply when negotiating with clubs about the use of surplus venues.

Consultation with MBIE

228. MBIE were consulted on the proposed changes to wind-up provisions of racing clubs. MBIE confirmed the proposals in this RIA and the planned changes to the Incorporated Societies Act 1908 are consistent as the proposed changes to the Racing Act will require the assets of racing clubs remain for non-profit purposes. It is intended that the current provision in the Racing Act, to override those in the Incorporated Societies Act, will remain.

²¹ The Racing Infrastructure Rating and Facilities Infrastructure Rating are based on information largely provided by NZTR.

Table 4: Potential scenarios arising from FVP negotiations

Steps taken	FVP process				
Code decision	Statutory restriction on club property transactions without code approval				
	Venue to be retained	Venue is declared surplus			
Club response	Club continues to race at own venue ²²	Club will not race		Club agrees to race at other venue	Club disputes FVP decision
Agreement reached between club and code	Agreement reached	No agreement on use of proceeds from surplus venue. Club will not wind up	Club decides to wind up. New wind-up provisions apply	Club agrees to the proposed distribution of proceeds from surplus venue between code, club and community	No agreement. Club refuses to surrender surplus venue to the code
Proposed new legislative provisions	<ul style="list-style-type: none"> Legislative provision clarifies that codes have function to register clubs, and approve their constitutions [see Governance section] 	<ul style="list-style-type: none"> Statutory decision-making power may be invoked by club or code Code may exercise new legislative provision to wind the club up if not racing Wind-up provisions in Racing Act amended to vest assets in code on wind-up 	<ul style="list-style-type: none"> Wind-up provisions in Racing Act amended to vest assets in code on wind up 	<ul style="list-style-type: none"> Provision to override club constitutions 	<ul style="list-style-type: none"> Statutory decision on surplus venue, invoked by club or code
Outcome	<ul style="list-style-type: none"> Club races at own venue Other clubs may also hire the club's venue 	<ul style="list-style-type: none"> Surplus assets vest in code for industry revitalisation Club wound up Community interest appropriately recognised 	<ul style="list-style-type: none"> Surplus assets vest in code for industry revitalisation Club wound up Community interest appropriately recognised 	<ul style="list-style-type: none"> Surplus assets vest in code for industry revitalisation Club races at other venue Community interest appropriately recognised 	<ul style="list-style-type: none"> Surplus assets vest in code for industry revitalisation Club races at other venue Community interest appropriately recognised

²² Any other response is considered unlikely. However, if a club decided not to race the wind-up provisions would be utilised.

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

229. The following criteria were developed to consider what option provided the best likely outcome, aligned with the overarching principles of the reforms.

Criteria	Description
Sustainability	Incentives and powers should support the long-term sustainability of the industry, for example by enabling the industry to leverage funding from venues no longer required for racing
Empowerment	The industry should be empowered to make the tough decisions necessary to revitalise itself
Subsidiarity	Issues are resolved at the most local level that is capable of resolving the matter
Minimum statutory intervention	Providing incentives that enable industry arrangements to be managed on a commercial basis where possible
Feasibility	The provisions governing the future state for the racing industry should be able to be implemented, without provoking excessive and expensive litigation

230. Some of the proposed options involve significant incursions on property rights.

Therefore, consistency with natural justice has been factored into the analysis of options. This includes the ability for affected clubs to utilise a dispute resolution process.

231. The Department also considered the options to ensure that surplus racing venues can be used for maximum industry benefit in terms of equity. The Messara recommendation option would provide equity of outcome, as all racing clubs (that own venues) would receive the same outcome – the loss of their assets. The option of ‘legislative provisions to support commercial negotiations’ will provide every club with an equal opportunity to participate in the same negotiated process, with a fair chance to be heard, reaching a result that is specific to each club’s situation. All clubs whose venue is declared surplus have the opportunity to respond to the code decision and utilise the dispute resolution process.

232. The statutory process provides for the Minister for Racing to decide how the proceeds of a surplus venue are used, having first received the advice from an independent commissioner. The decision will be a binding decision on the allocation of club property between the code, club and community. This enables the Minister to consider the matter and allocate assets without being limited by the capability of the parties involved.

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

Retaining the current number of racing venues

233. The option to retain the current number of racing venues is out of scope. There is wide agreement that there are too many race tracks in New Zealand; the Messara Report came to the same conclusion as previous reports. Despite this agreement, racing clubs,

in provincial areas are often a valued community resource and local interests have outweighed those of the wider industry. Considerable capital can be tied up in surplus racing assets that are not used efficiently, for example venues that hold one or two races a year. Submissions on the Messara recommendation to close venues included comments from individuals acknowledging the need for rationalisation, while arguing for their local venue to be retained.

234. The FVP process goes some way to resolving the property-related issues for the industry. However further change is required to ensure its outcomes.

Alternative funding for venue refurbishment

235. Messara identified the cost to upgrade retained tracks and facilities at \$190 million. The proposals in this paper recommend capital requirements be met from the realisation of capital value in venues that would not be retained. The alternative of using debt to fund capital requirements has been considered. Servicing the required capital, if entirely funded by debt, would cost in the order of \$15-20 million per annum. This assumes debt would be repaid over a 25-year term and an interest rate of approximately 6%, with debt to be secured against retained tracks and facilities. The Messara Report underlined that overall the racing industry runs at a loss and it is unrealistic to expect it to take on a very large debt and service that alongside making the additional investments that Messara said were needed, for example increasing the prize pool. In addition, because venues would remain owned by clubs, financing arrangements would be complex and securing debt may also be challenging.
236. The industry is therefore unable to support a debt financed solution to its capital needs, without an offsetting decrease in distributions to clubs. If rather than debt, the industry was to fund the upgrades from its main income, the distributions from TAB NZ to the codes, these would also necessarily decrease. As an example, if the required \$190 million was funded over 5 years, this would result in over 30% decrease of the funds provided to the three codes for other purposes over that period²³. This would have significant negative effects for all participants in the industry and the wider community.
237. A decrease in prizemoney, the opposite of what the reforms are aiming to achieve, would in all likelihood result in decreasing participation. Messara has already identified the current level of prizemoney has led to declining participation. This would be expected to lead to a decline in earnings for owners, which would in turn lead to decline in earnings for breeders, jockeys, trainers, and the supporting industries. An additional consequence of this would be a decline in distributions from TAB NZ, therefore risking the funds being available for the upgrades.
238. Short of a major capital injection from the Crown, realisation of capital from surplus tracks is the only viable option. Potential for further government funding, beyond the \$3.5 million contribution to the transition phase and progressive repeal of the betting levy through the Racing Reform Act, has not been considered.

²³ Based on the figure of \$600 million distributed to the three racing codes over the last five years.

Will surplus venues generate sufficient capital to enable the revitalisation programme?

239. The 2016 value of the venues identified by Messara as surplus (the initial 16 proposed for closure) is around \$30 million. This level of value would fall very significantly short of enabling the revitalisation. However, this valuation reflects current use and current zoning. Some surplus venues have, through the process of urban expansion, moved from being rural or semi-rural to being suitable for residential development. These venues have much greater value if rezoned.
240. As noted by Messara, the value of the initial 16 venues proposed for closure could realise \$150 to \$300 million if the land was rezoned for residential use. The Department does not know what the view of relevant zoning authorities will be regarding rezoning applications. However, surplus venues could make a significant contribution to addressing land supply issues in some locations and the Department expects planning authorities to look favourably on rezoning applications for those sites.

Section 4b: Impact Analysis

Table 5: Options to ensure that racing property and other assets are retained in the industry and used for maximum industry benefit

Criteria	Status quo	Option 1: Legislation to specify when a club winds-up its assets transfer to the code	Option 2: Legislation to specify codes have the ability to wind-up clubs that do not race
Sustainability	0 Current wind-up provisions mean assets can be lost to the industry	++ Prevents a club transferring its assets to other not-for-profit organisations on wind-up	++ Assets transferred from a club that is not participating in the industry, to the code, to benefit the wider industry
Empowerment	0 Codes have no ability to wind-up a club that is no longer racing	++ Codes have ability to decide where assets are best utilised	++ Codes decide whether to initiate wind-up of a club that does not race based on criteria within the Act
Subsidiarity	0 Codes have little control over how assets are dispersed when a club winds-up	++ Enables the industry to decide the use of assets from clubs that wind-up	+ Codes are best-placed to make decisions regarding whether a club is not racing and should be wound-up
Minimum statutory intervention	0 No statutory intervention	++ Is the minimum statutory intervention necessary to achieve objective	+ Is the minimum statutory intervention necessary to achieve objective. Decisions for winding-up clubs are commercial decisions
Feasibility	0 No change	+ Consistent with Incorporated Societies Act, as assets remain for not-for-profit purposes	- Risk of legal challenge (of decision to wind-up a club) Risk of conflict of interest if Option 1 and 2 are both implemented.
Overall assessment	0	++	+

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

Table 6: Options to ensure that surplus racing venues can be used for maximum industry benefit

Criteria	Status Quo ²⁴	Option 1 - Messara recommendation to vest all race club property to the codes	Option 2 - Legislative provisions to support commercial negotiations	Option 3 – New ‘racing ecosystem’ with no intervention
Sustainability	0	+ Codes own all property, and have ability to borrow against assets, but have unwanted obligations e.g. maintenance	++ Achieves certainty that surplus venues can support industry revitalisation.	+ Incentives for clubs with retained venues to meet standards specified by codes, but codes have limited ability to incentivise clubs with surplus venues to participate in negotiations.
Empowerment	0	++ Fully empowers codes to make decisions on national scale, however no requirement to have regard for local matters	+ Codes drive FVP negotiations, though the Minister will have decision powers if negotiations fail.	0 Code drives FVP negotiations but property law rights sit with club so code limited in results it can achieve, and no mechanism to break deadlocks.
Subsidiarity	0	-- A one-size-fits- all approach. No ability for a tailored solution for clubs.	+ Decisions made by clubs and codes locally on a commercial basis within the new framework of the amended Racing Act, but decisions may be made by the Minister as a last resort.	0 Long-standing issues related to property remain unresolved.
Minimum statutory intervention	0	-- Excessive intervention in all clubs, including those performing well. Similar benefits can be obtained with less intervention.	- Commercial FVP process is prioritised. Statutory power limited to cases when agreement cannot be reached.	0 No statutory intervention. Relies on agreement. May lead to calls for subsequent government involvement
Feasibility	0	-- Difficult to legislate for and implement.	+ With preferred statutory power (2A), reduced risk of legislative challenge.	- Limits to what the code can achieve by negotiation; results are uncertain but unlikely to fully support industry revitalisation

²⁴ The status quo is the current scenario where RITA has responsibility for the wagering and racing functions.

Equity	0	++ The same outcome is delivered to all clubs who own venues, resulting in loss of assets.	+ All venues assessed through FVP process, using same criteria. Outcome of venues will differ, based on the assessment. Where venue declared surplus, all clubs have opportunity to participate and challenge decisions of process. Statutory process with independent decision maker addresses disparities in capability between parties.	0 All clubs given same opportunity to participate in FVP process with a fair chance to be heard.
Overall assessment	0	-	+	0

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

Table 7: Options for the decision-maker of the statutory process, when negotiations fail

Criteria	Status quo	Option 2A: The Minister for Racing decides the allocation of surplus club property	Option 2B: An independent commissioner decides the allocation of surplus club property	Option 2C: The code decides on allocation of surplus property
Sustainability	0	++ Achieves best certainty that surplus venues can support industry sustainability	+ Judicial review risks may prevent property from contributing to industry sustainability	- Greatest risk that judicial review prevents property from contributing to industry sustainability
Empowerment	0	- Minister decides. Codes and clubs input to process	- Commissioner decides. Codes and clubs input to process	++ Code invokes the power, having regard to local and industry matters
Subsidiarity	0	+ Minister is drawn into local industry matters, but this is required to achieve certainty.	+ Minister is not drawn into local industry matters, but this is less likely to achieve certainty.	+ Matters are decided locally by code but not clubs and risks ineffective solution.
Minimum statutory intervention	0	+ Following Ministerial involvement, control of surplus venues will largely lie with industry	+ Following Commissioner involvement, control of surplus venues will largely lie with industry, subject to judicial review	-- Puts decision rights in code hands but judicial review may lead to calls for government involvement
Feasibility	0	++ Order in Council appropriate given significant impact on property rights and is best way to address judicial review risks.	+ Potential for clubs to challenge the independent commissioner's process and decision	-- Significant potential for clubs to challenge the process and decision of the code
Overall assessment	0	++	0	--

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?

How to ensure that racing property is retained in the industry and used for maximum industry benefit

241. Options 1 and 2 are not mutually exclusive and both scored well in section 4, therefore both options are proposed for inclusion in the Racing Act.
242. The Department considers the combination of options related to wind-up would best achieve Objective 2. It is likely to be seen as a conflict of interest for a code to wind-up a club that does not race, as the code would benefit from the decision. However, the codes represent the interests of the wider racing industry and do not stand to benefit directly from the assets of a club when it is wound-up. Proceeds from wound-up clubs and surplus venues will be held separately by the code and used to refurbish retained venues.
243. The actual conflict of interest is limited to the fact that the code will control which venues are to be refurbished with the proceeds from wound-up clubs. This is partly mitigated by the codes having clear prioritisation criteria for venue projects, to provide the optimum return for the industry.
244. The proposal is considered necessary on the basis that racing clubs should meet the registration criteria and hold races or have a reasonable prospect of doing so soon. For most clubs a failure to race will be a breach of its constitution.
245. As racing clubs are incorporated societies, their members cannot receive any pecuniary gain from the dissolution of the club and dispersal of its assets. Club members will not suffer any financial loss, rather they lose the decision-making rights on the disposal of the club's assets.

How to achieve certainty on the use of surplus racing venues for maximum industry benefit

246. Option 1 (the Messara recommendation) introduces several issues, including:
 - i. it does not allow any opportunity for negotiated agreement and is likely to give rise to the highest level of concern and opposition among clubs;
 - ii. a one-size-fits-all approach is inappropriate - ownership of retained venues should remain with the clubs because it is appropriate for clubs to continue to hold responsibilities such as maintenance, health and safety, and insurance due to their location at the venue. If codes were to own the race venues these responsibilities would shift to them, risking distracting them from their core business; and
 - iii. if race venues were to be transferred to codes and leased back to clubs, this would create unnecessary level of complexity which is counter to the aim of the reforms to create a more streamlined, efficient racing system.

247. In addition, the Department has considered submitters' views on the Messara recommendations. Strong opposition to the recommendation to vest all race club property to the codes contributed to the decision to discount Option 1. There has been no public consultation on Option 2, however it is expected that there will be some opposition to it. The level of support for recommendation 14 (see paragraph 179) strengthens the argument for venue revitalisation and funds dedicated to this. Given the difficulty and negative consequences of funding this revitalisation through debt funding or distributions from TAB NZ, utilisation of capital within the industry is the only viable option.
248. The Department's preference is negotiation between code and club, through the FVP process. It is anticipated that agreement can be reached in most cases. For cases where agreement cannot be reached, the 'future state' outlined in the governance section will provide the codes with some power to rationalise venues, specifically their ability to approve club constitutions, grant clubs' registration and licences to host race meetings. If a club does not satisfy the conditions set by the code, they will lose the ability to race at their venue, and therefore no longer receive funding from the code for both prizemoney and maintenance grants. This will result in a significant loss of income for a club, and all parties involved (codes, club and community) will suffer a loss.
249. This outcome will not provide the benefits proposed by Messara. The legislative provisions provided through Option 2, as a 'backstop' intervention, will ensure a result is reached in the limited cases where all other avenues fail. While this option involves significant incursion of property rights of affected clubs, this must be considered against the industry 'greater good', where the benefits are shared across the sector and the communities of all clubs. The statutory process to decide on the distribution of funds realised from surplus venues, is limited to a case specific process that includes a considered assessment of the value of the surplus venue to the surrounding community and provides for compensation to reflect that value. The backstop would only be exercised by the Minister who can balance all competing interests.
250. The interests of individual clubs are valid but must be seen in the context of the wider industry. The industry has declined, at least in part, because clubs, codes and the industry as a whole cannot reach consensus on how to address longstanding issues. Ultimately, if the industry thrives then so will clubs. The Department considers decisions cannot be delayed, and most particularly cannot be delayed for open ended negotiations when there is no certainty that necessary decisions will or can be made. The Department considers the 'greater good' argument outweighs the argument for the status quo to remain. Difficult decisions must be made, and the proposed statutory process provides for the unlocking of industry capital, while addressing the community interests that are affected.

251. The preferred statutory decision-making power (Option 2A - the Minister for Racing deciding on the allocation of surplus property, through an Order in Council), is appropriate for significant community assets and significant decisions affecting property rights. The involvement of the Minister and the use of an Order in Council process is most appropriate when there are such significant interests at stake and the need for democratic accountability for the use of the powers. While none of the options for a statutory decision-maker is without risk of cost and delays through judicial review, the Order and Council implementation mechanism stands the greatest chance of being effective in achieving the racing property objectives.

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	<p>Codes</p> <ul style="list-style-type: none"> - Costs for all codes undertaking FVP negotiations - Costs to codes associated with legal challenges to result of FVP process – expected from limited number of cases - Costs for codes when statutory process is invoked – expected from limited number of cases <p>Clubs</p> <ul style="list-style-type: none"> - Costs to clubs who undertake legal challenges to the results of FVP negotiations – expected from limited number of cases - Costs to all clubs (who own venues) for participation in FVP process - Costs to clubs (whose venue is declared surplus) who agree to race at alternative venue, e.g. rental at alternative venue (potential for funding to come from club assets through negotiation with codes, if required). - Cost to clubs (whose venue is declared surplus) who choose not to (or are unable to) race at alternative venue - Costs to club when statutory power is invoked – expected from limited number of cases 	<p>Low</p> <p>Medium</p> <p>Low</p> <p>Medium</p> <p>Low</p> <p>Low</p> <p>High</p> <p>Low</p>	<p>High</p>
Regulators	Racing industry judicial functions are self-regulated	Low	High
Wider government	Minimal. Crown cost of statutory process will be cost recoverable from code and club	Low	High

Other parties	<p>Possibility for extinguishment of trust (dependent on outcome of FVP process)</p> <p>Communities/industry participants affected by loss of venue</p> <p>Potential loss of opportunities for social gathering and opportunity to participate/volunteer. A payment will be made, if appropriate, to the community for the loss of event venue.</p> <p>Racing industry participants (e.g. trainers, owners, jockeys) and wider community members connected to a surplus venue will lose proximity to community venue, resulting in increased travelling distances to alternative venues, and potential increases related to relocation of training facilities.</p> <p>Charities/incorporated societies</p> <p>Loss of potential distribution of assets from the dissolution of racing clubs</p>	<p>High</p> <p>Medium</p> <p>High</p>	<p>Medium</p> <p>High</p> <p>High</p>
Total Monetised Cost	The monetised cost is difficult to estimate as it is subject to decisions on potential legal challenges, but is expected to be in the low millions	Medium	Medium
Non-monetised costs	Potential delays to realising funds from surplus venues, through legal challenge	Medium	High
Expected benefits of proposed approach, compared to taking no action			
Regulated parties	<p>Codes</p> <p>Gain ability to utilise funds to redevelop retained venues, make decisions at national-level on prioritisation for upgrading venues, for benefit of wider industry</p> <p>Clubs who own/based at retained venues</p> <p>Retained venues will be upgraded; clubs who own venues that require significant redevelopment will benefit from the decision of the code to invest in their venue. This reduces maintenance costs (ongoing, as opposed to deferred).</p> <p>Clubs that own venues will benefit from increased income gained through hosting other clubs, and increase in non-racing events.</p> <p>All clubs that continue to race will benefit from this through ability to hold more races, therefore increasing betting revenue and distributions from TAB NZ and codes.</p>	High	Medium
Regulators	Racing industry judicial functions are self-regulated	Low	High

Wider government	Benefit to support revitalisation of the racing industry, in addition to greater levels of tax and the wider contribution the racing industry brings to the New Zealand economy, through employment and the goods and services that supply the industry.	High	High
Other parties	<p>Revitalisation of the racing industry will have employment and economic benefits for some communities over time.</p> <p>Refurbished venues will aim to cater for wider range of events, providing local communities with greater facilities, therefore increasing opportunities for volunteering/participation in events or (non-racing) club activities.</p> <p>Better on-course experience for the race-going public and the betting public will have a higher quality product</p>	Medium	High
Total Monetised Benefit	<p>The monetised benefit is difficult to estimate as it is subject to industry decisions on surplus venues, and consumer demand at retained venues.</p> <p>However, a reasonable estimate is that more than \$150 million could be realised from venue rationalisation and be re-invested in the industry.</p>	High	Medium
Non-monetised benefits	Racing industry participants and consumers will benefit from improved venues and race-day experiences.	High	High

5.3 What other impacts is this approach likely to have?

252. The proposed changes come with risks of legal challenge.

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

253. The proposals do not impinge on individual autonomy or responsibility. However, the preferred options have impacts on property rights of clubs, which have potential NZBORA implications given racing clubs' status as legal persons. In addition, the proposals impact on a club's right of association and right to peaceful assembly. However, the preferred options have the lowest adverse impact while enabling the reform objectives to be achieved.
254. Mechanisms are included to minimise the impact on clubs and communities with surplus venues, including allowing for a negotiated process and only if that fails would a statutory intervention be considered. The proposals include some offsetting measures such as the ability for codes to agree on distributions from a surplus venue to clubs to allow them to race at retained venues and also to communities with a significant interest in a surplus venue.
255. The regulatory regime and associated processes related to property are expected to be the most contentious. However, transfers of assets without compensation within a sector have precedents with public assets, including in the health and local government sectors. The Health Sector Transfers Act 1993 allowed transfers within the health sector without consideration and is the legislative model that has been used for the recommended statutory process. The reorganisation of local government in Auckland also involved extensive vesting of assets between entities in that sector. The transfers proposed to support revitalising the racing industry will retain property within the racing industry, but differs from the local government and health examples property is private rather than public.

C. New wagering products

256. Decisions sought in relation to new wagering²⁵ products are:

- i. to strengthen the Racing Act's focus on harm prevention and minimisation by updating its purpose;
- ii. to agree to the scope of what new products recommended by the Messara Report and the MAC can be considered within the Racing Act;
- iii. to introduce an approval mechanism that provides a process to comprehensively consider rules for new products being proposed for introduction, based on section 243 of the Gambling Act; and
- iv. to agree to amend the Racing Act 2003 to provide TAB NZ exclusive rights to Intellectual Property in the Australian and New Zealand market.

Section 2c: Problem definition and objectives

2.3 *What is the policy problem or opportunity?*

257. As noted in section 2.1, the racing industry is not financially viable or sustainable and is in a state of decline. The industry is heavily reliant on revenue raised from racing and sports betting. Recommendation 8 of the Messara report recommended introducing a suite of new wagering products that would generate additional revenue. Specifically, it recommended changes to approve TAB NZ to:

- i. conduct in-the-run race betting;
- ii. conduct betting on sports where there is no agreement with a NSO;
- iii. conduct virtual racing games; and
- iv. remove legal restrictions in section 33(3) of the Gambling Act 2003 that prevent TAB NZ from acquiring existing class 4 gaming venue licences.

258. The MAC endorsed recommendation 8 and recommended an approval mechanism be enshrined in the Racing Act. This mechanism would enable new products to be considered against a set of criteria without having to change primary legislation (which is the current requirement). The MAC also identified other new products for consideration:

- i. betting exchange;
- ii. spread betting;
- iii. novelty betting;
- iv. betting on fantasy leagues; and
- v. betting on esports.

²⁵ 'Wagering products' refer to products that are related to racing and sports betting. 'Gambling products' encompass all gambling products not related to sport or racing betting.

259. The Racing Act provides TAB NZ with a domestic monopoly over racing and sport betting in New Zealand. The racing industry is heavily dependent on revenue from betting as its main income stream. In 2017/18, RITA reported that its net betting revenue from racing and sport was \$287.5 million. Although total revenue has been increasing, betting profit margins have reduced from 14.4% in 2008/09 to 12.7% in 2017/18.
260. The current legislative framework constrains the range of products RITA can offer to race and sport betting products and puts it at a disadvantage with offshore gambling operators. This is because the legislative settings make it difficult for RITA to be competitive, as offshore gambling operators are not subject to the same constraints. For example, New Zealand consumers can access a range of products through offshore gambling operators that are not available through New Zealand's gambling operators. This includes all the products that have been recommended for approval both in the Messara Report and by the MAC.
261. This issue is not unique to TAB NZ. The Lotteries Commission, which has the monopoly on lottery products in New Zealand, is also affected by offshore gambling operators.
262. There is also a lost opportunity for RITA and the Government when New Zealanders bet offshore on wagering and gambling products. Offshore operators can take bets from New Zealanders but are not required to contribute to the same level of duties or taxes, nor meet New Zealand's regulatory requirements to minimise harm and contribute to communities²⁶.
263. Often, offshore gambling operators also have lower overheads too. As a result of all these aspects – low overheads, low taxes, no requirements to act to minimise harm - many offshore operators can offer better odds, which can make them more attractive to potential customers. This situation is unable to be addressed without structural changes to the regulatory system for racing and, potentially, the Gambling Act.
264. This is not the first time the Government has considered this issue. The Racing Amendment Bill 2017 (the 2017 Bill) sought approval to introduce new wagering products to address the issue of New Zealanders betting on racing and sports with offshore gambling providers. The 2017 Bill's provisions for new wagering products received support from the majority of those that submitted through the select committee process. That Bill was withdrawn last year to allow consideration of broader reform of the racing industry as recommended by the Messara Report.
265. The Racing Reform Act 2019 introduced a change that enabled TAB NZ to provide bets on sports where there is no NSO in place, provided there is an agreement with Sport NZ. This will enable TAB NZ to offer betting on emerging sports (for example, there was no NSO for mixed martial arts in New Zealand when it originally became popular, which meant TAB NZ could not offer betting on it). This has the impact of enabling betting on esports, one of the new wagering products recommended for introduction in the Messara Report, as long as Sport NZ is willing to have an agreement on behalf of esports in New Zealand.

²⁶ Some offshore gambling providers do have harm minimisation systems in place.

266. The introduction of offshore charges through the Racing Reform Act 2019 provides for more balance between New Zealand providers and offshore gambling providers but only partially addresses the unfair playing field.

Intellectual Property

267. Another area that relates to wagering is the racing industry's Intellectual Property used in betting and broadcast products. The Messara Report included a recommendation to 'complete the chain of agreements and arrangements to prepare for the outsourcing process including the assignment of Intellectual Property by the Clubs to the Codes'. The purpose of this was to enable the three racing codes to maximise the revenue from assignment of Intellectual Property over their race field information and broadcast rights to TAB NZ. At the same time, it was anticipated that this would address the issue of clarifying who owns the race field information and broadcast rights.

Why does the counterfactual constitute a problem?

268. The Messara Report reasoned if the status quo remained then the racing industry would continue to gradually decline. This is exacerbated by TAB NZ's inability to compete on a "level playing field" with the range of wagering and gambling products offered by offshore operators. It reflects a shrinking over time of the effectiveness of the existing legislatively mandated gambling duopoly for wagering and lotto products (TAB NZ and the New Zealand Lotteries Commission) in New Zealand.

269. It also means that while some New Zealanders will be harmed from gambling products offered through offshore gambling operators, ultimately it is New Zealand's gambling providers that continue having to pay to address this harm. This is because New Zealand's Problem Gambling Strategy - *The Strategy to Prevent and Minimise Gambling Harm* - is funded through the problem gambling levy paid by New Zealand Gambling Providers: non-casino gaming machine operators, casinos, the RITA and the New Zealand Lotteries Commission.

270. In the case of intellectual property rights, RITA (and NZRB before it) have the view that it holds exclusive rights to the racing industry's intellectual property used in betting and broadcast products, as a result of rights being assigned to it through the process of issuing betting licenses.²⁷ However, the codes do not agree with this position and believe that each code should be the ultimate decision-maker about the code's intellectual property. Resolving the issue of intellectual property rights was identified as an important component of understanding whether TAB NZ's commercial activities could be outsourced or not.

²⁷ Betting licences are issued by RITA to the racing clubs to whom racing dates have been allocated.

What is the nature, scope and scale of the loss or harm being experienced?

271. The nature of loss is not known, although there are a range of estimates regarding what New Zealanders spend with offshore gambling providers. For example, the Offshore Racing and Sports Betting Working Group was tasked with shedding light on the increase in the number of New Zealanders engaging in offshore online racing and sports betting and addressing the use of race and sports information by offshore gambling operators. The Working Group's 2015 report found that betting turnover by New Zealanders with offshore gambling operators was estimated to be \$518 million per year.
272. Current industry estimates based on credit card data suggest that in the last 18 months New Zealanders spent approximately \$381 million with offshore gambling providers²⁸. The data is not clear, consistent or easily comparable (for example, betting turnover and total spend figures, as quoted above, reflect very different ways of accounting for spend). However, there is evidence that online gambling is growing in New Zealand and, as noted above, New Zealand does not derive the benefits from offshore gambling as it would do if the gambling activity was channelled through New Zealand's gambling providers. Global trends suggest online gambling is sharply on the rise. Therefore, there is a strong argument to be made that if TAB NZ is to remain competitive against these offshore operators, they should be able to increase their current product offering.

What is the underlying cause of the problem?

273. Previous attempts to revitalise the racing industry from both industry and government have not provided the results required to get the industry back on track. This has been recognised by both Messara and the MAC. Further consideration was given to how to address the issue of offshore gambling providers and their impact on the racing industry in 2017, culminating in the Racing Amendment Bill 2017 but this Bill was withdrawn to enable consideration of the Messara Report.
274. Consideration has been given to how this can be better addressed, specifically as it relates to an expansion of wagering and gambling products.
275. While RITA can take some steps towards revitalisation without Government intervention, ultimately legislative change is required if any new wagering products are to be introduced. This legislative change can only be mandated by Parliament.
276. If the Government does not intervene, then RITA will continue to compete with offshore operators who do not pay to mitigate the harm their products may create or contribute to the wider community through funding grants²⁹. While many offshore gambling operators are reputable with gambling harm minimisation practices in place, the New Zealand Government has no input to those practices and no ability to enforce compliance on behalf of New Zealanders. There are numerous overseas online gambling providers whose harm minimisation practices are insufficient, which expose New Zealanders to gambling harm.

²⁸ DIA (2019) *Online Gambling in New Zealand: Public Discussion Document*. Page 5.

²⁹The NZRB (RITA) and Lotto NZ both contribute to the Gambling (Problem Gambling Levy) Regulations 2019. The levy reimburses the Crown for the cost of problem gambling services delivered by the Ministry of Health.

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

277. New Zealand's gambling sector is underpinned by a public health approach. Its regulation is built on three main principles: communities benefit from the proceeds of gambling; New Zealanders gamble with trusted operators; and gambling-related harm is minimised (with the cost of minimisation and mitigation being carried by gambling providers). Any growth in the gambling sector is managed to ensure a balance between these key objectives.
278. The regulatory framework for racing seeks to 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). One of the purposes of the Gambling Act is that it authorises some gambling and prohibits the rest.
279. The proposals to increase the suite of gambling products and make changes to existing rules, if agreed, would require making changes to the Racing Act that conflict with the Gambling Act. Consideration needs to be given to whether decisions made in the context of the racing reforms create a two-tier gambling system which preferences the TAB NZ over, for example, the Lotteries Commission.
280. As such, the Department considered one constraint on the scope for decision-making was any decision that puts the Racing Act at odds with the Gambling Act. An example of this would be enabling TAB NZ to be able to deliver a range of gambling products that more naturally sit under the Gambling Act, such as novelty betting, which is not related to either sports or racing betting.

What interdependencies or connections are there to other existing issues or ongoing work?

Online gambling review

281. The Government is concerned about the impact that overseas online gambling operators are having on New Zealand gambling operators and the potential forgone benefit to New Zealanders. This is very much the same issue that the racing industry is grappling with, that led to the (now discharged) Racing Amendment Bill and a range of recommendations in the Messara Report to address this (including the introduction of offshore charges).
282. As a result of this concern, the Government has agreed the Department undertake work on online gambling to ensure that New Zealand's online gambling policy settings are fit-for-purpose [CAB-18-MIN-0442.01 refers].
283. The growth of online gambling makes it timely to review the current gambling framework to ensure it is resilient and fit-for-purpose. There are also opportunities to improve government's knowledge through gathering better data on gambling behaviour. The review aims to position the government to:
- i. make better policy decisions;
 - ii. target harm prevention and mitigation services more effectively; and
 - iii. to better evaluate the framework on the longer term.

284. The public discussion document *Online Gambling in New Zealand* was released on 31 July with submissions due by 30 September 2019. It presents four potential options to address online gambling, although this does not exclude consideration of other options. These options are:

- i. Lotto and TAB NZ offer existing gambling products (status quo);
- ii. extending gambling products Lotto and TAB NZ may offer;
- iii. licensing of domestic operators; and
- iv. licensing of domestic and/or overseas operators.

285. The timeframe of this work is longer than that of the racing reforms. Either way, the outcomes of this review will have an impact on the racing industry. For example, if a decision is made not to enable TAB NZ to deliver products that its offshore gambling operators do, this narrows the potential new revenue options available to TAB NZ. If domestic and overseas operators are able to be licensed to deliver products, this will create direct competition with TAB NZ and is likely to be detrimental to its baselines.

2.5 What do stakeholders think?

Public submissions on the recommendations of the Messara Report

286. Public consultation was undertaken on the recommendations of the Messara Report in September and October of 2018. The Department received over 1,700 submissions.

Recommendation 8: Seek approval for a suite of new wagering products to increase funding for the industry

287. A total of 42 submissions were received on this recommendation. 38 supported outright the approval of the new wagering products proposed within the report, virtual racing and 'in-the-run' betting. Three submissions opposed, and one submitter supported new betting options as opposed to new products.

288. Comments from submitters who supported the recommendation included an acknowledgment that many of these products are already available online, and new products would provide much needed funds for the industry.

289. The three submissions opposing this recommendation were concerned with the potential harm new gambling products could bring. One community organisation noted "these sorts of initiatives are hardly in keeping with the harm prevention and/or harm minimisation expectations currently placed on all forms of gambling here in NZ". The Problem Gambling Foundation argued there must be an understanding of the increase in people accessing problem gambling services, before any new products are introduced.

Response to two related sub-recommendations

290. Within the Report Mr Messara made two additional sub-recommendations which would also provide an increase in revenue for the racing industry, alongside the recommendation for new wagering products (virtual racing and 'in-the-run' betting). A high number of submissions were received in relation to these sub-recommendations, which are:

- i. removing legal restrictions in section 33(3) of the Gambling Act that prevent the NZRB from acquiring class 4 gaming licence venues (1,187 submissions received with only five submitters supporting the recommendation); and
- ii. conducting betting on sports where there is no agreement with a NSO (63 submissions received with 59 submitters opposed to the recommendation).

Summary of key stakeholders' submissions in support of approving a suite of new wagering products

The MAC's position

291. MAC strongly supports this recommendation. MAC expressed its desire for legislation to be changed as soon as possible to accommodate the wider range of bet types and betting, and gaming products. It recommended a suite of new products, as outlined above.
292. MAC also asked for Bill No.2 to include a mechanism to allow "TAB NZ to operate new bet types, such as a betting exchange and spread betting, and betting products such as in-race betting on the outcome of races, virtual racing, novelty and fantasy betting, and betting on e-sports, with an appropriate approval process."

RITA

293. RITA considered that the scope of the Racing Act needs to be broadened to include definitions outside "racing" and "sports". They did not find that this would contradict the Gambling Act, using the example of novelty betting as not falling within the scope of any definition of any other class of gambling.
294. RITA also recommended an adapted, more enabling version of Section 243 (Operation of New Zealand Lotteries) of the Gambling Act that would apply to TAB NZ should be introduced.
295. RITA also suggested that if an enabling mechanism is approved then:
- i. the approver should be an apolitical public servant rather than a Minister;
 - ii. criteria for assessing proposed products should be against specific criteria not open-ended tests;
 - iii. ministerial entitlement to require any design or specification should not be included; and
 - iv. there should be a statutory deadline for consideration of new products.

NZTR

296. NZTR strongly supports recommendation 8, specifically noting it supports the proposed loosening of restrictions on TAB NZ's wagering activities, on the basis that the scale of TAB NZ's investment into these areas would be subject to Code approval as part of the relationship between TAB NZ and the Codes.

HRNZ

297. HRNZ agreed with the introduction of new wagering products but noted some reservations with in-the-run race betting – as it could be counter-productive to overall turnover and Gross Betting Revenue. HRNZ considered that the ability to do this properly is key and that further consideration of the merits of this product should be undertaken before its introduction.

GRNZ

298. GRNZ believes that this is a reasonable action on behalf of New Zealand betting participants and that this would increase the scope of wagering behaviours that could fall within our domestic harm prevention programmes.

299. GRNZ noted many of these activities are already available to New Zealanders through the internet and this provides a safer environment for the activity that also provides a return to the New Zealand industry.

Summary of key stakeholders' submissions opposed to approving a new suite of wagering products

300. Many of the submitters opposed particular components of the package of wagering products that were recommended for approval (particularly the changes proposed to NSOs and class 4, as set out above). However, some organisations raised concerns about the recommendation in its entirety. A summary is provided below.

The Salvation Army Oasis

301. The Salvation Army noted that it believed Messara's recommendation to increase the suite of wagering products conflicted with the harm minimisation mandates in both the Racing and Gambling Acts. It was concerned that there was no 'reference to gambling harm or the health and social impacts' of the wagering recommendation. It also noted that none of these policy reforms should be considered without engaging with Māori.

302. The Salvation Army's submission noted its principal concern was 'the extent to which the racing industry's revitalisation will be financed by gambling ... too strong a focus on gambling as a revenue generator may lead to unhealthy gambling behaviours and negatively impact the integrity of sports and racing'. It also noted that the 'commercial sector, which racing clearly is, must not be provided with unfettered access to what are essentially charitable funds.

Problem Gambling Foundation

303. The Foundation strongly objected to, among other things:

- i. the proposal to introduce un-tested gambling product;
- ii. the aim of using increased gambling losses from ordinary New Zealanders to support the horse and dog racing industry;
- iii. allowing the TAB to acquire class 4 gaming licences; and
- iv. allowing the TAB to operate on all sporting events with or without the agreement of those national bodies.

304. It also noted ‘the survival of the industry cannot be at the expense of the well-being of all New Zealanders’ and considered more time should be taken to ‘digest the findings’ of the report.

The Trusts Community Foundation Ltd

305. The Trust noted the proposed new wagering products ‘are not designed to do anything other than attract new clientele as well as entice existing clientele to spend more. These sorts of initiatives are hardly in keeping with the harm prevention and/or harm minimisation expectations currently placed on all forms of gambling here in NZ, and most particularly with regards to the class 4 gambling sector’. The Trust noted that it did not support this change.

Stakeholder views on intellectual property

306. RITA is supportive of TAB NZ holding exclusive rights to intellectual property of racing product because it considers this best enables it to optimise the value of its betting products. It considers this is achieved through being able to sell bundled rights (such as the agreement with Tabcorp in Australia). It considers these benefits may not accrue under a dis-aggregated model where the components are split up and negotiated separately.

307. The joint code position (Thoroughbred, Harness and Greyhound) is that each code should be the ultimate decision-maker about the code’s intellectual property.

Section 3c: Options identification

3.1 What options are available to address the problem?

309. Before coming to final options regarding wagering products there were a range of policy issues the Department needed to explore in order to consider how to approach recommendation 8 of the Messara Report and its potential flow-on impacts. The questions included:

- i. What products to bring in?
- ii. How to package the products up?
- iii. How this would work with the current framework for wagering and gambling in New Zealand?

310. The first step of the analysis consisted of looking at each proposed change and product individually. The sum of this analysis is set out in the table below.

Table 8: Proposed changes and wagering products

Potential new product/change	Description	Criteria		
		Impact on NZRB revenue	Harm from gambling	Community impact (broader than racing)
Change in class 4 (not in the Racing Act) that removes the current cap in place through section 33(3) of the Gambling Act.	In 2015, section 33(3) was inserted so that the NZRB could not acquire a class 4 licence if another society holds, or has held, a licence at the venue in question. The rationale for the restriction was to preserve class 4 funding for the community rather than for it to be increasingly channelled back to the racing sector.	This would increase funds for distribution to Racing Authorised Purposes, the majority of which currently goes towards funding the JCA. Some is also distributed for the benefit of community sport and recreation (although for this group, it would still represent a net loss).	This change would not make a difference to the total number of machines, so the harm from gambling would remain at existing levels (although harm is high from gaming machines, recorded as the primary gambling mode for 50% of gamblers seeking help for gambling problems). ³⁰	Beneficiaries of net proceeds would change, from a sport and community focus to racing purposes. For the racing community, this would be beneficial, but for the sport and recreation community, this would be a net loss, as 80% of net proceeds fund Racing Authorised Purposes and only 20% is distributed through amateur sporting organisation grants.
Change to NSO settings in Racing Act to enable betting to take place on international sporting fixtures without NSO agreement	Removes existing requirement for RITA to have an agreement in place with an NSO for sports betting that takes place on overseas sporting fixtures. e.g. Basketball NSO wouldn't have bargaining power for bets made on NBA games.	Uncertain. Assumption would be that this would not change revenue, however, feedback from RITA would be useful to determine if this is the case (i.e. whether this change would see them change existing agreements in place with, for example, New Zealand Football). If it doesn't change revenue, what is the benefit of making the change?	Likely to be neutral, as only potential new products from this are from those sports that currently don't allow RITA to bet on its sports. Currently rowing chooses not to enable betting – this would remove rowing's ability to determine what happens in an international setting.	NSOs may feel disempowered as they will lose potential bargaining power (consider for example, NBA, football world cup, American football) leading to concern that there will be reduced income being distributed to NSO's as a result of this change.
In-the-run race betting	s52(3) of the Racing Act has a requirement that betting must close before the race starts which means in-	Potential to increase betting revenue by extending the product types offered by RITA but unlikely to have a significant impact.	Potentially increases risks of problem gambling but the risk is considered minimised by the fact that the races are of short duration.	Any resulting increase in revenue would increase returns to racing codes. This would benefit the racing community, rather than the

³⁰ SOURCE: Ministry of Health Gambling – Data on Problem Gambling Treatment Services)

Potential new product/change	Description	Criteria		
		Impact on NZRB revenue	Harm from gambling	Community impact (broader than racing)
	the-run race betting is prohibited. This prohibition originally enabled time to collate all bets before a race started. However, technology now enables this to happen in real time.		In-the-run race betting is already available to New Zealanders through offshore operators. If New Zealand gamblers switch to using TAB NZ instead, there would be a greater ability to minimise harm.	broader community. Would also increase returns from gambling to Government if people are switching from offshore operators to TAB NZ through increased tax and levy payments. Will provide existing gamblers with the ability to access in-the-run race betting within New Zealand rather than using offshore operators
Virtual Online Racing (and Sports)	A virtual racing game is a computer simulation of a horse or greyhound race. It creates the appearance of an actual race, but it is a fixed-odds system in which the outcome is determined based on random numbers generated by a programme, akin to a gaming or 'pokie' machine.	This would likely lead to a significant increase in revenue for RITA as these types of games (continuous, with quick results) are very popular. Likely to have some set up costs involved.	It would increase harm from gambling. This form of gambling product (continuous with quick results) is associated with a high risk of problem gambling. However, although this does not mitigate the risk, these kinds of products are already available to New Zealanders through offshore operators. If New Zealand gamblers switch to using TAB NZ instead, there would be a greater ability to minimise harm.	The benefits would likely be distributed to the racing industry. The community impact of a product like this is likely to be negative if it encourages problem gambling. Also, the broader community's benefits are likely to be low (similar to Class 4) unless specific provision is made to provide some funding to general community purposes.
Introduction of betting exchange	When betting with a bookmaker you are restricted to just backing the winner, however betting exchanges allow their users the ability to both 'back' and 'lay' an outcome - so bettors can act as a 'bookmaker' by setting odds for an event, or the 'customer' by backing the odds set by other users on the exchange. RITA would earn revenue on this through charging commission.	RITA would earn revenue through the commission earned from transactions on the betting commissions – however, they would need to do an assessment of whether this would be a viable offering	The NatCen Report (UK) shows that the highest rates of problem gambling prevalence were among those who had participated in spread betting and betting with a betting exchange (however, the actual numbers of people using the service were low). However, although this does not mitigate the risk, these kinds of products are already available to New Zealanders through offshore operators. If New Zealand gamblers switch to using TAB NZ instead, there would be a greater ability to minimise harm.	Any financial benefits would be available to be distributed to the racing industry and potentially also sports organisations
Spread betting products	Spread betting is a form of betting in which the bettor wins or loses money according to the margin by which the value of an outcome varies from the spread of expected values quoted by the bookmaker.	RITA would earn revenue from offering a new product, although unable to quantify whether this would be significant – it appears spread betting is fairly niche.	The NatCen Report (UK) shows that the highest rates of problem gambling prevalence were among those who had participated in spread betting and betting with a betting exchange (as above). Spread betting can come with fairly high levels of risk as losses can be quite high. However, if New Zealand gamblers switch to using TAB NZ instead, there would be a greater ability to minimise	Any financial benefits would be available to be distributed to the racing industry and potentially also sports organisations

Potential new product/change	Description	Criteria		
		Impact on NZRB revenue	Harm from gambling	Community impact (broader than racing)
			harm.	
Betting on esports (gaming)	Esports is a form of competition using video games. Most commonly, esports takes the form of organized, multiplayer video game competitions, particularly between professional players, individually or as teams.	Would likely increase revenue (there is a fast emerging market in e-sport betting) although not significantly	<p>Would likely be the same as from other sports betting, although as esports has attracts a younger demographic, could see more young people engaging in betting activities.</p> <p>However, although this does not mitigate the risk, these kinds of products are already available to New Zealanders through offshore operators. If New Zealand gamblers switch to using TAB NZ instead, there would be a greater ability to minimise harm.</p>	Any financial benefits would be available to be distributed to the racing industry and Sports NZ.
Novelty betting	A novelty bet is a bet on an outcome that's not sport- or racing-related and can be offered on anything, such as the winner of a presidential election or the gender of a baby about to be born to royalty.	Would likely increase revenue as novelty bets are often placed on current events that are of interest to a greater variety of people than those that bet on racing and sports	It is unclear what the impact would be on problem gambling. However, it would likely make gambling with the TAB attractive to a broader range of consumers, which is likely to increase the risk of harm from gambling. If New Zealand gamblers switch to using TAB NZ instead, there would be a greater ability to minimise harm.	Any resulting increase in revenue would increase returns to racing codes. This would benefit the racing community, rather than the broader community. However, would also increase returns from gambling to Government if people are switching from offshore operators to TAB.
Betting on fantasy leagues	Fantasy sport is a type of online game where participants assemble imaginary or virtual teams of real players of a professional sport. These teams compete based on the statistical performance of those players' in actual games.	Would likely increase revenue (there is a fast emerging market in e-sport betting) although not significantly	<p>Would likely be the same as from other sports betting (i.e. this type of betting relies on the outcomes of real games).</p> <p>However, although this does not mitigate the risk, these kinds of products are already available to New Zealanders through offshore operators. If New Zealand gamblers switch to using TAB NZ instead, there would be a greater ability to minimise harm.</p>	Any financial benefits would be available to be distributed to the racing industry and Sports NZ.

311. What was clear from this analysis is the Department does not have the information necessary to make decisions to support the legislation being changed to enable these changes and new products. A significant gap the analysis uncovered was that the Department does not have the information needed to be able to estimate the amount of revenue likely to be generated as a result of enabling the introduction of any of the new products recommended for introduction by the Messara Report or the MAC.

312. Other gaps, or issues, raised in the initial analysis included the following:

- i. there is large variability in the likely risk profile of the different products;
- ii. there is a lack of understanding of the extent of the likely risks and how the TAB NZ would seek to mitigate these;

- iii. enabling the full range of wagering and gambling products would make the Racing Act out of step with the Gambling Act (and privilege TAB NZ over other New Zealand gambling providers); and
- iv. there are limited existing legislative requirements on TAB NZ to mitigate the likely risks.

313. The analysis helped to further develop the options for how best to consider recommendation 8 of the Messara Report. Firstly, it identified there was a natural division of the changes and products being proposed which influenced one of the criteria used to support decision making.

314. There are those products and changes that are related to racing and sport betting (wagering products) and fit within the Racing Act. There are those products that are related to gambling products and have a more natural fit with the Gambling Act. The table below sets this out in further detail:

Table 9: Potential new products and their description

Potential New Products or changes	Description
Potential New Products proposed by the Messara Report	
Change in class 4 that removes the current cap in place through section 33(3) of the Gambling Act.	In 2015, section 33(3) was inserted so that the New Zealand Racing Board (now RITA) could not acquire a class 4 licence if another society holds, or has held, a licence at the venue in question.
No NSO agreement needed on international sporting fixtures	Removes requirement for TAB NZ to have an agreement in place with an NSO for any sports betting that takes place on overseas sporting fixtures.
In-the-run race betting	s52(3) of the Racing Act has a requirement that betting must close before the race starts which means in-the-run race betting is prohibited.
Virtual Online Racing	A virtual race is a computer simulation of a race. It is a fixed-odds system in which the outcome is determined based on random numbers generated by a programme, akin to a 'pokie' machine.
Additional Products proposed by the MAC	
Introduction of betting exchange	A betting exchange allow users to both 'back' and 'lay' an outcome - so bettors can set odds for an event, or back odds set by other users on the exchange. TAB NZ would earn revenue through charging commission.
Spread betting products	Spread betting is a form of betting in which the bettor wins or loses money according to the margin by which the value of an outcome varies from the spread of expected values quoted by the bookmaker.
Betting on e-sports (gaming)	E-sports is a form of competition using video games and takes the form of organized, multiplayer video game competitions.
Novelty betting	A bet on an outcome that is not sport- or racing-related e.g. the winner of a presidential election.
Betting on fantasy leagues	Fantasy sport is a type of online game where participants assemble imaginary or virtual teams of real players of a professional sport. These teams compete, and have results generated, from the statistical performance of those players' in actual games.

Key: Racing Act related products Broader gambling products

315. The Department initially identified five options for the introduction of new wagering products. Note that two of the five options were discounted. The two discounted options were:

- i. Retaining the status quo by not allowing any additional wagering products; and
- ii. Bringing in all the recommended wagering and gambling products and changes.

For more information on these and the rationale for discounting them, see point 3.3 below.

316. As a result, the Department identified three viable options for the introduction of wagering products. These have been weighed against four key criteria (impact on RITA revenue; harm from gambling; community benefit; and consistency with the Gambling Act as set out below in section 3.2). In addition to this, the risks and benefits of each choice were also considered. These options are set out in Table 10 below.

Table 10: Options for considering new wagering and gambling products

	Option 1: Bring in Racing Act related products only	Option 2: Bring in Racing Act products and an approval mechanism for other gambling products	Option 3: Remove prohibitions for Racing Act products and bring in approval mechanism to use for any new products
Sustainability: impact on NZRB revenue	Increase in revenue from increase in range of racing-related wagering products, although full revenue potential not achieved as limited to racing and sports-related products. Goes some way to address competitive advantage that offshore gambling operators have.		Over time, could go some way to address competitive advantage that offshore gambling operators have.
		Over time, as TAB NZ seeks agreement to new wagering products, and dependent on outcome of online gambling review, revenue could increase significantly.	
Harm from gambling	Medium to high risk of additional harm from new racing and sports betting products	Same as option 1, however, dependent on outcome of online gambling review, could further increase risk of harm from gambling but this will be mitigated to some degree through setting out harm minimisation actions through approval mechanism process.	No or minimal additional harm from gambling initially. As agreement is sought to expand range of products allowed, could increase risk of harm from gambling but this will be mitigated to some degree through setting out harm minimisation actions through approval mechanism process.
	If New Zealanders move gambling from offshore to NZ, more resources are available to address gambling harm.		
Community impact	The Racing Act products would benefit racing and sporting codes.		
	The broader community, outside of racing and sports, will not benefit as a result of these changes.	Gambling products, if introduced, outside Racing Act would likely see broader community benefit, alongside the racing community.	
Consistency with Gambling Reg Framework	Yes, no changes are made that change the status quo.	Yes, an approval mechanism aligns well with the Gambling Act, which contains an approval mechanism for the Lotteries Commission. No non-racing related products are introduced unless this is made possible in the Gambling Act.	
Benefits	TAB NZ has an opportunity to introduce a limited range of new products and increase revenue. Racing Act's scope is limited to racing and sport betting products which in turn reduces the amount of associated risk of gambling harm as not introducing most high-risk products: continuous, random		

	<p>probability games with opportunities for quick investment. No conflict between the Gambling and Racing Acts.</p>		
	<p>Doesn't preclude possibility of adopting new gambling products if Gambling Act is changed as a result of the online gambling review.</p>	<p>Doesn't preclude possibility of adopting new gambling products, with the onus on TAB NZ to provide detailed information on any new products, including details on the likelihood of gambling harm, what design decisions have been made to minimise this and who the beneficiaries will be, for consideration by Ministers.</p> <p>Requires a high level of scrutiny for potential new non-racing and sports betting products and aligns with the approach in place for Lotto to bring in new products.</p>	
Risks	<p>The risk profile of the racing related products recommended by the Messara Report and the MAC are all different. For example, decisions on whether spread betting and a betting exchange should be introduced are quite significant, and the Department is unlikely to have the information needed prior to the introduction of Bill No. 2 to make an informed risk assessment.</p> <p>Limiting consideration to racing and sport betting products only, constrains opportunities to realise more potential revenue gains.</p>	<p>The introduction of an approval mechanism could be reducing transparency by removing consideration by Cabinet and/or public (i.e. through Select Committee process).</p> <p>Could be a perception that it is a fait accompli that the outcome of the online gambling review will include the ability for New Zealand Gambling Operators to provide a wider range of online gambling products.</p>	
		<p>Limiting consideration to racing and sport betting products only in the first instance, constrains opportunities to realise more potential revenue gains.</p> <p>There are varying levels of risk attendant with the racing and sports wagering products that are being proposed, as noted above.</p>	<p>This option provides for the slowest introduction of new wagering products and attendant revenue.</p>

317. The Department recommends Option 3: to remove prohibitions for Racing Act products and bring in an approval mechanism through which all Racing Act products are assessed. Overall, the Department considers that Option 3 best meets the intent behind the Messara Report's recommendation 8 by creating potential for sustained revenue gains for RITA over time, while retaining the Racing Act's scope to racing and sports betting products only. Simultaneously, it increases the onus on TAB NZ to create the safest possible products, by requiring that harm minimisation is prioritised. It also ensures that the outcome of the online gambling review is not pre-empted by limiting potential new products to sport and race betting products.

318. Consideration of how potential wagering and gambling products should be dealt with makes up the bulk of analysis. However, there are several other matters relating to wagering that also have legislative implications and have been canvassed in this RIA. These include: how to address a likely increase in gambling harm; an ability to consider new wagering products without requiring a change to primary legislation; and rights to the intellectual property of racing products. Discussion on these matters follows below.

How to address a likely increase in gambling harm

Current TAB NZ initiatives

319. TAB NZ has harm minimisation initiatives in place. This is driven by the Racing (Harm Prevention and Minimisation) Regulations 2004 which require RITA to: provide information about problem gambling at each RITA venue; and provide problem gambling awareness training to each employee who is involved in supervising racing betting or sports betting at a venue.

320. Specific processes in place include:

- **Personnel** – RITA has a dedicated Responsible Gambling Team.
- **Training** – RITA provides harm minimisation training to all 2,700 staff who oversee gambling conducted on behalf of RITA via two online training modules, those being:
 - a) *A TAB NZ specific harm minimisation module* – this module is developed by RITA and is to be completed by staff at all sites; and
 - b) *A Class 4 gaming module* - this module was developed in conjunction with the Health Promotion Agency and the Department.
- **Retail Exclusion Programmes** - A TAB NZ retail customer can self-exclude (a Voluntary Retail Self-Exclusion) or be excluded by TAB NZ staff (a TAB NZ Imposed Retail Exclusion) from one or more TAB NZ site. Exclusions can be applied on a local, regional, or national level.
- **Transaction Monitoring** – Where a customer is identified through this process as potentially experiencing issues with their gambling, active monitoring can occur or, alternatively (if appropriate) an immediate intervention by the Responsible Gambling Team can take place.
- **Harm Minimisation Investment** – comprises of:
 - a) *Account Only Exclusion* - This exclusion type allowed customers who were having difficulty managing their account activity to implement an exclusion specific to accessing the TAB NZ's online services; and
 - b) *Set Your Limits Programme* - This programme allowed customers to set specific spend/deposit limits in relation to betting conducted through their TAB NZ betting account.

321. In 2017/18, NZRB invested \$118,500 in the provision of training in harm minimisation and prevention procedures for staff in customer-contact roles and the wider racing industry.

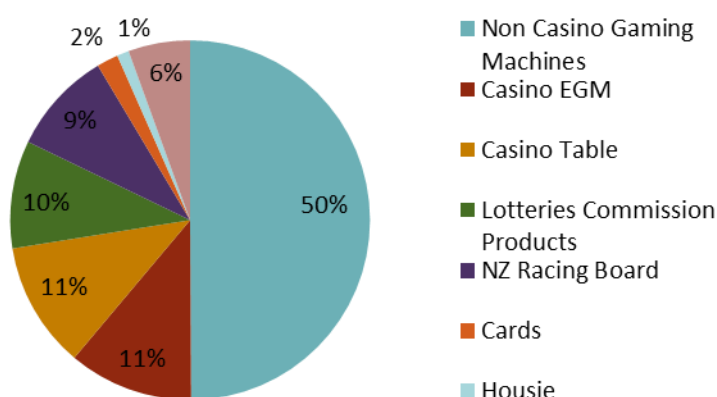
Trade-offs for consideration

322. While there is an opportunity to increase revenue through wagering products, there are trade-offs that need to be considered. Gambling products can be harmful and are regulated to reduce the harm that is experienced by New Zealanders. A key principle for the regulation of gambling products is that the level of regulation and scrutiny required for a gambling product is directly proportional to the level of harm which it causes.

323. The diagram below reflects that among people in New Zealand seeking help for gambling-related harm, the primary problem gambling mode for them are gambling products that are continuous, random probability games that allow for immediate reinvestment of any winnings.³¹

³¹ Data is sourced from Ministry of Health: <https://www.health.govt.nz/our-work/mental-health-and-addictions/gambling/service-user-data/intervention-client-data#ppgm>. Note that this data captures Clients Assisted by Primary Problem Gambling Mode.

Gamblers seeking help by type of gambling 2017/18



324. Proposals need to factor in that there will be an increased risk of harm from gambling if new products are to be introduced. This constraint is also set out in the section 9(2)(b) of the Racing Act, which requires RITA to *'exhibit a sense of social responsibility by having regard to the interests of the community in which it operates'*.
325. The options set out above in table 10 still left a gap in how the Racing Act addresses the potential of harm from wagering products. The Racing Act's purpose focuses on facilitating and promoting racing and sports betting and maximising profits to benefit New Zealand Racing. The Racing Act, unlike the Gambling Act, does not explicitly recognise the inherent risk of harm from gambling products. The Department considered that any option pursued that enables TAB NZ to expand its product offering overtime will necessarily have the potential to increase harm from gambling.
326. The Department considered If TAB NZ wants to expand the range of wagering or gambling products that it offers, that the current purpose and objectives of the Racing Act are not fit for purpose. A balance needs to be maintained between the Racing Act's focus on revenue generation and identifying and addressing harm from gambling for New Zealanders. Doing so explicitly recognises that new wagering and gambling products are likely to increase risk to a level requiring stronger regulation than currently exists. It provides a clear signal to TAB NZ of the importance that the Government places on preventing and minimising harm from gambling that has been absent from the Racing Act to date.
327. To do this, the Department recommends that the Racing Act's purpose is updated to include a focus on minimising gambling harm. This could align with the language used in the Gambling Act, to *'prevent and minimise harm from gambling, including problem gambling'*.
328. This change would also align well with the additional funding that TAB NZ has committed to harm minimisation from the funds made available from the progressive repeal of the totalisator duty (also known as the betting levy) through the Racing Reform Act 2019. TAB NZ has indicated it will use this funding to support industry initiatives focused on the reduction of gambling harm.

Enabling new wagering products without requiring a change to primary legislation

329. In its final report, the MAC recommended drafting legislation that would provide a mechanism to allow TAB NZ to operate new bet types. The Department also

recommends having an approval mechanism in the Racing Act, to enable consideration of new wagering products, provided that a set of defined criteria are met and the Ministers for Racing and of Internal Affairs approve.

330. The main benefits of this approach are that:

- i. It makes it easier for new products to be considered by removing the requirement to change primary legislation each time TAB NZ wishes to offer a new product;
- ii. It would enable TAB NZ to be more agile in response to changes/new product opportunities in the market; and
- iii. There is precedent for this because the Lotteries Commission has a similar approval mechanism in place in section 243 of the Gambling Act.

331. However, there is also the risk that, dependent on final form, this kind of mechanism could be considered less transparent than going through the legislative change process. The Department considers that this risk is mitigated by the intention to replicate the approach that is taken for the Lotteries Commission, which includes consultation with the Ministry of Health, as the lead agency for New Zealand's gambling harm strategy.

332. The Department considers that the basis for any approval of rules that allow for new products should use the provisions in the Gambling Act which govern Lotto under section 243 of the Gambling Act. A summary is provided below:

- i. under section 243(2) of the Act, the Minister of Internal Affairs must approve the rules before they are made;
- ii. when the Minister of Internal Affairs has approved the amended rules, these will be forwarded to Lotto NZ, which will arrange for their publication in the New Zealand Gazette;
- iii. the Minister of Internal Affairs Office will also be required to present the rules to the House on behalf of Lotto NZ, within 16 sitting days of the rules being made;
- iv. the Act requires that lottery rules are not inconsistent with the Act. Lotto NZ is also required, when making rules, to minimise the risk of players becoming problem gamblers and the risk of under-age gambling; and
- v. Lotto NZ may determine the detail of changes to game rules. However, the Minister of Internal Affairs can require any design, specification, or other detail to be incorporated into the rules before Lotto NZ provides the changes to the Minister of Internal Affairs for final approval.

333. The Department also considered the process that the Lotteries Commission follows where, long before new games go to the Minister for approval, there is significant consultation with the Department and the Ministry of Health. Although it is not an explicit requirement, it is a convention and the basis on which the Minister for Internal Affairs makes decisions. It is intended that this same approach would be used when considering new rules for the TAB NZ.

334. The Department considered what information would be required if new rules to enable a new product was being considered through the legislative process. The sum

of this analysis was that any proposed wagering product would not to provide the following information to be considered:

- i. likely revenue and the beneficiaries of revenue;
- ii. likely gambling harm and how risks will be managed³²;
- iii. age restrictions and how these will be monitored/enforced;
- iv. a plan on how the integrity of the product will be maintained;
- v. what mechanisms are in place to safeguard online products³³; and
- vi. what stakeholders have been consulted with.

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

Rights to the intellectual property of racing products

336. The Department recognises that the ownership of the Intellectual Property of racing products may require clarification to reinforce TAB NZ's status as the monopoly provider of racing and sports betting in New Zealand.

337. The Department considers this type of arrangement should be handled through commercial agreements between the TAB and the racing codes and legislation is not required as a first step. This approach provides interested parties with an ability to negotiate outcomes that work best for all parties.

338. RITA has noted its preference that TAB NZ needs to have exclusive rights for both New Zealand and Australia in order to gain benefits of scale and maximise the overall returns to the racing industry and has recommended providing TAB NZ with the statutory power to do so.

339. The Department does not consider creating a legislative power to determine who has the right to the intellectual property of racing products is necessary.

What relevant experience from other countries has been considered?

340. The Department considered the varying way wagering and gambling products are dealt with in overseas jurisdictions. As laid out below, some jurisdictions legislate racing and gambling products together, while in other jurisdictions these are separate functions.

The United Kingdom

341. The Gambling Act 2005 (UK) is designed to control all forms of gambling, including race and sport betting. It transfers authority for licensing gambling from the courts to local authorities (specifically unitary authorities, and the councils of metropolitan borough, non-metropolitan district and London boroughs), or to Scottish licensing boards. The Act also created the Gambling Commission which regulates gambling. The British Horseracing Authority has responsibility for horse racing.

³² For example: age restrictions; preventing and minimising harm from gambling, including problem gambling; and policies for problem gamblers, including exclusion orders and other tools.

³³ For example: age verification; mandatory and individual spending limits; player self-exclusion; opening and closing hours; email communications restricted to players aged 18-plus

342. The UK Gambling Commission covers remote gaming and several segments of the brick-and-mortar industry. Any company that now operates in the UK must be licensed by the Gambling Commission. This includes offshore gambling operators. In a recent review of online gambling in the UK, the Commission identified that there was a need to do more to provide greater protection to consumers.
343. In considering whether to grant an operating licence, remote gambling operators need to meet: technical standards (such as display of transactions, gambling account history and financial limits) and security requirements.

Australia

344. Each of Australia's eight States and Territories legislate and regulate their racing activities in their respective jurisdictions. Harm minimisation practices and policies vary across the different States and Territories in Australia. These include self-exclusion initiatives, deposit limits, time limits, links to external help with problem gambling, and internal material relating to problem gambling and harm.
345. The Interactive Gambling Act 2001 makes it illegal to provide interactive gambling services if it is provided to someone who is physically in Australia. The focus of the Act is limiting the harmful effects of gambling. Offences are applied to the interactive gaming providers, rather than the customers. The Act also supports internet service providers to limit access by Australians to some types of gambling sites on the internet.

Hong Kong

346. The Hong Kong Jockey Club (HKJC) is a non-profit organisation which has a Government granted monopoly (created through the Gambling Ordinance 1977 Act) to provide horse racing, sporting and betting entertainment in Hong Kong. HKJC is structured as a non-profit, so 79% of all gambling proceeds are put back into the economy through taxes and charitable donations.
347. Hong Kong has charities which have a goal to promote responsible gambling practices among those who gamble and to minimise the negative effects of problem gambling. Such charities also look for a balance between meeting the demand for gambling and maximising the social and economic benefits of gambling for the community, while helping to minimise potential harm to individuals and the community.

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

348. The proposal to extend the suite of wagering products to increase the industry's revenue was considered in the context of various trade-offs. Trade-offs include the potential for increased harm from gambling, and the broader impact for communities. Consideration was given on how these fit with New Zealand's gambling policy framework as set out in the Gambling Act, which focuses on community benefit from gambling and harm minimisation.
349. The following criteria were developed to consider how each option meets the aims the Messara review is seeking to achieve while also meeting Government's responsibility to protect people through the regulatory frameworks in place.

Table 11: Criteria for options analysis for considering new wagering products

Criteria	Description
Sustainability	Does this option support the sustainability of the racing industry through increased economic returns; and international competitiveness? Does this option address the competitive advantage that offshore operators have? ³⁴
Harm from gambling	Does this option increase gambling harm or the risk of it?
Community impact	Do communities benefit from this? Are there particular individuals or communities that benefit or lose out? i.e. sporting or charitable organisations?
Consistency with Gambling Act	Does the option create a disparity between the Gambling Act and the Racing Act? i.e. Would it enable TAB NZ to offer products that are prohibited or restricted under the Gambling Act?

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

350. Two options were discounted. These were:

1.1 *retaining the status quo by not allowing any additional wagering products.*

This was discounted because, while it would come with the least amount of risk and maintain consistency with the Gambling Act, it would not bring in any additional revenue to TAB NZ aside from those products that can be introduced within the existing legislation (specifically spread betting and betting on esports). There is no additional benefit to either the racing community or broader community. Nor would this approach address the issue of offshore gambling providers being advantaged by operating without the constraints that the TAB NZ has, while also contributing significantly less to the New Zealand economy and not being required to minimise harm.

1.2 *bringing in all the recommended wagering products and changes.*

This was discounted because, although it best meets the outcome of increasing TAB NZ's revenue, it would also increase the risk of harm from gambling significantly as it would not allow for sufficient consideration of risks prior to introduction. This approach would also create disparities between the Racing and Gambling Acts, and in doing so, favour the TAB NZ over other New Zealand gambling providers, such as the New Zealand Lotteries Commission.

³⁴ In many instances, offshore operators have a competitive advantage because they don't have the same regulatory requirements (and resulting restrictions) placed on them. Nor do they have to pay the same level of duties, levies and distributions. This component of the criterion looks at whether options provide a fairer basis for competition.

Section 4c: Impact Analysis

Table 12: Options for considering new wagering and gambling products

	Status quo: TAB NZ limited to existing wagering products	Option 1: Bring in Racing Act related products only	Option 2: Bring in Racing Act products and an approval mechanism for other gambling products	Option 3: Remove prohibitions for Racing Act products and bring in approval mechanism to use for any new Racing Act products
Sustainability: impact on NZRB revenue	0 No change but current decline continues	+ Increase in revenue from increase in range of racing-related wagering products Goes some way to address the competitive advantage that offshore gambling operators have	++ Increase in revenue from increase in range of racing-related wagering products Addresses, at least in part, the competitive advantage that offshore gambling operators have	+ Unlikely to provide significant new revenue initially Could address competitive advantage that offshore gambling operators over time
Harm from gambling	0 No change	-- Medium to high risk of additional harm from new racing and sports betting products	-- Medium to high risk of additional harm from new racing and sports betting products and new gambling products	- Medium risk of additional harm from new racing and sports betting products as harm minimisation measures need to be detailed before approval
Community impact	0 No change but declining income impacts racing community	+ The Racing Act products would benefit racing and sporting codes. The broader community will not benefit as a result of these changes	- The Racing Act products would benefit racing and sporting codes. Gambling products, if introduced, outside the Racing Act would likely see broader community benefit, alongside the racing community	+ The Racing Act products would benefit racing and sporting codes.
Consistency with Gambling Reg Framework	0 No change	++ Yes, because no changes are made that change the status quo.	-- Enabling gambling products under the Racing Act does not maintain consistency with New Zealand's gambling framework	++ Approval mechanism aligns well with the Gambling Act. No non-racing related products are introduced unless this is made possible in the Gambling Act
Overall assessment	0	+	-	++

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 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?

351. The Department has provided a suite of recommendations as a result of its analysis. These are:

- i. that the Racing Act’s purpose is updated to ‘prevent and minimise harm from gambling, including problem gambling’;
- ii. that the Racing Act will continue to enable wagering products only and remove the prohibition on in-the-run race betting;
- iii. to introduce an approval mechanism which provides a process to comprehensively consider new products being proposed for introduction based on section 243 of the Gambling Act; and
- iv. that the existing provisions that enable the suite of wagering products currently offered by TAB NZ are set out in a schedule, with all products not on the schedule requiring approval for introduction.

352. The Department considers these recommendations best meet the intent behind the Messara Report’s recommendation 8 by creating potential for sustained revenue gains for RITA over time while simultaneously increasing the onus on TAB NZ to create the safest possible products, by requiring that harm minimisation is prioritised.

353. The recommendations also future-proof TAB NZ by creating a mechanism that enables it to seek approval for new products as they come to market. This removes the cumbersome requirement of needing to seek a change to primary legislation each time a change is sought while also ensuring an appropriate level of scrutiny.

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	Cost to RITA to undertake due diligence required to propose new wagering products and a mandate that increases the focus of RITA on minimising harm from gambling.	Cost – low: would be BAU to build a business case for introducing a new product, but would normally require more time and lobbying government for change to primary legislation	Medium

Regulators	Low-touch regulatory oversight currently in place, with RITA required to comply with legislative requirements and mostly self-regulating. Additional resource may be required by Department to analyse any proposed new rules	Cost - low	Medium
Wider government	There may be implications for organisations like Ministry of Health if wagering changes result in increased presentations of people seeking help for gambling harm	Cost – low	Low
Total Monetised Cost	Nil	Unknown	Low
Non-monetised costs	Monitoring of RITA and advice to the Minister for Racing and possibly the Minister of Internal Affairs	Department Resource – likely within BAU	Low
Expected benefits of proposed approach, compared to taking no action			
Regulated parties	If RITA expands its product range this will likely support increased revenue for distribution to racing and sports code. As part of a broader reform to support the revitalisation of the racing industry, this will have flow-on impacts to clubs, trainers, jockeys etc. Relies on the total reform package for maximum benefit to be achieved	Benefit – low to medium	Low
Regulators	Benefit is that none is required as it is in the self-interest of the regulated party to maintain their social license to operate	Benefit – no change	Low
Wider government	Any increase in wagering profits from TAB NZ will provide greater levels of tax revenue to the Government	Benefit – low	Medium
Total Monetised Benefit	The monetised benefit is difficult to estimate as it is subject to RITA seeking to introduce new products and consumer demand for any new products that are introduced	Benefit – low	Low
Non-monetised benefits	New Zealand consumers will have greater certainty and clarity by betting with TAB	<i>Benefit- low to medium</i>	Nil

5.3 What other impacts is this approach likely to have?

354. Not applicable.

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

355. The Department considers the preferred options, as set out in this section, are compatible with current guidance on good regulatory systems. The key points are that it:

- i. is well-aligned with existing requirements in related regulatory systems with the preferred option focused on retaining coherency between the gambling and racing regulatory systems and, in particular, does not pre-empt the outcomes of the online gambling review;
- ii. has scope to evolve in response to changing circumstances or new information on the regulatory system's performance by providing a mechanism that future proofs the racing industry by enabling new products to be considered without a change to primary legislation; and
- iii. seeks to achieve objectives in the least costly way.

Section 6: Implementation and operation

6.1 How will the new arrangements work in practice?

356. This RIA presents a suite of options which require legislative change to come into effect. This will be done through the Racing Reform Bill No. 2 which, subject to Cabinet approval and Parliamentary agreement, will be introduced in 2019. These changes represent the conclusion of a programme of reform which aim to get the racing industry into a sustainable, financially viable 'future state'.
357. The reforms create a racing ecosystem where the industry is empowered, and government involvement is limited. Practically, this will mean the racing industry is responsible for the new arrangements that are proposed to form Bill No. 2. However, the Minister for Racing will have the ability to intervene in the management and administration of the industry, if there is a need to address significant risks to long-term sustainability such as:
- i. maintaining an appropriate level of funding of the racing integrity system;
 - ii. ensuring responsible and effective governance by the racing codes for their respective industries;
 - iii. ensuring that the functions of the codes are discharged effectively so that racing clubs and TAB NZ can operate at their full potential; and
 - iv. making final decisions regarding surplus property if codes and clubs fail to reach agreement.
358. The codes will take on responsibilities for producing the racing product and regulating the racing clubs, while the TAB NZ will be responsible for commercial betting operations. The TAB NZ board members will be appointed by the Minister for Racing, and the SOI and Business Plans of TAB NZ and the codes will be tabled in Parliament.
359. This approach has been socialised with those parties that will ultimately have the bulk of the responsibility for the racing industry as a result of these reforms. The creation of RITA through the Racing Reform Act 2019 put the industry into a state of transition, with the purpose of preparing the industry for future reform.
360. The Department recognises in order to limit the possibility of future government intervention of this scale, it will need to ensure it is well positioned to support the implementation of the reformed New Zealand racing industry. As is detailed, the changes proposed are significant and represent new ways of working. To be successful, it will require strong communication between the Minister for Racing, the Department and the various responsible bodies representing the racing industry and its interests. The Department will continue to have a role, throughout the implementation of the reforms and beyond, in providing policy advice to the Minister as well as supporting the racing industry through the reforms.

6.2 What are the implementation risks?

Implementation of new governance arrangements

361. These reforms are taking place within an ambitious timeframe. The new governance arrangements transfer significant responsibilities to the codes. There is a risk that the codes are not adequately prepared to take on these new functions within the

timeframe given. This risk is mitigated to some extent by creating Ministerial ‘backstop powers’. It is also mitigated further by the extensive consultation that has been able to be factored in to the analysis that has shaped the final advice.

- 362. The MAC engaged the codes, with the creation of the Industry Governance Project Group (IGPG), to consider separation of the wagering and racing functions from the NZRB. The IGPG considered the best way of delivering the transition and delivered a report to RITA, which will inform the change management plan that RITA develops.

Implementation of property proposals

- 363. The new arrangements give significant power to the codes to make decisions on behalf of the racing industry. With this, there is a risk that codes make decisions that do not produce the intended results, and decisions result in a breakdown of relationships between clubs and their code. There is a risk there will be strong opposition and legal challenges to decisions made by the codes. These challenges may delay the intended effect of the proposals, by delaying the realisation of funds for infrastructure development. Given Messara’s assessment of the industry at a ‘tipping point’, any delay carries the risk that the industry ‘tips over’ before remediation has an impact.
- 364. There is a risk that codes do not act in good faith during the FVP negotiation process and may not take due account of the community interests and therefore not appropriately recompense a community that suffers a loss from the decisions made by the codes. This will increase the risk of legal challenge.
- 365. This risk is mitigated by powers proposed to enable the Minister for Racing to prescribe in regulations a process and criteria that codes must apply in seeking to negotiate with clubs, about the use of surplus racing venues, including having due regard to any community interest in the venue.

Introduction of new wagering products

TAB NZ’s betting operation is part of a New Zealand gambling system that is coming under increasing strain as a result of digital and technological development. New Zealanders are spending increasing amounts of money with offshore gambling operators. There is an implementation risk that the reforms will not be as effective if New Zealanders continue to spend more money overseas through online gambling. This is something the TAB NZ will need to address through its business as usual processes (i.e. considering how to make its products more attractive to the market).

Budget sensitive

[Redacted content]

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

367. System-level monitoring and evaluation will be sourced from the TAB NZ and the racing codes, through their annual reports outlining their financial statements. The success of the reforms will be able to be measured based on some of the signposts that were used to identify the decline of the racing industry. This could include monitoring increases in betting profits, distributions to racing codes and prizemoney. Other indicators could include reduced industry overheads and improved racing infrastructure.
368. With reforms of this scale, the Department will be required to provide additional support during implementation, and provide advice to the Minister for Racing, in particular regarding the need to apply Ministerial backstop powers. Given the risks associated with the property proposals, the Department will monitor the FVP process, through regular updates from the codes and receiving requests from codes, clubs and other interested parties to initiate Ministerial involvement.

7.2 When and how will the new arrangements be reviewed?

369. There is no scheduled time for another racing review after this one. Checks and balances are proposed through the respective roles of the clubs, codes, the independent integrity body and commercial operation of TAB NZ. The industry will be self-reliant and self-correcting.
370. Any broad structural reviews will be subject to the decisions of the Minister for Racing and Cabinet. Stakeholders will still be able to raise concerns with the Minister for Racing.

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](#).