

Initial Response to Bill two for clubs and stakeholders

Introduction

The NZTR Board met on Friday 13 December to discuss the Racing Industry Bill (the **Bill**). We are still in the process of completing our detailed review of the Bill and considering its potential impact on our industry. In the meantime, we wanted to provide our initial views on the key provisions of the Bill that we have identified to date. We will provide a further update in the New Year.

Over the next five weeks we will be working with RITA and the other Codes to finalise an initial Thoroughbred Code response. Although submissions on the Bill are not due, at this stage, until 11 February next year, we understand that any major issues or concerns we have with the Bill need to be raised with the DIA and the Minister as soon as possible. We will aim to do this in January.

We also met with RITA management and the other Codes in the week beginning Monday 9 December for an initial discussion on the Bill. RITA had convened the meeting to see whether it and the Codes could reach a united “Racing position” on the Bill and present a joint submission to the Select Committee. RITA opened the meeting by stating that the Bill had been drafted by PCO (the Parliamentary Counsel Office) and the DIA. RITA’s view is that the Bill is not perfect from its perspective but that reflects in part the urgency with which it has been drafted and the impact of the political process. In addition to completing our own detailed review of the Bill over the coming weeks, we will continue to work with RITA and the other Codes to see if there are areas where joint submissions can be made. Where agreement cannot be reached on a joint submission on a part or clause of the Bill, then we will make our own submission. Discussions with the other Codes since our initial discussion with RITA indicate we are likely to be strongly aligned on some of the key areas of focus identified below.

It is important to note that NZTR continues to support the majority of the recommendations from the Messara Report and wants to see the key principles and framework from the Report reflected in the Bill. Unfortunately, no extra revenue will flow to the Codes directly under this Bill. Accordingly, it does not in our view address the key thrust of the Messara Report. As part of our review of the Bill, we will identify for DIA and RITA areas of the Bill that can be amended to better address the key aspects of the Messara Report for the benefit of the industry as a whole.

The key areas of focus identified by us in our review to date are:

- Code functions and industry governance
- The proposed new Racing Integrity Board
- Venues
- Racing Intellectual Property
- Partnering by the new TAB NZ with overseas operators

As an overall comment, there is a disconnect between the Explanatory note to the Bill, which states that the Bill empowers the Codes to effectively govern their respective industries and networks of clubs and venues by devolving the high-level functions previously held by RITA (and by the Racing Board before it) to the Codes, and some of the operative provisions of the Bill. A key focus of our review will be to ensure that the proposed empowerment of the Codes occurs under the legislation when it is finally enacted.

Code Functions and Industry Governance

Clause	High-level Description	NZTR View
Clause 8	<p>This clause sets of the functions of each Code being to:</p> <ul style="list-style-type: none"> • Govern racing clubs, racing venues and participants by amongst other things monitoring racing club performance and finances, monitoring venues, and registering and deregistering clubs • Develop racing rules in consultation with TAB NZ and the Racing Integrity Board (RIB) • Develop and implement animal welfare policies • Distribute revenue to racing clubs; and • Collaborate with the other Codes to achieve the objectives of the industry as a whole <p>Each Code must comply with natural justice and exhibit a sense of social responsibility by having regard to the interest of the community in which it operates when carrying out its functions.</p>	<p>As indicated above, clause 8 (and other clauses – e.g. the clauses dealing with the Dates Calendar below) does not appear to align with the Explanatory note to the Bill. In our view, clause 8 needs to confer broader powers on the Codes to govern and administer their respective industries. RITA agreed with this view at our meeting with it and asked the Codes to identify functions that are missing from clause 8</p> <p>There was also discussion in this context about the need for the Codes to prepare SOIs under clause 9 of the Bill. While the Codes are “happy” to prepare annual business plans, we believe that SOIs are unnecessary and add little value for stakeholders given that NZTR already prepares and publishes a strategic plan for the thoroughbred industry.</p>
Clause 12	<p>This clause enables the Minister on the joint request of the Codes to appoint a body to perform all or any of their functions for a specified period or indefinitely (clause 12(1)). It also enables to the Minister to set the appointment process for Code directors (clause 12(2))</p>	<p>We are to consider further the potential implications of clauses 12(2) noting that the power to recommend relates to the appointment process and not the power of appointment itself, and that the Minister can only act if he/she is satisfied on reasonable grounds that it is necessary to do so. That said, the clause is inconsistent with the intended effect of the Bill regarding Code governance and could potentially allow a Minister to require a power of approval to be included in the director appointment process.</p>
Clauses 13 and 14	<p>These clauses provide for the Minister to appoint a Commissioner to resolve a significant disagreement between 2 or more Codes and to impose a levy to pay for the costs of the Commissioner</p>	<p>We do have some concerns about this process but are to work with the other Codes to identify potential areas where a significant disagreement could arise, triggering the need to appoint a Commissioner. We are also considering whether a similar provision should be included for resolving areas of significant disagreement between the Codes and TAB NZ.</p>

Venues

<p>Clauses 17 to 27</p>	<p>These clauses:</p> <ul style="list-style-type: none">• impose a moratorium on clubs dealing with their property without Code consent• allow for the dissolution of a club and the vesting of its assets in the relevant Code if a club is no longer racing• introduce a procedure under which a Code can negotiate with a club for the transfer of its venue to the Code if its venue is “surplus” and the Minister can, on the application of a Code, recommend that the Governor-General order a transfer of the venue to the Code if agreement cannot be reached between the club and the Code regarding the venue subject to compliance with the procedures set out in the Bill• provide for two or more clubs to join to form one club	<p>NZTR has consistently stated that it disagrees with the recommendation in the Messara Report that all club assets vest in the Codes. We are pleased that this recommendation has not been adopted.</p> <p>Our preferred approach on venues is to work with the Clubs in each region in trying to reach agreement amongst the clubs (with our approval) on the venues that would be used for racing in each region in the future. We are making good progress in some regions. We accept, however, that there needs to be a mechanism by which a final position can be reached for racing venues in each region if an acceptable agreement cannot be reached amongst the relevant clubs. Preferably, clubs whose venues are not required for racing would retain revenue generating assets, develop those assets with their local communities and apply the profits to support their racing at an enhanced regional or premier facility.</p> <p>The racing industry has provided stakes funding (of varying types and levels), meeting funding, venue funding, infrastructure grants, race meeting compliance funding and club compliance funding to clubs to enable them to hold race meetings and meet compliance obligations. Clubs have therefore benefitted significantly from the financial support provided to them by the racing industry over many years. In view of the financial (and other support) provided to clubs by NZTR, we believe that there needs to be a mechanism for ensuring that the racing industry benefits appropriately, locally and nationally, if a venue is no longer required for racing and can be sold, while also recognising the “interest” of the local community. [For example, if it is agreed that a venue should be sold (whether as part of a regional solution or otherwise), the proceeds could be applied for the benefit of both the racing industry and the local community, with the club retaining part of the proceeds to help fund future race meetings at a new venue and other activities.]</p> <p>Accordingly, we welcome the inclusion in the Bill of a mechanism for achieving that outcome. However, this is a complicated part of the Bill. We need to review it in more detail to fully understand its implications and come to a view on it.</p>
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Rules of racing and their status

<p>Clauses 28 to 30</p>	<p>These clauses provide for the Codes to make racing rules covering amongst other things:</p> <ul style="list-style-type: none"> • the roles of stipendiary stewards and racecourse inspectors • the licensing of trainers, jockeys and apprentices • the registration of horses, syndicates and colours • the conduct of race meetings • the mechanics of race meetings (prize money, weights, nominations, withdrawals, handicapping etc) • punishments and disqualifications for breaching rules, <p>and to amend racing rules (clauses 28 and 29).</p> <p>They also clarify that the racing rules are contractual in nature and are not legislative instruments or disallowable instruments for the purposes of the Legislation Act 2012. Accordingly, they cannot be challenged under that Act (clause 30).</p>	<p>We support these clauses of the Bill which will make the process for changing the Rules of Racing more straightforward – under the Bill, the Codes will only need to consult the TAB and the RIB on Rule changes, and Rule changes will only need to be sent to the Minister after being introduced. The clarification that the Rules are contractual in nature, and are not instruments under the Legislation Act, is also welcomed.</p>
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Integrity and establishment of new Racing Integrity Board

<p>Clauses 33 to 41</p>	<p>These clause provide for the establishment of a new RIB, which will have both compliance functions (eg to employ and train stipendiary stewards and investigators to preside over races and investigate rule breaches, and to provide for veterinary and drug testing services) and adjudicative functions (eg appointing judicial committees to hear matters and appointing appeal tribunals to hear appeals against decursions of judicial committees) (clause 35)</p> <p>The RIB will be appointed by the Minister (clause 36) and its budget will be agreed between the RIB and TAB NZ (clause 37)</p>	<p>We strongly oppose the establishment of a new RIB which is responsible for both compliance and adjudicative functions.</p> <p>While the current system and its performance can be improved, we are of the view that there should not be a change to the current structure (ie there should be two separate bodies). The JCA and the other Codes support our view on the new structure proposed under the Bill. We are seeking a meeting with RITA early in the New Year to discuss the proposed new structure and our concerns in more detail.</p> <p>Importantly, we were advised that it would take a significant period to transition to the new RIB structure (potentially another 2 years) and that a Racing Integrity Establishment Board would be appointed to handle that transition. We were also advised that a lot of the operational detail on this process is yet to come from the DIA, which has been focussed on the “base” legislation to date.</p> <p>RITA advised that the Bill reflects the views of the RITA Board and the findings of the Burgess Report on racing’s integrity structure. We have</p>
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<p>Clauses 42 to 44</p>	<p>These clauses provide for the appointment of betting inspectors to inspect racecourses and TABs to ensure betting licences and betting rules are being complied with.</p>	<p>Although these clauses are carried over from the current legislation, we question the need for betting inspectors. That said, we are willing to accept them provide that their role is clearly limited to overseeing the "mechanics" of betting (ie compliance with betting rules etc).</p>

Establishment and functions of new TAB NZ, and Code distributions

<p>Clause 45</p>	<p>This clause provides for the establishment of TAB NZ, a new statutory body that will conduct race and sports betting etc. It also provides in clause 45(4) that TAB NZ must obtain written Ministerial approval for a “partnering arrangement” (ie an arrangement that provides for a substantial proportion of 1 or more of TAB NZ’s betting, broadcasting, or gaming functions under clause 48(1)(c) of the Bill being carried by another person).</p>	<p>RITA noted in relation to clause 45 that TAB NZ is a new entity and that there are some transitional issues that need to be worked through (e.g. transferring employees/contracts etc).</p> <p>RITA is unhappy with clause 45(4) which will give the Minister a greater say in TAB NZ’s core activities and will restrict its current commercial independence. We need to consider this clause in more detail and discuss it with the other Codes as it could be a major impediment to a JV/partnership with an international wagering operator, something NZTR continues to support strongly for reasons previously outlined by us. Our view is that there needs to be clear independence between TAB NZ’s commercial activities and Government, and that TAB NZ needs to be able to act quickly, in the best commercial interests of the Codes, in what is a rapidly evolving market without unnecessary Government intervention or control.</p>
<p>Clauses 46 to 48</p>	<p>These clauses provide for the appointment by the Minister of the governing body of TAB NZ after considering recommendations from the Codes and set out the knowledge and experience requirements for membership of that governing body (clause 46) and set out its functions including determining the racing calendar for each year. (Under clause 56 of the Bill, TAB NZ is required to establish and maintain a dates committee that will ultimately be reasonable for determining the dates calendar and allocating dates among clubs. This is the same as current process which by and large works well.)</p>	<p>We have strong concerns with the appointment process for the Board of TAB NZ and do not support it. The proposed process is inconsistent with the Explanatory note (see above) and fundamentally we are of the view that the Codes should have the power to appoint members of the Board of TAB NZ to represent their interests. This may result in Sport NZ having representation on the Board of TAB NZ, which we are comfortable with at this stage. This position was supported by the other Codes.</p> <p>In addition, we do not agree that the Codes should be told by the “betting agency” when their clubs are to race. Instead, that should be a Code decision made in discussion/consultation with TAB NZ. The other Codes also agreed with this position. A possible solution maybe for the Codes to have majority representation on, and to appoint the chair of, the Dates Committee referred to in clause 56. Our concerns with this process would diminish if our concerns regarding Board representation were addressed satisfactorily although fundamentally, we believe that the dates calendar should be a Code run and driven process with input from TAB NZ, with the aim of improving wagering returns.</p>

Clause 63	This clause deals with distributions to Codes but on its face limits them to specified percentages.	We raised concerns with the wording of this clause. RITA explained that it is intended to apply only to the benefits derived from the reduction in “gaming duty” over the period to 30 June 2022 but appears to be wider than that on its face. All parties agreed that the clause should be amended to clarify its effect and intended application.
Clause 65	This clause permits TAB NZ to conduct or control race meetings with the approval of the Minister	Although this clause is simply being carried forward from the current Racing Act, all parties agreed to seek its deletion.
Clause 75	This clause deals with the introduction of betting rules for racing and sports betting and requires approval by the DIA of all betting rules.	RITA is concerned that this clause will impose unnecessary restrictions on its power to introduce new betting products (e.g. in running betting/spread betting etc). RITA advised that it still has work to do in this area as, in its view, the position in the Bill is not conducive to the introduction of new betting options or changes to existing betting types, which it believes are essential to growing betting revenue.

Racing Intellectual Property

Clause 81	This clause provides that TAB NZ has exclusive rights in NZ and Australia to all IP associated with racing betting information, racing betting systems and any audio or visual content derived from an NZ race	<p>Not surprisingly, this was a major point of contention for all Codes. We are strongly opposed to the clause and were supported by both Harness and Greyhounds. Technically, NZTR would under this provision be in breach of TAB NZ’s rights by running its website and the Bureau, and clubs would also be in breach of those rights by printing race books and promoting their race meetings and individual races. In our view, rights to use of IP should be dealt with by way of agreement or reciprocal performance contracts. (This position was supported by the DIA in its regulatory assessment paper on the Bill).</p> <p>The Codes and RITA are to meet early in the New Year to explore a possible joint-exploitation agreement that would record what IP rights could be exercised by who and for what purpose. As part of this process, NZTR needs to articulate the opportunities it wants to be able to pursue for promoting betting on NZ racing in Australia using racing information. We are optimistic that an agreement can be reached as, ultimately, all parties want an outcome that will maximise betting on NZ racing, especially from Australia and other jurisdictions. The betting market is dynamic, and we need to respond to changes in it.</p>
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9 January
Good afternoon,

With the new year underway, we wanted to write to you and your members again regarding the Racing Industry Bill. As you will be aware, the Government's Bill is currently before Parliament and will, once passed, give effect to many of the critical changes required to revitalise the New Zealand racing industry.

This is a very significant and comprehensive Bill and reflects a determined focus and commitment from this Government to the racing industry. The RITA Board welcomes the Bill and the opportunities it presents for everyone connected to racing in New Zealand.

Prior to the Christmas break, New Zealand Thoroughbred Racing provided an initial assessment of the Bill to clubs, outlining their early views on some of the key provisions. Subsequent to this, we have received a number of requests from racing clubs to provide RITA's initial thoughts on the Bill and to clarify our position on elements of NZTR's email that reference a view of RITA.

While we will be holding conversations later this month with the industry to discuss the proposed legislation, the RITA Board is concerned that there is some degree of misinformation about elements of the Bill that should be cleared up as soon as possible. We wanted to cover off some of these aspects here, while also taking the opportunity to set out RITA's position on some key aspects of the Bill.

Future Industry Structure

This Bill (which is the second piece of racing reform legislation) finalises the post-transition structure of our industry.

Under the Bill, TAB NZ is established as a new entity, responsible for betting, broadcasting and gaming. Operating as a commercially focussed wagering entity, TAB NZ has a legal responsibility to maximise its profits for the long term benefit of New Zealand racing.

The three Racing Codes are responsible for governance and administration functions within their respective code. These functions include oversight of racing clubs, venues and participants, development of racing rules and animal welfare policies and distribution of revenue to clubs.

In carrying out their functions, each Code is required to adhere to the rules of natural justice and exhibit a sense of social responsibility by having regard to the interests of the community in which it operates. These are important legal principles that will govern how a Code undertakes its functions (and provide important "checks and balances" for the comfort of clubs and all industry participants).

Principle of "regulatory back stops"

The Bill provides the Codes with a variety of tools and functions to effectively govern their

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industries. However, the Bill also introduces a number of regulatory/statutory backstops in the event that the Codes (or other industry participants) are at an impasse or otherwise require Government assistance. These are largely helpful fallback provisions and having a Minister being able to make a decision, in the event progress is not being made, is positive and may help deal with issues that have gone unresolved for decades and have held the industry back.

In RITA's view, generally, these provisions do not detract from the overall theme of the legislation which is to place appropriate control of the industry in the hands of industry participants and ensure clear pathways for decision making, enabling the industry to move forward.

Further, clubs and Codes can take comfort from the fact that Ministerial decision making, if it comes to that stage, will also be subject to judicial review considerations (including principles of natural justice).

New Revenue

The legislation is intended to deliver real benefits for industry participants. Therefore, RITA is concerned by suggestions that no extra revenue will flow to the Codes directly under this Bill. Whilst this Bill is a complete rewrite of the Racing Act 2003 it incorporates all of the revenue initiatives introduced last year (as part of the first racing reform legislation). These initiatives (reduction in betting duty and the suite of offshore charges) have already, and will continue to generate much needed revenue for the industry. For example, funds already collected as a result of the betting duty reduction are being specifically ring-fenced by RITA until Government regulations are issued to determine the distribution of those funds between the Racing Codes and Sport NZ (with a proportion of those funds also being allocated to betting related harm minimisation initiatives). From mid 2021, we would expect these returns alone will be in excess of \$14m per annum.

Under the current Bill, the statutory offshore charges will be able to be set and collected following the implementation of regulations (which are currently being considered by the Government). The Minister has indicated he will direct the Select Committee to consider amendments allowing the industry to reach better voluntary commercial arrangements on the offshore charges regime. These amendments will be sent to the Committee when the Parliament resumes this year. In the meantime, a number of offshore wagering operators have already committed to paying voluntary charges, most recently SportsBet and Ladbrokes.

The Bill also introduces provisions which are intended to allow TAB NZ to offer a broader range of betting products, to increase revenue for the industry (subject to an approval process and a number of important considerations being met, including in relation to harm minimisation). In our view this is not yet where it needs to be and is one area of the Bill that RITA will be considering closely as part of the Select Committee process, with a view to seeking increased flexibility for RITA in introducing new products.

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Venues

We know the Bill's provisions in relation to racing venues have generated much attention already. We understand that the new proposed processes are a source of concern for some clubs and so with this in mind, we will separately provide a more detailed synopsis of the Bill's venue provisions.

The majority of the industry recognise that there are too many racing venues to support sustainably. In helping determine the optimum footprint of racing venues, the Bill provides a transparent, industry led evaluation process to identify any surplus racing venues based around a statutory prescribed process (venue assessment criteria). This includes clear opportunities for consultation with industry stakeholders and Codes will be bound by the natural justice principles outlined above, to ensure a fair process is followed.

The intent behind the venue provisions in the Bill is that industry assets should continue to provide long term benefit for racing, whether that's continuing as a racetrack, becoming a training facility, being developed for commercial benefit or selling it (which some incorrectly default to). Critically, the industry will be at the forefront of determining if a venue is not required for racing and then considering its alternate optimum use. In the event that the Code and the Club cannot reach an agreement, it is only then that the fall-back provisions of the Bill (which involve Ministerial decision making) come into play.

Racing Integrity Board

There has been significant discussion about the structure of New Zealand racing's integrity functions and performance over recent years, which is unsurprising given the paramount importance in ensuring there is confidence in the integrity of racing.

In undertaking a review of the structure and efficacy of the RIU and allied integrity bodies (as recommended by Mr Messara), Malcolm Burgess (who was commissioned by the Ministerial Advisory Committee (MAC)) engaged extensively with industry participants and administrators and with experts in the area of integrity - in New Zealand and Australia. His independent report made a number of recommendations, including the establishment of a new single governance Racing Integrity Board (RIB), which will be responsible for compliance and adjudicative functions. This recommendation has been adopted in the Bill and is one which RITA supports (the combined structure is not unique in the New Zealand context). In order for the industry and punters to have confidence in the integrity of racing, independence from the industry is vital. Accordingly, in RITA's view, an independent, streamlined model (as proposed in the Bill) can only be a good thing for racing.

While NZTR expresses concern that it will take a significant period of time to transition to the new RIB structure, RITA isn't of the same view. Understandably it will take some effort to bring two organisations together, however plans and preparations are well advanced to get this done professionally and in a timely fashion once the Bill is enacted. The Bill also specifically requires the new Board to ensure the compliance and adjudicative functions are performed independent of each other.

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Major transaction

The Bill requires TAB NZ to obtain written Ministerial approval for a “partnering arrangement”. This is an arrangement which would provide for a substantial proportion of TAB NZ’s betting, broadcasting or gaming functions to be undertaken by another person. Contrary to the NZTR note, RITA considers this clause is appropriate, given the significance of the TAB in New Zealand to not just racing but to all Kiwis. The TAB is a valuable, and arguably, the most important asset the industry has and therefore, it is understandable that the responsible Minister should make the final decision if such a significant transaction is proposed in relation to it. This is no different from similar arrangements overseas and provides clarity and ensures the process is robust.

Governance

NZTR has expressed reservations about the appointment process for the Board of TAB NZ. The Bill provides that the Minister will consider nominations from the Codes and Sports NZ and then appoint TAB NZ Board members. The Bill records that the Board members must have, collectively, specified skills.

The MAC supported Code representation on the Board in its report, however, RITA considers the Bill’s “skills based” approach the most suitable alternative. It is clear from the skills set out in the Bill that any appointments would need to have significant experience in racing and betting, which should provide confidence to the industry that we will have a very capable and experienced Board leading TAB NZ.

Clause 56 of the Bill largely maintains the existing process where TAB NZ is required to establish and maintain a dates committee who will determine and allocate race dates among clubs (after undertaking consultation processes with the Codes). RITA considers it imperative that TAB NZ, as the wagering operator, retains oversight of the dates calendar process. This is so it can ensure that the racing calendar is structured in a way to maximise TAB NZ wagering profits for the benefit of the wider industry (as it will be legally responsible for doing).

The current calendar process has, on balance, worked well and been refined annually based on input from the codes. Equally, the final calendar is the outcome of significant industry consultation, initially with the codes in its early development and then with the wider industry. By way of example, in the final round of consultation on the 2019/20 calendar there were only four submissions received, which would indicate a well-balanced process.

In respect to Code representation on the Dates Committee, this has worked well previously and RITA would support the Codes nominating potential representatives to the Committee (for the TAB Board to then determine its membership).

Racing Intellectual Property (IP)

NZTR has indicated strong opposition to the Bill’s position on IP. The Bill confirms that, within Australasia, TAB NZ will have exclusive rights to all IP associated with racing betting

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information, racing betting systems and any audio or visual content derived from a NZ race.

It is essential that TAB NZ has uninhibited access and usage of racing IP in order to be able to monetise that IP effectively and thereby maximise its profits for the benefit of the racing industry, as the legislation intends. In simple terms, for the benefit of the industry, TAB NZ needs to be able to use racing IP to function effectively as a wagering operator.

RITA/TAB NZ does not see the enactment of this provision as radically changing the status quo for clubs or Codes. RITA is using racing IP today to drive profits (for the benefit of the industry). RITA is also entering into arrangements with third parties (such as Tabcorp) which authorise the usage of that IP in exchange for the payment of fees, again for the benefit of the industry. Other parties, including clubs and Codes, also use that racing IP. Race books and domestic Code website field lists are good examples of this. TAB NZ has no intention to constrain these types of activities and will ensure that industry players can use racing IP as they need to (subject to any contractual constraints restricting this). Vesting racing IP with TAB NZ does not mean that only TAB NZ will be able to use it; on the contrary TAB NZ expects industry players will continue to use racing IP as they do today for the promotion of the industry.

RITA has and will continue to discuss this provision with the Codes over the coming weeks to ensure there is a workable, mutual understanding of how this will be applied.

Next Steps

Over the coming weeks we will meet with clubs, Racing Industry Organisations and other stakeholders to listen to the views of the industry on the Bill.

While RITA was consulted in the development of the Bill, this is the Government's legislation and we will be providing a submission ourselves which we will share with you when complete. The RITA Board encourages clubs to participate in the Bill process; as we have indicated previously we believe this will be the final opportunity to get the reform that the industry needs in place.

If you have questions you want to send us directly, please email us at industry.conversations@tab.co.nz.

Sincerely,



Dean McKenzie
Executive Chair