

JANUARY 2020 UPDATE

The NZ Trainers' Association appreciate how crucial the new legislation being introduced will be for members. Accordingly we want to keep you regularly apprised of communications and also assure you that we are having regular consultative meetings with NZTR, RITA (via Dean McKenzie), the Minister's office and John Messara.

The NZ Trainers' Association will be making a submission on the Draft Racing Industry Bill and we can assure you the main message will be that stakeholders require urgent relief via substantial increases in stakes.

Below is the latest release from Dean McKenzie from RITA for your information. If you have any feedback, please either direct it to wendy@nztrainers.co.nz or direct to Dean:

A MESSAGE FROM DEAN



RACING INDUSTRY
TRANSITION AGENCY

TAB

TAB trackside

DEAN MCKENZIE
Executive Chair

To: Thoroughbred Racing Clubs and RIOs
Date: 9 January 2020

RACING INDUSTRY BILL #2

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 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 focused 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 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.

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.

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 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.