

Proactive Release: Protecting and Promoting the Integrity of Sport and Active Recreation



Minister	Hon. Grant Robertson	Portfolio	Sport and Recreation
Title of Cabinet Paper	Protecting and promoting the integrity of sport and active recreation	Date of Issue	15 November 2022

These documents have been proactively released:

<i>Date</i>	<i>Title</i>	<i>Author</i>
September 2022	Protecting and Promoting the Integrity of Sport and Active Recreation	Hon. Grant Robertson, Minister for Sport and Recreation
28 September 2022	Protecting and Promoting the Integrity of Sport and Active Recreation SWC-22-MIN-0166	Cabinet Social Wellbeing Committee

Information redacted

Some parts of this information release are not appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the applicable sections of the Act have been noted.

Information has been withheld from this release under the following grounds of the Official Information Act 1982:

- s 9(2)(f)(iv) - maintain the constitutional convention protecting the confidentiality of advice tendered by Ministers and officials.

No public interest has been identified that would outweigh the reasons for withholding this information.

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In Confidence

Office of the Minister for Sport and Recreation
Cabinet Social Wellbeing Committee

Protecting and promoting the integrity of sport and active recreation

Proposal

- 1. This paper seeks final approval to establish an independent Crown entity to promote and protect the safety and wellbeing of participants in sport and active recreation, following in-principle decisions in June 2022 [CAB-22-MIN-0210 refers].

Relation to government priorities

- 2. The proposals in this paper aim to improve the wellbeing of participants in sport and active recreation by protecting their safety and inclusion in, and the fairness of, these activities.

Executive Summary

- 3. In June 2022, Cabinet agreed in principle to establish an entity to strengthen and protect the integrity of the sport and active recreation system to ensure it is safe, fair, and inclusive for all participants. I now seek final Cabinet agreement to establish the integrity entity, its purpose, scope, functions and powers, and for drafting instructions to be provided to the Parliamentary Counsel Office for the establishing Bill.
- 4. I propose that the working name for the entity be Integrity Sport and Recreation New Zealand (ISRNZ). I expect to report-back on a confirmed name for the entity when seeking approval for introduction of the Bill from the Cabinet Legislation Committee.
- 5. The proposed functions and powers are designed to ensure ISRNZ is responsive to participants and their voices can be heard. ISRNZ will do this by working with participants and organisations to prevent and address threats to integrity, issuing codes and rules relating to sport integrity, and providing an independent, participant-centric complaints service. ISRNZ will assume the functions exercised by Drug Free Sport New Zealand (DFSNZ) and the integrity functions performed by Sport NZ.
- 6. I propose that ISRNZ be established as an independent Crown entity with a board which understands, represents, and works with the sport and active recreation sector. I intend for ISRNZ to commence operations in 2024. To achieve this, I will seek to introduce the establishing legislation in early-2023.

- 7. s9(2)(f)(iv)
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Background

8. There have been numerous public reports of undesirable behaviour occurring in sports in recent years. The 2018 Sport Integrity Review by Sport NZ and High Performance Sport New Zealand (HPSNZ) also indicated a lack of capability across the sport sector to deal with integrity-related issues, particularly in relation to the reporting and management of complaints.
9. In June 2022, Cabinet agreed in principle to the establishment of a new standalone entity that would, at a minimum:
 - 9.1. undertake all functions currently performed by DFSNZ;
 - 9.2. undertake some or all integrity functions performed by Sport NZ; and
 - 9.3. establish a National Code of Sport Integrity (NCSI).
10. This decision was made in the context of the Play, Active Recreation, and Sport Integrity Working Group's (IWG) recommendations in its report to me in March 2022 [CAB-22-MIN-0210 refers].
11. In July 2022, the Sport NZ board appointed an independent Sport and Recreation Integrity Transition Committee (the ITC) to oversee work on the scope and scale of a new entity.
12. The ITC's advice forms the basis of my proposals in this paper. The ITC's work has also helped to build a clearer picture of Māori interests, including the importance of autonomy for Māori sport and active recreation bodies, collective decision making, equality and ensuring there is a strong Māori perspective at a governance level. The proposals below seek to ensure that IRSNZ has a clear direction, and the expertise necessary to enable it, to act consistently with te Tiriti o Waitangi and take a te ao Māori approach to governance and integrity.

Establishing Integrity Sport and Recreation New Zealand (ISRNZ)

13. It is imperative that sport and active recreation is free of competition manipulation, discrimination, harassment, cheating, violence, abuse, racism, corruption, doping, and any other behaviour that creates an unsafe environment for participants. Integral to this is the assurance that all participants have the right to be heard. A new integrity entity will offer an opportunity to investigate issues that arise, and work in partnership with participants and the sector. In turn, safer sport and recreation environments may help to improve outcomes for participants' health and wellbeing. A new integrity entity may also enhance our international standing in relation to integrity and anti-corruption.
14. The ITC is giving further consideration to the name of ISRNZ, in consultation with stakeholders. This process will include exploration of a te reo Māori name for the entity, or the process by which a te reo Māori name would appropriately be selected. I expect to report on a confirmed name for the entity when seeking approval for introduction of the Bill from the Cabinet Legislation Committee.

15. I propose that ISRNZ be established through legislation to be introduced in early 2023. I envisage that ISRNZ will be operational in early 2024.
16. ISRNZ's functions will include the anti-doping functions currently delivered by DFSNZ. DFSNZ would be disestablished and all existing employment, contractual, and other obligations of DFSNZ would be transferred to ISRNZ, including funding. Incorporating the role of DFSNZ into ISRNZ will give it responsibility for implementing the World Anti-Doping Code under the Sports Anti-Doping Act 2006.
17. To the extent that ISRNZ's proposed functions are currently being exercised by Sport NZ, these will transfer to ISRNZ. Sport NZ would administer the new legislation. While operational independence from Sport NZ and HPSNZ is critical, as both those entities may be investigated by ISRNZ, Sport NZ holds the policy responsibility for the sport and recreation system. This is also consistent with Sport NZ's current responsibilities in relation to the Sports Anti-Doping Act 2006.

Proposed purpose, scope and functions of ISRNZ

ISRNZ's purpose will centre on participant safety and wellbeing

18. I propose that ISRNZ's purpose will be to promote and protect the safety and wellbeing¹ of participants in sport and active recreation by:
 - 18.1. preventing and addressing threats to integrity in sport and active recreation; and
 - 18.2. promoting participants' trust and confidence in integrity within the sport and active recreation sector.
19. The intention is to ensure participant safety and wellbeing is at the heart of how ISRNZ operates. The purpose statement is intentionally broad, to give ISRNZ the flexibility to respond to emerging integrity issues which pose a risk to participants.
20. The purpose is informed by the definition of integrity for the play, active recreation and sport system adopted by Cabinet in June 2022. Following Cabinet's invitation, the Sport NZ Board approved the addition of racism in the definition. The ITC has also suggested technical amendments,² and I propose that Cabinet adopt the revised definition, which is as follows:

The integrity of the New Zealand play, active recreation and sport system encompasses personal, organisational and competition integrity, and ensures the safety, security, wellbeing, and inclusion of all participants in a manner consistent with internationally recognised human rights and the principles of te Tiriti o Waitangi.

It rejects competition manipulation, discrimination, bullying, harassment, cheating, violence, abuse, racism, corruption, doping and fraud or any other criminal conduct, and promotes fairness, transparency, accountability, and a right for participants to be heard.

¹ The intent is for wellbeing to be treated holistically, encompassing physical health/taha tinana, spiritual health/taha wairua, psychological health/taha hinengaro, and family or social health taha whānau.

² Including the addition of "bullying" and a broader reference to the principles of te Tiriti o Waitangi.

21. ISRNZ's scope will span participant protection, child safeguarding, anti-doping, anti-competition manipulation, anti-corruption and organisational culture.

ISRNZ's functions will enable it to directly respond to participants and increase the effectiveness of the sector by building capability

22. In addition to the anti-doping functions transferred from the Sports Anti-Doping Act 2006, I propose that ISRNZ have the following broader integrity functions:
- 22.1. work with the sport and active recreation sector, including participants, Māori, and other relevant stakeholders, to develop and issue codes and rules relating to integrity and fair competition (including competition manipulation);
 - 22.2. provide advice, support, education, and guidance relating to integrity for participants and the sector;
 - 22.3. advocate and promote respect for, and an understanding and appreciation of issues relating to integrity in the sport and active recreation sector;
 - 22.4. provide independent, participant-centric complaints and dispute resolution mechanisms (including a Disciplinary Panel and culturally appropriate dispute resolution options);
 - 22.5. investigate matters relating to integrity in the sport and active recreation sector, both in response to complaints and on its own initiative, and publicly report on its findings;
 - 22.6. monitor changes and themes relating to integrity in the sector, including through engagement with participants and organisations; and
 - 22.7. lead and coordinate on integrity issues in sport and active recreation within government and with international partners.
23. I note that the power to conduct an investigation (either in response to a complaint or on ISRNZ's own initiative) would apply regardless of whether the sport and active recreation organisation had adopted the NSCI (discussed below), provided such an investigation was in the public interest.
24. The power proposed to issue codes and rules (paragraph 22.1) setting minimum standards for the prevention of competition manipulation will accommodate a potential role for ISRNZ as the "National Platform" under the Council of Europe Convention on the Manipulation of Sports Competitions.³ An ability to set minimum standards will complement the roles already carried out by other agencies⁴ by targeting relevant behaviour that does not meet the threshold of criminal behaviour.
25. In light of its purpose and scope, I consider that ISRNZ will need to maintain the capability and capacity to carry out its functions in a manner which:

³ In June 2022, Cabinet agreed to a National Interest Analysis (NIA) being undertaken to determine whether there is a strong case for New Zealand signing up to the Convention.

⁴ For example, New Zealand Police, the Serious Fraud Office, and the Department of Internal Affairs.

- 25.1. reflects the needs of participants, including their privacy and any other needs based on culture, language, gender, and disability;
 - 25.2. promotes the best interests of children and young people; and
 - 25.3. is responsive to the rights and interests of Māori, tikanga Māori and te Tiriti o Waitangi.
26. The means of achieving these outcomes will necessarily evolve over time as ISRNZ establishes relationships with the sector, develops and implements the NCSI, and sets up mechanisms such as the complaints and disciplinary mechanisms. I anticipate that this requirement will benefit from targeted engagement and refinement in the drafting process.
27. I also recommend that ISRNZ be required to establish effective means of seeking the views of participants, Māori, and important stakeholders including Pacific peoples, disabled people, and children and young people. Among other things, this would signal the need for mechanisms to ensure the needs of participants are addressed and their voice taken into account in decision-making, without dictating the form of any potential athletes'/participants' commission.

Proposed powers of ISRNZ

28. As above, DFSNZ's powers would transfer to ISRNZ. Further, to ensure ISRNZ can fulfil its purpose and functions, and adequately respond to participants' concerns, I propose that ISRNZ be empowered to:
- 28.1. publicly report on the findings of investigations relating to systemic or serious organisational integrity failures;
 - 28.2. refer proceedings against individuals or organisations for breaches of codes and rules to the Disciplinary Panel or Sports Tribunal;
 - 28.3. charge reasonable fees in relation to the provision of its services; and
 - 28.4. regulate its own proceedings and policies, for example in relation to the handling of complaints (including repeat or frivolous complainants) and the conduct of disciplinary proceedings.
29. I am also seeking Cabinet's in principle agreement to ISRNZ having powers to:
- 29.1. receive information from other relevant bodies and, when reasonably necessary, compel individuals and organisations to give evidence and provide information relevant to an investigation; and
 - 29.2. refer complaints and/or disclose information to another agency with the jurisdiction to appropriately respond.
30. In my view, these powers are necessary to ensure the efficient and effective exercise of ISRNZ's investigative functions. They will also help to clarify the existing powers of DFSNZ under the Sports Anti-Doping Act. However, it is essential that these powers are proportionate. Further work is needed on:

- 30.1. the scope of individuals and organisations who would be covered by a power to require the giving of evidence or information, including the limitations and protections that would apply;
 - 30.2. the extent to which the current law around information sharing may permit the exchange of information with other agencies; and
 - 30.3. whether the extraterritorial application of DFSNZ's functions and powers is appropriate in the context of any of ISRNZ's functions and powers.⁵
31. I propose Cabinet delegate the authority to make final decisions on the scope of these powers to the Minister for Sport and Recreation jointly with the Minister of Justice, in consultation with other interested Ministers such as the Minister for the Community and Voluntary Sector. Officials will also consult with the Office of the Privacy Commissioner and the Human Rights Commission.

ISRNZ will issue and enforce a national code for sport and active recreation integrity (NCSI)

32. Establishing codes and rules relating to integrity and fair competition, including the NCSI,⁶ is key to achieving ISRNZ's purpose.
33. This will introduce a national framework that sets standards of conduct and simplifies the pathway for participants who want to raise an integrity-related complaint. It is important that the NCSI respect te Tiriti o Waitangi and uphold human rights.
34. Adoption of the NCSI will not be mandatory under the Bill for sport and active recreation organisations or groups. Stakeholder feedback indicates that much of the sector will adopt the NCSI voluntarily. I anticipate that the initial focus would be on encouraging larger organisations to adopt the NCSI.
35. Buy-in is essential for the efficacy of any code, which is why I propose a partnership approach to the development of the NCSI and its adoption. The ITC and officials will also continue to explore mechanisms available to incentivise adoption such as making it a condition of recognition by Sport NZ as a national sporting organisation and incentives such as certification. There is a fine balance to be struck between a collaborative approach that does not impose an undue burden on the parts of the sector comprised of small, local and primarily voluntary organisations while ensuring that there is sufficient motivation for significant players in the sector to meet reasonable standards of conduct.
36. Enforcement of the NCSI will be facilitated by ISRNZ investigating complaints from participants that relate to a potential breach of the code. It is also intended that the NCSI will contain a requirement on organisations to notify ISRNZ of serious integrity breaches (this is included in the Australian National Integrity Framework). This requirement will affect organisations which adopt the NCSI.

⁵ The Sports Anti-Doping Act provides that DFSNZ's functions and powers may be exercised outside of New Zealand.

⁶ Cabinet agreed to the NCSI as proposed and named by the IWG. Officials will consult the sector on an appropriate name to ensure it's also relevant for active recreation and play organisations/activities.

37. The enacting legislation would require that the Act be reviewed five years after the NCSI has been issued to assess how widely and effectively the NCSI has been implemented, and whether legislative change is necessary.
38. The ITC intends to test whether it would be appropriate for ISRNZ to be able to apply to the Sports Tribunal seeking an order that a non-signatory organisation address systemic organisational failings by meeting equivalent standards to the NCSI. The ability to make such an order would significantly extend the jurisdiction of the Sports Tribunal, which is generally exercised based on the consent of the parties before it. Further work will be required on the threshold for, and design of, any such order. I propose that Cabinet delegate the authority to make final decisions on the scope of this power to the Minister for Sport and Recreation jointly with the Minister of Justice, in consultation with other interested Ministers.

An independent, centralised complaints process would include a disciplinary panel that could apply sanctions for integrity breaches

39. Sport NZ currently provides access to the Sport and Recreation Complaints and Mediation Service (SRCMS), but there is scope to improve participants' access to this or another competent and timely dispute resolution process.
40. As outlined above, I am proposing that one of the functions of ISRNZ will be to provide an independent centralised, participant-centric complaints and dispute resolution mechanism (including a disciplinary panel and culturally appropriate dispute resolution options).
41. I envisage that under the NCSI, organisations will need to provide an internal complaints process for participants. However, the NCSI would also enable participants the option of an alternative pathway through the centralised complaints process and require the organisation's engagement in that process. In either case, where a matter has been determined by either the centralised disciplinary panel or an organisation's own panel, there will be a right of appeal to the Sports Tribunal.

Proposed form and structure of ISRNZ

42. To promote ISRNZ's independence, I propose that it be established as an independent Crown entity. The Ministry for Culture and Heritage will be the monitoring agency for ISRNZ, as it is independent of HPSNZ and Sport NZ. As an independent Crown entity, ISRNZ would be subject to the Ombudsmen Act 1975 and Official Information Act 1982.
43. The board of ISRNZ will be appointed by the Governor-General, on the recommendation of the Minister for Sport and Recreation.
44. The board will need sufficient skills and experience to fulfil the functions of ISRNZ, including those carried out by DFSNZ, and to represent the broad population that engages in sport and active recreation. I therefore propose that the board have between seven and nine members and must collectively have knowledge of, and experience and expertise in relation to:

- 44.1. law;

- 44.2. sports medicine;
- 44.3. sport and active recreation sector participation and administration, including participant associations or unions;
- 44.4. human rights, in particular the rights of children and young people; and
- 44.5. te Tiriti o Waitangi and its principles.
45. The ITC has also recommended that at least two members must have knowledge of, and experience and expertise in relation to tikanga Māori and te ao Māori. This will help ensure a baseline level of Māori representation on the board of ISRNZ and help to reflect the rights and interests of Māori.
46. To emphasise the independence of ISRNZ, I propose that the legislation specify that board members and staff of Sport NZ or HPSNZ cannot be members of ISRNZ. Other individuals may also be ineligible for appointment under current domestic and international settings.⁷
47. The Crown Entities Act 2004 requires the responsible Minister to take into account promoting diversity in the membership of Crown entities. I have a strong expectation that the board will be gender-diverse, including wahine Māori representation, and that disabled people will be represented.

Role, functions and membership of the Sports Tribunal

48. With the possible exception of the order discussed in paragraph 38, I do not propose any significant changes to the remit of the Sports Tribunal. However, some amendments to its governing legislation and jurisdiction will be required to ensure the relationship between ISRNZ and the Tribunal is clear.
49. I propose that the Tribunal's jurisdiction be extended to hear appeals in relation to matters concerning the application of the NCSI and other rules (usually by a participant appealing a decision), including appeals from decisions by the entity's disciplinary panel. The Tribunal would be able to exercise jurisdiction where the grounds above applied and/or where the organisation had adopted the NCSI.⁸
50. Participants who have been subject to a decision of the proposed Disciplinary Panel could appeal decisions to the Tribunal that fit within its jurisdiction. I also propose that ISRNZ would have the ability to refer matters (such as breaches of the NCSI) to the Tribunal in the same way as Sport NZ can do currently.
51. If Cabinet agrees to the extension to the Tribunal's jurisdiction, I consider it necessary to also remove the cap of nine appointed Tribunal members.

⁷ For example, the World Anti-Doping Code (2021) prohibits the involvement in operational decisions and activities of any persons involved in the management or operations of any International Federation, National Federation, Major Event Organization, National Olympic Committee, National Paralympic Committee, or government department with responsibility for sport or anti-doping.

⁸ The Sports Tribunal is the decision-maker of first instance in anti-doping matters but would be an appeal body in relation to matters under the NCSI. Decisions of the Sports Tribunal are final, although in some instances there is a right of appeal of decisions of the Sports Tribunal to the International Court of Arbitration for Sport.

52. I understand the Chairperson of the Tribunal considers that nine members will continue to be sufficient to manage the Tribunal's case load. However, an uncapped membership would future-proof the capacity of the Tribunal to manage an expected higher case load, and potentially a greater variety and complexity of cases. It may also provide an opportunity to appoint members with skills, knowledge and experience related to ISRNZ's broader functions. I also note that many tribunals do not have a cap and this approach is consistent with Ministry of Justice guidance.⁹ Taking this approach would not require further appointments to be made, but creates the opportunity should this be required. My officials will continue to work with the Ministry for Culture and Heritage and the Sports Tribunal in relation to this proposal.

Consultation

53. The following departments and entities were consulted on the draft of this paper: the Department of Internal Affairs; Department of Prime Minister and Cabinet; Oranga Tamariki; Office for Disability Issues at Whaikaha - the Ministry of Disabled People; Ministry of Business, Innovation, and Employment; Ministry for Culture and Heritage; Ministry of Foreign Affairs and Trade; Ministry of Health; Ministry of Justice; Ministry for Primary Industries; Ministry for Pacific Peoples; Manatū Wāhine - Ministry for Women; New Zealand Police; the Public Service Commission; Te Arawhiti; Ministry of Social Development; Crown Law Office; New Zealand Customs Service; the Treasury; Drug Free Sport New Zealand; Serious Fraud Office; Sports Tribunal; the Office of the Ombudsman.
54. Te Puni Kōkiri and the Office of the Auditor-General were informed of the paper.
55. Officials met with the Treaty Provisions Oversight Group (TPOG) to discuss the proposals. TPOG recommended a range of further work, including identifying a more specific set of desired outcomes for Māori and undertaking further analysis on te Tiriti implications of all ISRNZ's proposed functions.
56. The ITC is continuing its targeted engagement programme with participants - including athletes, coaches, governors and management - with connections to and within te ao Māori and Pasifika on cultural dynamics and issues arising for consideration by ISRNZ. The sport and active recreation sector will also be consulted on the NCSI. This will build on extensive engagement with the sport and active recreation sector undertaken by the IWG in 2021.

Public Service Commission comment

57. The Public Service Commission opposes recommendation 12, that Sport NZ administer the legislation for the new agency. The new entity will be an Independent Crown Entity not subject to Ministerial direction on government policy. It may be required to investigate activities of Sport NZ. Having its establishing legislation administered by Sport NZ may create a perception that the new entity is somehow subject to Sport NZ. Sport NZ is the only Crown entity that administers legislation. Responsibility for administering the legislation would be more appropriately placed with the monitoring department, which advises the Minister on

⁹ Ministry of Justice '[Tribunal Guidelines](#)' (2017), pg. 17.

entity performance including any issues the new entity faces in delivering its functions.

Manatū Taonga Ministry for Culture and Heritage comment

58. The Ministry for Culture and Heritage has concerns with the proposal to remove the cap of nine members for the Sports Tribunal (the Tribunal). While the paper references the need to 'future-proof' the potential impact of jurisdictional changes to the Tribunal's remit, there is insufficient evidence presented on the forecast demand drivers for removing the cap (e.g. case complexity, case variety, panel sizes, etc). The paper notes that many tribunals do not have a membership cap. Manatū Taonga's advice is that there are also many tribunals who operate effectively with membership caps and these caps have been ascertained with clearly understood demand drivers and caseload forecasts. Given the lack of clarity around forecast appointment demands in an 'uncapped' scenario the proposal could have a potentially deleterious impact on Manatū Taonga's overall appointments work programme. This programme supports four responsible Ministers across multiple portfolios to make appointments to 15 different boards and is carefully planned and sequenced with those Ministers.

Financial Implications

59. Budget 2022 included \$4.8 million of initial funding for the transition phase [CAB-22-MIN-0129 refers].
60. s9(2)(f)(iv) [REDACTED] This includes costs for staff to carry out ISRNZ's functions, establishing a disciplinary panel and participants' commission, and the cost of funding the complaints service (including support for victims). I anticipate that ISRNZ will be funded via a new appropriation under Vote Sport and Recreation.
61. The existing appropriation for Drug Free Sport NZ would be transferred to ISRNZ.¹⁰ There is no existing appropriation for integrity functions carried out by Sport NZ, so no appropriation to transfer.

62. s9(2)(f)(iv) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Treasury comment

63. The report-back to Cabinet on funding sources for the proposed new agency will need to take into account the constrained fiscal environment and seek to minimise any new funding requirement, e.g. by including options for reprioritisation of other spending within the Sport and Recreation portfolio. Any funding decisions taken through Budget 2023 will also need to be in accordance with expectations and

¹⁰ \$4.8 million in 2023/24 and \$3.2 million per annum in 2024/25 and outyears.

process as set out in Cabinet's recently agreed Budget 2023 Strategy [CAB-22-MIN-0368 refers].

Legislative Implications

64. I envisage that a new Act will establish ISRNZ and that the enacting Bill will repeal provisions of the Sports Anti-Doping Act 2006 relating to DFSNZ.¹¹ I anticipate the NCSI would have the status of secondary legislation.
65. Cabinet agreed in June 2022 to the inclusion of a Bill to establish the new entity in the 2022 Legislation Programme with Category 5 priority (instructions to be provided to Parliamentary Counsel Office in 2022).
66. Subject to Cabinet's agreement to the proposals in this paper, officials will provide initial drafting instructions to the Parliamentary Counsel Office (PCO) in October 2022 for drafting a stand-alone Act of Parliament to establish the entity.
67. My intention is that the legislation will be passed by July 2023. To achieve this, I intend to seek approval from the Cabinet Legislation Committee in February 2023 to introduce the Bill that same month. Four months have been factored into the timeline for Select Committee, with an estimated report back of late-June or early-July 2023. Second Reading, Committee of the Whole House, Third Reading and the Royal Assent would then occur in July 2023.

Impact Analysis

68. A RIA Quality Assurance Panel at Manatū Taonga has reviewed the Regulatory Impact Statement: Sport Integrity Bill, and considers it partially meets the quality assurance criteria.
69. The RIS provides detail to supplement earlier analysis for Cabinet's in-principle decision to establish a standalone sport integrity entity. Some gaps are still present, particularly in relation to the proposal's costs for the sport and active recreation sector, and some of the analysis would have benefitted from a deeper exploration of options and impacts. However, the conclusions reached are reasoned against clear and compelling criteria, and the RIS acknowledges where more work and consultation are required to support final decisions on some aspects of the entity's design.
70. The Climate Implications of Policy Assessment (CIPA) team has confirmed the CIPA requirements do not apply to this proposal.

Human Rights

71. There is a strong link between human rights and sport and active recreation; the importance of exercise and recreation is expressly acknowledged in international human rights instruments.¹²

¹¹ This may change subject to advice on the drafting from officials and the Parliamentary Counsel Office.

¹² For example, United Nations Convention on the Rights of the Child, Convention on the Rights of Persons with Disabilities, Convention on the Elimination of All Forms of Discrimination Against Women, and the International Convention on the Elimination of All Forms of Racial Discrimination.

72. I expect the proposals to enhance New Zealanders' right to be free from discrimination affirmed in section 19(1) of the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act). The definition of integrity in sport and recreation sends a clear message that racism and discrimination are to be rejected, and ISRNZ will therefore have a clear remit to promote anti-discrimination efforts in the sector.
73. I note that the proposed powers to obtain information will limit section 14 (freedom of expression) and section 21 (unreasonable search and seizure) of the Bill of Rights Act. In my view, such powers are rationally connected to the investigative functions of ISRNZ. As above, I recognise that further work is required to make sure these powers are proportionate. The Integrity Transition Programme will work with officials, including in the Ministry of Justice, Crown Law Office and other stakeholders, to ensure the information-gathering powers are designed appropriately. In particular, I expect officials to consider options to minimise the risk that information-gathering powers could adversely impact vulnerable participants, including complainants.

Te Tiriti o Waitangi

74. I recognise that there are te Tiriti interests in respect of ngā taonga tākarō – the wide variety of sports, games and activities developed in te ao Māori. These rights are affirmed by the UN Declaration on the Rights of Indigenous Peoples (Article 31). There are equity considerations involved also, for example in relation to Māori participation,¹³ involvement in leadership, and freedom from discrimination.
75. There are a range of potential Treaty partners for the Crown to engage with. Initial targeted engagement has highlighted important issues including the autonomy of Māori sport and active recreation bodies, inequalities and discrimination experienced by Māori in the sector, and the importance of collective decision making and ensuring there is a strong Māori perspective at a governance level. The need for the protection of tikanga Māori including cultural expressions (such as haka), language and naming was also noted.
76. Further engagement will ensure the rights and interests of Māori are incorporated into the final design of the entity's governance and functions.

Population Implications

77. The Government's Women and Girls Strategy (the Strategy) in 2018 highlighted clear inequalities for women and girls when it comes to participation, and their wider involvement and visibility within sport and active recreation in Aotearoa New Zealand. Women are more likely than men to encounter harassment, bullying, and abuse in sports organisations, and have less confidence for those incidents to be adequately handled.¹⁴
78. While the broader responsibility to promote and encourage participation in sport and active recreation will remain with Sport NZ, ISRNZ will play a complementary role. In particular, I expect ISRNZ to play a role in identifying and addressing the challenges

¹³ For example, the 2021 Active NZ survey highlighted that a decrease in organised sports and activities had increased inequities in the system for Māori and Pacific and for young people living in high deprivation areas.

¹⁴ *Sport Integrity Review* (2019). Sport New Zealand.

people can face due to discrimination on the basis of their gender, race, ethnicity, sexual orientation, religion, age or ability.

79. I am also conscious that Pacific peoples face inequities in sport and active recreation participation rates.¹⁵ In my view, this is why it is particularly important that the definition of integrity reject racism and discrimination, and why it is essential that ISRNZ have means of seeking the views of Pacific peoples.
80. I also note that many volunteers in sport are Māori and Pacific peoples. I am conscious of the risk of placing a compliance burden on volunteers and that this might disincentivise such work. This is one of the reasons why I have proposed a non-mandatory code, and why ISRNZ's functions explicitly require it to work alongside the sector, and provide support, education and guidance.

Disability Perspective

81. The New Zealand Disability Strategy 2016-26 affirms that disabled people's participation in sport and active recreation should be supported and valued, and that they should be fully included in sport and recreation events as spectators or participants.
82. Disabled people face more barriers to participation than non-disabled people, and have reported feeling discriminated against and devalued in sport and active recreation environments.¹⁶ The proposals in this paper are intended to give effect to the outcome of equal inclusion for disabled people by resolving complaints about matters such as limited or no access to sport and/or recreation, and educating organisations on how they can bolster inclusivity of their activity. Officials in ISRNZ and the Integrity Transition Programme will need to consider how the entity's procedures will accommodate the needs of participants who have certain accessibility requirements.
83. I understand that the Accessibility Committee, to be created under the Accessibility for New Zealanders Bill, is planned for establishment before July 2024. There may be scope for ISRNZ to work with the Accessibility Committee around recurrent accessibility issues identified in its work.

Publicity

84. Following Cabinet's in-principle agreement to establish ISRNZ, I publicly announced that it would be operational in 2024, pending legislation being passed. My officials will update the sport and active recreation sector through central and direct communication channels. I will advise Cabinet of any further publicity at the point approval is sought to introduce a Bill. Any announcements will need to be made with consideration of the decisions about the proposed investigation powers that I am seeking to be made by a delegated subset of Ministers.

¹⁵ Previous research has shown Pacific peoples reporting turning away from sport because of negative experiences, including the behaviour of coaches, teammates, and spectators. See, for example, *Sport and recreation in New Zealand Pasifika communities* (2010). Gordon, B.A., Sauni, P., Tuagulu, C., Hodis, F.

¹⁶ *Active NZ Main Report 2022: The New Zealand Participation Survey 2021* (2022). Sport NZ; "How can we make it work for you?" *Enabling sporting assemblages for disabled young people* (2021). Carroll et al.

Proactive Release

85. I propose that this Cabinet paper be made public within 30 business days of Cabinet confirming its decisions.

Recommendations

86. The Minister for Sport and Recreation recommends that the Committee:
1. **note** that Cabinet agreed in-principle in June 2022 to establish an independent integrity entity, and noted the proposed appointment of an Integrity Transition Committee to oversee work on the establishment of the entity [CAB-22-MIN-0210 refers];
 2. **note** that advice from the Integrity Transition Committee on the form, functions and scope of a new integrity entity confirms the need for a new independent entity with responsibility for integrity in New Zealand's sport and active recreation system;
 3. **agree** to establish a new independent entity for integrity in sport and active recreation, that will become operational in 2024;
 4. **note** that the working name for the entity is Integrity Sport and Recreation New Zealand (ISRNZ), with a name to be confirmed following stakeholder consultation;
 5. **agree** that Drug Free Sport New Zealand (DFSNZ) will be disestablished and its functions and powers transferred to ISRNZ;
 6. **agree** that all existing employment, contractual, and other obligations of DFSNZ be transferred to ISRNZ;
 7. **agree** that the purpose of ISRNZ will be to promote and protect the safety of participants in sport and active recreation, including by:
 - 7.1. preventing and addressing threats to integrity in sport and active recreation; and
 - 7.2. promoting participants' trust and confidence in integrity within the sport and active recreation sector;
 8. **agree** to adopt the following revised definition of integrity:

The integrity of the New Zealand play, active recreation and sport system encompasses personal, organisational and competition integrity, and ensures the safety, security, wellbeing, and inclusion of all participants in a manner consistent with internationally recognised human rights and the principles of te Tiriti o Waitangi.

It rejects competition manipulation, discrimination, bullying, harassment, cheating, violence, abuse, racism, corruption, doping and fraud or any other criminal conduct, and promotes fairness, transparency, accountability, and a right for participants to be heard.
 9. **agree** that ISRNZ's scope includes participant protection, child safeguarding, anti-doping, anti-competition manipulation, anti-corruption, and organisational culture;

10. **agree** that, in addition to the functions transferred from DFSNZ, ISRNZ will deliver the following functions:
- 10.1. work with the sport and active recreation sector, including participants and Māori organisations, to develop and issue codes and rules relating to integrity and fair competition;
 - 10.2. provide advice, support, education, and guidance relating to integrity for participants and the sector;
 - 10.3. advocate and promote respect for, and an understanding and appreciation of, issues relating to integrity in the sport and active recreation sectors;
 - 10.4. provide independent, participant-centric complaints and dispute resolution mechanisms (including a disciplinary panel and culturally appropriate dispute resolution options);
 - 10.5. investigate matters relating to integrity in the sport and active recreation sector, both in response to complaints and proactively, and publicly report on its findings;
 - 10.6. monitor changes and themes relating to integrity in the sector, including through engagement with participants and organisations; and
 - 10.7. lead and coordinate on integrity issues in sport and active recreation within government and with international partners;
11. **agree** that ISRNZ be required to maintain the capability and capacity to carry out its functions in a manner which:
- 11.1. reflects the needs of participants, including their privacy and any other needs based on culture, language, gender, and disability;
 - 11.2. promotes the best interests of children and young people; and
 - 11.3. is responsive to the rights and interests of Māori, tikanga Māori and te Tiriti o Waitangi;
12. **agree** that Sport NZ will be responsible for the administration of the new legislation;
13. **agree** to require ISRNZ to consult on the development of codes and rules relating to integrity and to establish effective means of seeking the views of participants, Māori, and other relevant stakeholders including Pacific peoples, disabled people, and children and young people;
14. **agree** that ISRNZ will need the following powers to give effect to its purpose:
- 14.1. publicly report on the findings of investigations relating to systemic or serious organisational integrity failures;
 - 14.2. refer proceedings against individuals or organisations for breaches of codes and rules to the Disciplinary Panel or Sports Tribunal;
 - 14.3. charge reasonable fees in relation to the provision of its services; and

- 14.4. regulate its own proceedings and policies;
15. **agree** in principle, subject to recommendation 16 below, to ISRNZ having the following powers in relation to investigations into alleged breaches of statutory codes and rules:
- 15.1. receive information from other relevant bodies and, when reasonably necessary, compel individuals and organisations to give evidence and provide information relevant to an investigation;
 - 15.2. refer complaints and/or disclose information to another agency with the jurisdiction to appropriately respond; and
 - 15.3. as a last resort, apply to the Sports Tribunal seeking an order that an organisation who has not adopted the NCSI address systemic/organisational failings by meeting equivalent standards to the NCSI;
16. **authorise** the Ministers of Sport and Recreation and Justice, in consultation with other relevant Ministers, to make decisions on the appropriate scope of the powers in recommendation 15 above prior to consideration of the Bill by the Cabinet Legislation Committee;
17. **agree** that adoption of codes and rules issued by ISRNZ, including the National Code of Sport Integrity, will not be mandatory under the Bill;
18. **agree** that the Minister for Sport and Recreation will review the legislation that establishes ISRNZ within five years of the establishment of a code to assess how widely and effectively the code has been implemented and whether legislative change is necessary to improve adoption and compliance;
19. **agree** that ISRNZ be established as an independent Crown entity, with between seven and nine board members;
20. **agree** that the Minister must recommend appointment of board members who collectively have knowledge of, and experience and expertise in relation to:
- 20.1. law;
 - 20.2. sports medicine;
 - 20.3. sport and active recreation sector participation and administration, including participant associations or unions;
 - 20.4. human rights, in particular the rights of children and young people; and
 - 20.5. te Tiriti o Waitangi and its principles;
21. **agree** that at least two board members must have knowledge of, and experience and expertise in relation to tikanga Māori and te ao Māori;
22. **agree** that board members and staff of Sport NZ or High Performance Sport New Zealand will not be able to be members of ISRNZ;

23. **note** that the Minister for Sport and Recreation has an expectation that the board will be gender-diverse, including wāhine Māori representation, and that disabled people will be represented;
24. **agree** to expand the Sports Tribunal's jurisdiction to include:
- 24.1. appeals related to sport and active recreation organisations that have implemented the National Code for Sport Integrity; and
- 24.2. matters referred to the Tribunal by ISRNZ;
25. **agree** to remove the cap of nine members for the membership of the Sports Tribunal;

Financial implications

26. s9(2)(f)(iv) [REDACTED]
27. **note** that it is intended that Drug Free Sport New Zealand's appropriation will be transferred to ISRNZ;
28. **note** that Budget 2022 included \$4.8 million of initial funding for the transition phase [CAB-22-MIN-0129 refers];
29. s9(2)(f)(iv) [REDACTED]
30. s9(2)(f)(iv) [REDACTED]

Legislative implications

31. **note** that a Bill is on the legislative programme for the establishment of ISRNZ with a Category 5 priority;
32. **invite** the Minister for Sport and Recreation to issue drafting instructions to the Parliamentary Counsel Office to give effect to recommendations 3, 5 to 15, 17 to 22 and 24 to 25 above;
33. **authorise** the Minister for Sport and Recreation to determine minor technical and policy matters that may arise during drafting, including any consequential amendments to other legislation that may be required.

Authorised for lodgement

Hon Grant Robertson

Minister for Sport and Recreation



Cabinet Social Wellbeing Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Protecting and Promoting the Integrity of Sport and Active Recreation

Portfolio Sport and Recreation

On 28 September 2022, the Cabinet Social Wellbeing Committee (SWC):

Background

1 **noted** that in June 2022, SWC agreed to a definition of integrity for sport and recreation, agreed in-principle to establish an independent integrity entity subject to a report back in September 2022, and noted that an Integrity Transition Committee would be appointed by Sport New Zealand (NZ) to oversee the entity's establishment [SWC-22-MIN-0096];

Independent Integrity Entity

2 **noted** that advice from the Integrity Transition Committee on the form, functions and scope of a new integrity entity confirms the need for a new independent entity with responsibility for integrity in New Zealand's sport and active recreation system;

3 **agreed** to establish a new independent entity for integrity in sport and active recreation that will become operational in 2024;

4 **noted** that the working name for the entity is Integrity Sport and Recreation New Zealand (ISRNZ), with a name to be confirmed following stakeholder consultation;

5 **agreed** that Drug Free Sport New Zealand (DFSNZ) be disestablished, and its functions and powers transferred to ISRNZ;

6 **agreed** that all existing employment, contractual, and other obligations of DFSNZ be transferred to ISRNZ;

7 **agreed** that the purpose of ISRNZ will be to promote and protect the safety of participants in sport and active recreation, including by:

7.1 preventing and addressing threats to integrity in sport and active recreation;

7.2 promoting participants' trust and confidence in integrity within the sport and active recreation sector;

8 **agreed** to adopt the following revised definition of integrity:

The integrity of the New Zealand play, active recreation and sport system encompasses personal, organisational and competition integrity, and ensures the safety, security, wellbeing, and inclusion of all participants in a manner consistent with internationally recognised human rights and the principles of te Tiriti o Waitangi.

It rejects competition manipulation, discrimination, bullying, harassment, cheating, violence, abuse, racism, corruption, doping and fraud or any other criminal conduct, and promotes fairness, transparency, accountability, and a right for participants to be heard.

9 **agreed** that ISRNZ's scope includes participant protection, child safeguarding, anti-doping, anti-competition manipulation, anti-corruption, and organisational culture;

10 **agreed** that, in addition to the functions transferred from DFSNZ, ISRNZ will deliver the following functions:

- 10.1 work with the sport and active recreation sector, including participants and Māori organisations, to develop and issue codes and rules relating to integrity and fair competition;
- 10.2 provide advice, support, education, and guidance relating to integrity for participants and the sector;
- 10.3 advocate and promote respect for, and an understanding and appreciation of, issues relating to integrity in the sport and active recreation sectors;
- 10.4 provide independent, participant-centric complaints and dispute resolution mechanisms (including a disciplinary panel and culturally appropriate dispute resolution options);
- 10.5 investigate matters relating to integrity in the sport and active recreation sector, both in response to complaints and proactively, and publicly report on its findings;
- 10.6 monitor changes and themes relating to integrity in the sector, including through engagement with participants and organisations; and
- 10.7 lead and coordinate on integrity issues in sport and active recreation within government and with international partners;

11 **agreed** that ISRNZ be required to maintain the capability and capacity to carry out its functions in a manner which:

- 11.1 reflects the needs of participants, including their privacy and any other needs based on culture, language, gender, and disability;
- 11.2 promotes the best interests of children and young people; and
- 11.3 is responsive to the rights and interests of Māori, tikanga Māori and te Tiriti o Waitangi;

12 **agreed** that Sport NZ will be responsible for the administration of the legislation described in paragraph 31 below;

- 13 **agreed** to require ISRNZ to consult on the development of codes and rules relating to integrity and to establish effective means of seeking the views of participants, Māori, and other relevant stakeholders including Pacific peoples, disabled people, and children and young people;
- 14 **agreed** that ISRNZ will need the following powers to give effect to its purpose:
- 14.1 publicly report on the findings of investigations relating to systemic or serious organisational integrity failures;
 - 14.2 refer proceedings against individuals or organisations for breaches of codes and rules to the Disciplinary Panel or Sports Tribunal;
 - 14.3 charge reasonable fees in relation to the provision of its services;
 - 14.4 regulate its own proceedings and policies;
- 15 **agreed in-principle**, subject to paragraph 16 below, that ISRNZ have the following powers in relation to investigations into alleged breaches of statutory codes and rules:
- 15.1 receive information from other relevant bodies and, when reasonably necessary, compel individuals and organisations to give evidence and provide information relevant to an investigation;
 - 15.2 refer complaints and/or disclose information to another agency with the jurisdiction to appropriately respond; and
 - 15.3 as a last resort, apply to the Sports Tribunal seeking an order that an organisation who has not adopted the NCSI address systemic/organisational failings by meeting equivalent standards to the NCSI;
- 16 **authorised** the Minister of Sport and Recreation (the Minister) and Minister of Justice, in consultation with other relevant Ministers, to make decisions on the appropriate scope of the above powers prior to consideration of the Bill by the Cabinet Legislation Committee;
- 17 **agreed** that adoption of codes and rules issued by ISRNZ, including the National Code of Sport Integrity, will not be mandatory under the Bill;
- 18 **agreed** that the Minister review the legislation that establishes ISRNZ within five years of the establishment of a code to assess how widely and effectively the code has been implemented and whether legislative change is necessary to improve adoption and compliance;
- 19 **agreed** that ISRNZ be established as an independent Crown entity, with between seven and nine board members;
- 20 **agreed** that the Minister must recommend appointment of board members who collectively have knowledge of, and experience and expertise in relation to:
- 20.1 law;
 - 20.2 sports medicine;
 - 20.3 sport and active recreation sector participation and administration, including participant associations or unions;

20.4 human rights, in particular the rights of children and young people; and

20.5 te Tiriti o Waitangi and its principles;

21 **agreed** that at least two board members must have knowledge of, and experience and expertise in relation to tikanga Māori and te ao Māori;

22 **agreed** that board members and staff of Sport NZ or High Performance Sport NZ will not be able to be members of ISRNZ;

23 **noted** that the Minister has an expectation that the board will be gender-diverse, including wāhine Māori representation, and that disabled people will be represented;

24 **agreed** to expand the Sports Tribunal's jurisdiction to include:

24.1 appeals related to sport and active recreation organisations that have implemented the National Code for Sport Integrity; and

24.2 matters referred to the Tribunal by ISRNZ;

25 **agreed** to remove the cap of nine members for the membership of the Sports Tribunal;

Financial Implications

26 s9(2)(f)(iv)

27 **noted** that it is intended that DFSNZ's appropriation will be transferred to ISRNZ;

28 **noted** that in Budget 2022, Cabinet approved \$4.8 million for the transition phase to a new integrity entity [CAB-22-MIN-0129];

29 s9(2)(f)(iv)

30 s9(2)(f)(iv)

Legislative Implications

31 **noted** that a Bill to establish ISRNZ holds a category 5 priority on the 2022 Legislation Programme (instructions to be provided to Parliamentary Counsel in 2022);

32 **invited** the Minister to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above decisions;

authorised the Minister to determine minor technical and policy matters that may arise during drafting, including any consequential amendments to other legislation that may be required.

Rachel Clarke
Committee Secretary
Attendance (see over)

Present:

Rt Hon Jacinda Ardern
Hon Grant Robertson
Hon Chris Hipkins
Hon Carmel Sepuloni
Hon Andrew Little
Hon Poto Williams
Hon Peeni Henare
Hon Kiri Allan
Hon Priyanca Radhakrishnan

Officials present from:

Office of the Prime Minister
Office of the SWC Chair
Officials Committee for SWC

RELEASED BY SPORT NZ UNDER OUR COMMITMENT TO OPEN GOVERNMENT