

# Regulatory Impact Statement: Sport Integrity Bill

## Coversheet

Purpose of Document	
Decision sought:	This analysis has been prepared for the purposes of informing Cabinet decisions regarding the form, functions and establishment process for a new sport and active recreation integrity entity.
Advising agencies:	Sport New Zealand, Integrity Transition Committee
Proposing Ministers:	Sport and Recreation
Date finalised:	21 September 2022
Problem Definition	
<p>The sport and recreation system has faced a large number of issues with integrity over recent years, and participants at all levels do not always consider that processes to remedy issues are robust or trustworthy.</p> <p>In June 2022, Cabinet<sup>1</sup> agreed in principle to establish a new, standalone entity with primary responsibility for strengthening and protecting the integrity of the sport and active recreation system that, at minimum, would:</p> <ul style="list-style-type: none"><li>a. assume responsibility for all functions currently performed by Drug Free Sport New Zealand (DFSNZ)</li><li>b. develop and implement a Code of Integrity for the sport and recreation sector, and</li><li>c. assume responsibility for some or all of Sport NZ's existing integrity functions.</li></ul> <p>This RIS provides further analysis of the case for that decision and assesses options for its scope, form, governance, functions and powers.</p>	
Executive Summary	
<p>The last decade has seen a noticeable number of issues of athlete welfare, bullying, abuse, and inappropriate behaviour and culture arising regularly across the sport and recreation system, from elite to grassroots. The current system is likely to have disproportionate impacts on vulnerable and disadvantaged groups, such as tamariki and rangatahi, women, disabled people, LGBTQ+, Māori and Pacific peoples and those from minority ethnic backgrounds.<sup>2</sup></p> <p>Despite several system improvements in recent years,<sup>3</sup> the sport and recreation integrity system is a significant distance away from one which adequately protects the wellbeing of</p>	

<sup>1</sup> CAB-22-MIN-0210 refers.

<sup>2</sup> See, for example, [The New Zealand Participation Survey \(Active NZ, 2019\)](#) and [Spotlight on Disability \(Active NZ, 2018\)](#).

<sup>3</sup> For example, establishing an independent complaints system and completing or progressing every recommendation from the 2019 Sport Integrity Review (see Section 1 for a comprehensive overview).

participants. This is evidenced by the nature of the issues coming to the attention of the Sport NZ, the ongoing issues with athlete treatment and wellbeing in high performance sport and the findings from numerous reviews into integrity issues.<sup>4</sup>

While different organisations in the system have leadership responsibilities, no government agency is explicitly charged with leading, monitoring, or strengthening the integrity of the sport and active recreation system.

Following several comprehensive reviews of sport integrity issues, Cabinet agreed in principle to establish a new independent entity that, at minimum, would<sup>5</sup>:

- a. assume responsibility for all functions currently performed by Drug Free Sport New Zealand (DFSNZ)
- b. develop and implement a Code of Integrity (the Code) for the sport and recreation sector,<sup>6</sup> and
- c. assume responsibility for some or all of Sport NZ's existing integrity functions, such as education and overall responsibility for the Sport and Recreation Complaints and Mediation Service (SRCMS).<sup>7</sup>

This RIS concerns the following proposals:

- to confirm Cabinet's in-principle decisions from June 2022,<sup>8</sup>
- of the design of the functions and powers of the new entity,
- of the policy settings for the Code, and
- of the governance and powers of the Sports Tribunal in relation to the Code.

The Cabinet paper related to this RIS proposes to establish a new sport integrity entity whose purpose will be to promote and protect the safety and wellbeing of participants in sport and active recreation.

Part A of the options analysis reassesses the structural options for achieving the objective of ensuring that New Zealand has an integrity system that ensures that all participants can participate in a safe, fair and inclusive environment, on a level playing field with their wellbeing safeguarded and protected.

Expanding on the two structural options considered in June,<sup>9</sup> we have considered the following organisational forms for the entity against the status quo of the current arrangements of Sport NZ and DFSNZ:

- Departmental Agency
- Independent Crown Entity (ICE) (**recommended option**)

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4 [See, for example, Black Ferns Cultural & Environmental Review \(Muir et al., 2022\)](#)

5 CAB-22-MIN-0210 refers.

6 A Code of Integrity would set minimum standards for the sector relating to all aspects of integrity and the mechanism for holding individuals and organisations to account when they fail to meet those standards.

7 The SRCMS is an independent complaints management service for the sport and recreation sector. The SRCMS is operated independently from Sport NZ and sport and recreation bodies, clubs, and organisations. Its purpose is to ensure those with issues related to sport and recreation have a place to make complaints and have them resolved fairly.

8 CAB-22-MIN-0210 refers.

9 CAB-22-MIN-0210 refers.

- Bespoke statutory entity

The preferred option for the organisational form is an ICE. An ICE is most likely to meet the critical criteria of enhancing wellbeing and safety. The independence provided by this option sends a signal to stakeholders that the new entity is intended to be completely impartial when handling complaints and investigations.

The remaining sections of the RIS relate to the design of the functions and powers of the new entity and the policy settings for the Code that best supports the wellbeing of participants. These sections (Parts B through E), are compared against the counterfactual of the minimum functions for the new entity already agreed to in-principle by Cabinet and the recommended form and governance from Part A.

The fragmented coverage of existing regulatory agencies means that participants and sport and active recreation organisations find the current institutional arrangements convoluted, with the roles and responsibilities of government agencies unclear. In addition to establishing a Code and taking responsibility for the functions of DFSNZ,<sup>10</sup> Part B considers two options for the functions of the new entity:

- Prioritise compliance and enforcement functions
- Consolidate all integrity functions from Sport NZ (**recommended option**)

The impact analysis indicates that consolidating all integrity functions currently performed by Sport NZ (except the strategic policy function) into the new entity best meets the assessment criteria. One of the best strategies for dealing with integrity issues in sport is to adopt an integrated approach across all issues, areas and sectors. Isolating integrity functions reduces the opportunities to connect the links between integrity threats and often leads to duplication of work across areas.

Part C considers the powers that the entity might need to ensure it can effectively undertake investigations of potential threats to integrity. This analysis is intended to support an in-principle decision. Final approval will be sought following further consultation with the sector. Against the counterfactual of no additional powers to support investigations, we considered the following two options for investigative powers:

- The entity has the power to require evidence as part of investigations (**recommended option**)

The preferred option is to provide the new entity with the power to require evidence. The ability of the integrity entity to investigate and address issues outside the context of the Code mitigates against the risk of some organisations declining to adopt the Code.

Part D considers the best approach to establish the Code as an enduring framework that lifts the standards of support and protection of participants across the sector. The Code will form the cornerstone of the sector's integrity system, setting clear minimum standards founded on fundamental human rights and indigenous rights. Against the counterfactual of a non-legislated Code or standards, we consider two options:

- Establish a voluntary Code as secondary legislation (**recommended option**)

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<sup>10</sup> Already agreed to by Cabinet in June 2022 (CAB-22-MIN-0210 refers).

- Mandate the Code in primary legislation for all or a subset of the sector

The preferred option is to establish a voluntary code in secondary legislation. On balance, officials consider that the benefits of a collaborative approach with the sector, the large variability within the sector in terms of size and capacity, and the availability of a range of non-legislative levers supports a non-mandated approach.

Finally, Part E considers the potential role the Sports Tribunal could have within the new institutional arrangements.<sup>11</sup> Against the counterfactual of no change to the jurisdiction or arrangements for the Tribunal, we consider two options:

- Expand the Sports Tribunal's jurisdiction to enforce the Code
- Expand the Sports Tribunal's jurisdiction to enforce the Code and remove the member cap (**recommended option**)

The preferred option is to expand the Sport Tribunal's jurisdiction and remove the member cap. Providing the system with an appeals body will increase participants' and organisations' confidence in the system. Removing the Tribunal's member cap and providing the Governor-General with the power to appoint temporary members will future-proof the Tribunal's ability to hear and resolve cases quickly.

Overall, we consider the preferred options will ensure consistent expectations that meet the needs of diverse participants because they:

- continue to focus on outcomes and flexible processes that enable organisations to support their members in ways that best meet their needs
- allow organisations to build on the work they are doing to build capability by retaining strengths of existing policies and processes, refining requirements, and adding some new practices, and
- align expectations for all participants, where their needs are shared, to improve clarity for participants and organisations.

The key expected benefit is improved subjective wellbeing of participants and potentially increased participation in sport and recreation.<sup>12</sup> Improving participants' subjective wellbeing could be expected to have flow-on public benefits.<sup>13</sup>

s9(2)(f)(iv)

Given the new entity will subsume existing DFSNZ functions, the existing 'Sports

<sup>11</sup> The Sports Tribunal is an independent statutory body that determines certain types of disputes for the sports sector. The Tribunal mainly hears anti-doping violations and appeals against selections made by a National Sporting Organisation or the New Zealand Olympic Committee. However, it can also hear other "sports-related" disputes if both parties and the Tribunal agree, and matters referred by the Board of Sport NZ.

<sup>12</sup> The Living Standards Framework recognises physical activity as not only important to individuals' physical health, but also conducive to safeguarding the future health and capabilities of children. Physical activity has also been found to be positively associated with mental wellbeing in New Zealand adults. Additionally, the Government recognises that equal access to opportunities that are free of discrimination supports people's wellbeing and the overall social cohesion of New Zealand.

<sup>13</sup> The public benefits from the recommended options have not been quantified due to time and resource constraints. For context, the economic value of sport and recreation to the New Zealand economy is estimated to be \$4.9 billion, or 2.3 per cent of GDP. Sport and active recreation also result in gains in productivity and health benefits valued at \$1.0 billion.

Anti-Doping' appropriation (\$4.758 million) will transfer to the new entity. s9(2)(f)(iv)  
s9(2)(f)(iv)

Subject to Cabinet decisions, the proposals will be implemented through a Sport and Recreation Integrity Bill. The Bill is included in this year's Legislation Programme with a Category 5 priority (instructions to be provided to Parliamentary Counsel in the year). It is anticipated that the Bill will be passed in mid 2023 to enable the new entity to be operational in 2024 per Ministerial expectations.

### Limitations and Constraints on Analysis

Cabinet has agreed in principle to establish a new stand-alone integrity entity, and that the new entity will:

- undertake all functions currently performed by DFSNZ (to be disestablished)
- establish a Code of Integrity
- undertake some or all integrity related functions currently performed by Sport NZ.<sup>14</sup>

While Cabinet agreed in principle to establish a new stand-alone integrity entity, the previous analysis was incomplete as it did not consider all feasible options for the institutional form of the new entity. Further, the full range of functions of the new entity were not considered.

#### *Evidence of the problem*

The assessment of sport and active recreation integrity issues and their impacts is robust and credible. Whilst the scale of harm in the sector is not currently quantifiable, there is evidence from a series of reviews<sup>15</sup> and from the complaints received by the SRCMS of the depth of harm for some participants.<sup>16</sup>

#### *Impact of recent interventions*

In response to the findings of the Sport Integrity Review, Sport NZ have completed or are in the progress of implementing the 22 recommendations (outlined further in Section 1). We acknowledge these recent initiatives and have assessed the current system with these changes in mind. However, these are very recent initiatives that have not yet been formally reviewed or evaluated. As a result, it is difficult to assess the impact of these changes on the problem outlined above or the case for change expressed in the IWG report.

#### *Quality of data used for impact analysis*

This RIS relies on a range of qualitative and quantitative data to assess the impacts of the proposed options, including government reviews, a preliminary and revised feasibility analysis, independent advice, international evidence, and anecdotal evidence from public submissions.

<sup>14</sup> CAB-22-MIN-0210 refers.

<sup>15</sup> See Appendix One for a full list of these reviews.

<sup>16</sup> The SRCMS has received 237 enquiries, complaints and disputes since the service began in February 2021. As at the end of August 2022, the SRCMS had 49 active matters and 188 matters had been closed. The SRCMS has bridged parties to early facilitation and/or mediation in 65 cases and of these over 90 per cent resolved some or all of the underlying issues. Following assistance from the Service a further 22 disputes were resolved against the backdrop of the service.

Economic data on the establishment and operating costs of an Integrity entity are largely based on the feasibility analysis conducted for the final Report of the IWG.<sup>17</sup> The feasibility study estimated establishment and operating costs based on comparable examples in the public sector, conversations with sector experts, existing appropriations, financial reports, budget bids, and previous modelling of costs in the public sector.

Much of the evidence related to New Zealand's policy and institutional framework is drawn from the IWG report as well as Sport NZ's 2019 Sport Integrity Review. These reports also have their limitations in terms of scope and analysis<sup>18</sup> but provide valuable insights and perspectives on the problem of integrity issues in sport.

*Timing constraints*

In June 2022, Cabinet invited the Minister for Sport and Recreation to report back in September 2022 and seek Cabinet decisions on the detailed design of the institutional form, governance, and accountability arrangements for the Integrity entity. This timeframe has constrained the breadth and depth of policy analysis. Consequently, consultation with government agencies, the sector and Māori on the preferred options has also been limited.

**Responsible Manager(s) (completed by relevant manager)**

Nicki Ablitt  
 Group Policy Manager  
 Strategic Policy and Corporate  
 Sport New Zealand



21 September 2022

**Quality Assurance (completed by QA panel)**

Reviewing Agency:	Manatū Taonga – Ministry for Culture and Heritage
Panel Assessment & Comment:	<p>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.</p> <p>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.</p>

<sup>17</sup> [Report of the Play, Active Recreation and Sport Integrity Working Group \(Appendix 8\) \(IWG, 2022\)](#)

<sup>18</sup> For example, the Sport Integrity Review did not disaggregate data for populations. This limited the conclusions that could be made about implications for vulnerable and disadvantaged groups, such as tamariki and rangatahi, women, disabled people, LGBTQ+, Māori and Pacific peoples and those from minority ethnic backgrounds.

## Section 1: Context and problem definition

### What is the context within which action is proposed?

#### Cabinet has agreed in principle to establish a sport and recreation integrity entity

1. In June 2022, Cabinet agreed to substantial reform of the sport and active recreation integrity system, accepting the case for change articulated by the Sport Integrity Review<sup>19</sup> and in the Report of the IWG.<sup>20</sup>
2. These reviews made findings that the current institutional arrangements fall short of providing a nationally consistent approach to integrity issues that places athletes and participants at the centre.
3. Informed by overseas definitions of integrity and capturing key elements of the New Zealand context, including te Tiriti o Waitangi, Cabinet endorsed the definition of integrity developed by the IWG:

*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 three principles of Te Tiriti o Waitangi, participation, protection, and partnership.*

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

4. In response to the issues raised in the reviews (discussed further below), Cabinet agreed in principle to establish a new independent entity responsible for overseeing integrity in the sport and active recreation system. The agreement was subject to further work on the form, governance arrangements, functions, powers and costings for the Integrity entity.<sup>21</sup>

#### The sport and recreation sector suffers from serious issues in relation to integrity

5. The June 2022 RIS previously outlined the serious issues in relation to integrity in the sports and active recreation sector.<sup>22</sup>
6. In summary, the last decade has seen a noticeable number of issues of athlete welfare, bullying, abuse, and inappropriate behaviour and culture come to public attention in high-performance sports, such as football, cycling and hockey, and these issues are continuing.<sup>23</sup>
7. While issues within high performance sport attract national media attention, there are similar issues arising regularly across the sport and recreation system, from elite to

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19 [Sport Integrity Review \(Sport NZ, 2019\)](#)

20 [Report of the Play, Active Recreation and Sport Integrity Working Group \(IWG, 2022\)](#)

21 CAB-22-MIN-0210 refers

22 [Regulatory Impact Statement: A new sport and recreation integrity entity \(Sport NZ, 2022\)](#)

23 [See, for example, Black Ferns Cultural & Environmental Review \(Muir et al., 2022\)](#)

grassroots. This is supported by reviews into individual sports<sup>24</sup> and data from the recently established SRCMS.<sup>25</sup>

8. Available survey data suggests that integrity issues may not have had a wide-reaching impact within our sports clubs or with the public at large.<sup>26</sup> However, we consider these results are likely to reflect the fact that most people have not had any personal experience with an integrity issue when participating in sport and recreation.
9. For those who do experience a problem, the consequences of integrity breaches can be serious, both for the individuals affected, their whānau and support networks. Serious impacts include significant distress,<sup>27</sup> poor mental health,<sup>28</sup> trauma,<sup>29</sup> and medical problems including eating disorders.<sup>30</sup>
10. Due to the diverse and informal structure of active recreation, there is little information about integrity issues in the active recreation sector. The active recreation sector will not have the same issues around match-fixing and doping, but it is possible that participants may face similar welfare issues such as bullying, abuse, and inappropriate culture.

### **Sport NZ has introduced various interventions in response to integrity issues**

11. The June 2022 RIS outlined the numerous reviews into integrity issues that have been undertaken or commissioned by Sport NZ, High Performance Sport New Zealand (HPSNZ) and National Sports Organisations (NSOs) (See **Appendix One** for a full list of these reviews).
12. The most comprehensive review was the Sport Integrity Review, undertaken by Sport NZ and released in September 2019. One of the 22 recommendations in the Review was to investigate the establishment of a sports mediation service.
13. In response to this recommendation, Sport NZ established the SRCMS in February 2021. The service is operated by Immediation New Zealand Limited, which has been contracted by Sport NZ to run the service independent of any sporting bodies, clubs and organisations. The SRCMS received 131 enquiries, complaints and disputes in its first year of operation.
14. In addition to establishing the SRCMS, the other 21 recommendations have either been completed or are in progress. Key initiatives include:
  - a. Sport NZ's National Sports Organisation Capability Project which has included strengthening governance guidance and templates
  - b. Ongoing work to strengthen National Sport Organisations capability
  - c. New child safeguarding approach launched in 2020

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<sup>24</sup> [See, for example, Independent Review of Gymnastics New Zealand \(Howman, Nicol & Vickery, 2021\)](#)

<sup>25</sup> Sport and Recreation Complaints and Mediation Service Snapshot of year 2021 - 2022 (Sport NZ, unpublished)

<sup>26</sup> Voice of the Participant Survey 2020/21 (Sport NZ, unpublished)

<sup>27</sup> [Black Ferns Cultural & Environmental Review \(Muir et al., 2022\)](#)

<sup>28</sup> [Independent Review of Gymnastics New Zealand \(Howman, Nicol & Vickery, 2021\)](#)

<sup>29</sup> Sport and Recreation Complaints and Mediation Service Snapshot of year 2021 - 2022 (Sport NZ, unpublished)

<sup>30</sup> [Independent Review of Gymnastics New Zealand \(Howman, Nicol & Vickery, 2021\)](#)



- d. Increased time limited funding for DFSNZ of \$4.3 million over 3 years allocated in 2020 through the COVID-19 Recovery Package
  - e. The new Sport NZ Integrity Community Portal launched in October 2020, and
  - f. Increasing baseline funding to \$2.2 million per annum from July 2022, for all funded partners to acknowledge and support the work that partners are undertaking across all aspects of integrity.
15. We acknowledge these recent initiatives and have assessed the system with these changes in mind. However, because these are very recent initiatives, it is difficult to assess the impact of these changes on the problem outlined above or the case for change expressed in the IWG report.

### **Many other countries are reassessing their sport integrity systems and structures**

16. Several countries have responded to high profile integrity scandals by analysing their institutional arrangements for ensuring integrity in sport. The IWG looked closely at these developments, paying particular attention to Australia and Canada.
17. In 2018, the Report of the Review of Australia's Sports Integrity Arrangements (the Wood Review) concluded that "at the heart of the framework, an effective and coordinated national capability" was needed.<sup>31</sup>
18. On 1 July 2020, Australia established Sport Integrity Australia (SIA) by combining the Australian Sports Anti-Doping Authority (ASADA), the National Integrity of Sport Unit and the nationally focused integrity functions of Sport Australia.
19. The SIA introduced a National Integrity Framework<sup>32</sup> which provides sports bodies with a suite of template policies to address integrity risks. Sport Australia have successfully facilitated very wide adoption of the Framework by including it as part of the eligibility criteria for recognition as an NSO/NSOD<sup>33</sup> (and consequential funding).<sup>34</sup> Additionally, in 2021, Sport Australia offered \$120,000 for NSOs to employ someone to assist with the adoption and implementation of the Framework.
20. In Canada, Sport Canada facilitated the development of the Universal Code of Conduct to Prevent and Address Maltreatment in Sport (UCCMS) by NSOs, sport service organisations and the Canadian Olympic and Paralympic Sport Institute (COPSI).
21. In 2021, the Sport Dispute Resolution Centre of Canada (SDRCC)<sup>35</sup> established the Office of the Sport Integrity Commissioner (OSIC) to administer the UCCMS.<sup>36</sup> In April 2022, the Government of Canada announced that the UCCMS must be adopted into the rules of all federally funded sport organizations

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<sup>31</sup> [Report of the Review of Australia's Sports Integrity Arrangements \(Wood, Howman & Murreihy, 2018\)](#)

<sup>32</sup> [National Integrity Framework \(SIA, 2021\)](#)

<sup>33</sup> National Sporting Organisation/National Sporting Organisation for people with Disability

<sup>34</sup> As of August 2022, 62 NSOs/NSODs have adopted the Framework.

<sup>35</sup> The Sport Dispute Resolution Centre of Canada (SDRCC) is a separate entity established in 2003 as an independent organisation funded by Sport Canada, with the aim of providing the Canadian sport community with the tools to prevent conflicts, and when they are inevitable, to resolve them.

<sup>36</sup> OSIC oversees a complaint intake process, conducts investigations, monitors compliance by signatory organizations, facilitates access to legal and mental health support, as applicable, and contributes to best practice guidance for sport organisations

## The Integrity Working Group recommended establishing a sport and recreation integrity entity

22. In December 2020, Sport NZ established the IWG to consider the most appropriate arrangements and structures to manage the various integrity elements across the system.
23. The IWG found that despite the progress in the last few years in addressing integrity issues in New Zealand sport and recreation, there is still a lack of capability across the sector in relation to integrity issues. While Sport NZ has progressed work it hopes will improve the capability across the sector, the IWG found that:
  - a. participants are not involved in the design or provision of integrity services
  - b. there are multiple players involved in the current system, with no single body entirely focused on all dimensions of integrity
  - c. there are no clear and consistent national integrity standards, and
  - d. there is a lack of trust in the ability of Sport NZ to act objectively and independently in addressing integrity issues given its close working and funding relationship with NSOs and the wider sector.
24. The IWG acknowledged that the impact of recent initiatives is difficult to assess. However, based on sector feedback and analysis of the system, the IWG concluded that core elements of the problem (the lack of single responsible integrity body with sufficient independence) are fundamental to the current institutional and regulatory arrangements.
25. The IWG considered two options for structural change having discounted the status quo as unable to deliver on design objectives and design principles developed by the IWG (informed by criteria set out in the Terms of Reference). The two options for change taken forward to feasibility testing were:
  - a. An evolutionary model which would involve (amongst other things):
    - establishing a new integrity unit within Sport New Zealand
    - a new statutory director of integrity within Sport New Zealand
    - the role of DFSNZ being expanded to take on competition manipulation functions
  - b. A new stand-alone integrity organisation independent of Sport New Zealand, which would involve (amongst other things):
    - DFSNZ folding into the new agency
    - Sport New Zealand's existing integrity functions transferring to the new agency.
26. The IWG recommended the establishment of a new entity, entirely independent of Sport New Zealand. The IWG also recommended the development of a Code of Integrity and New Zealand becoming a party to the Macolin Convention.<sup>37</sup> It concluded that, compared with Option A, Option B would better:
  - a. achieve actual and perceived independence and independent decision-making which fosters the trust of participants in the system

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<sup>37</sup> The [Council of Europe Convention on the Manipulation of Sports Competitions](#) (known as the Macolin Convention) is the only multilateral treaty that aims to combat manipulation of sports competition.

- b. support a participant centred approach that accommodated the varying needs of participants
  - c. provide a simple accessible system that covers all dimensions of integrity
  - d. enable a more consistent interpretation and application of integrity standards, and
  - e. provides a cost-effective solution by protecting against and resolving integrity issues effectively and efficiently.
27. Sector feedback supported a separate entity, primarily because it would best achieve actual and perceived independence. Many also saw advantages of accessibility and efficiencies in a single integrity entity, and clearer accountabilities.

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

28. There are a range of bodies working in various areas related to sport and active recreation integrity that have statutory roles providing education, advocacy services, drug testing, and complaints resolution.
29. Sport NZ is a kaitiaki for the sport and recreation sector, with overall responsibility for policy and funding. Sport NZ carries out a range of integrity functions, including disputes resolution, education, guidance, training and capability building in relation to good governance, member protection and child safeguarding in particular.
30. Since it was established in August 2019, Sport NZ's Integrity Team has assisted sport and recreation organisations with 29 integrity related issues. This has included several bullying and harassment matters, allegations of assault, child protection, unfair treatment and board/committee issues. Organisations also raise issues directly with Sport NZ partnership managers and with HPSNZ.
31. High Performance Sport New Zealand (HPSNZ) was established as a subsidiary of Sport NZ and is focussed primarily on the delivery of outcomes related to high performance sport. In relation to integrity, it has an important role to support NSOs to provide a safe environment for athletes in high performance environments.
32. Although Sport NZ has these system-level responsibilities, there are two entities with a specific focus on sport integrity issues :
- a. **DFSNZ:** DFSNZ is an Independent Crown Entity with statutory responsibility to implement and enforce the World Anti-Doping Code under the Sports Anti-doping Act 2006. DFSNZ operates as the regulator of the Code and is responsible for providing anti-doping education to the Sector and enforcing the Code. It does this through a testing and investigation regime, with cases brought to the Sports Tribunal for determination.
  - b. **Sports Tribunal of New Zealand:** The Sports Tribunal is an independent body that determines certain types of disputes for the sports sector. The aim of the Tribunal is to ensure that national sport organisations and other parties to a sports dispute, such as athletes, have access to an affordable, just and speedy means of resolving a sports dispute.
33. Additionally, the following criminal justice agencies have responsibilities addressing integrity issues in the sector:
- a. **New Zealand Police:** Police investigate and prosecute criminal match-fixing, organised crime activity, some corruption and other criminal behaviours under the Crimes Act 1961. Section 240A clarifies that certain "match-fixing"

behaviour is a form of deception.<sup>38</sup> Police also administers the Child Protection (Child sex Offender Government Registry) Act 2016, which aims to reduce the risk posed by serious child sex offenders, and the Police Vetting Service, which assesses suitability of individuals for some roles where safety is a consideration.

- b. **The Serious Fraud Office (SFO):** The SFO is primarily responsible for receiving reports of financial corruption, bribery, and complex fraud. It also investigates and prosecutes such cases with Police.
34. Finally, the following agencies are tangentially involved in the sport and recreation sector:
- a. **Oranga Tamariki:** Oranga Tamariki is responsible for child protection, including responding to reports of concern.
  - b. **Worksafe:** Worksafe is responsible for integrity issues that fall under the Health and Safety at Work Act 2015. Sector organisations have a duty of care under the Act to keep athletes, coaches, volunteers and other participants safe.
  - c. **Ministry of Primary Industries (MPI):** MPI investigate and prosecutes animal welfare breach, including racing animals, under the Animal Welfare Act 1999.
  - d. **The National Animal Welfare Advisory Committee (NAWAC):** NAWAC is an independent statutory committee established under the Animal Welfare Act 1999. It administers several codes of welfare for animals<sup>39</sup> and provides advice to the minister responsible for animal welfare (including animals used for racing).<sup>40</sup>
35. There is a wider network of wellbeing-focused entities with a stake in the sport and active recreation space. This includes the Human Rights Commission, Health and Disability Commissioner, Office of the Children's Commissioner, and Mental Health and Wellbeing Commission.

### What is the policy problem or opportunity?

36. The June 2022 RIS previously outlined the serious issues in relation to integrity in the sports and active recreation sector.<sup>41</sup> The Sport Integrity Review<sup>42</sup> and the Report of the IWG<sup>43</sup> identified system-wide issues with how integrity issues are managed and highlighted a lack of system leadership needed to address these issues.
37. Sport NZ acknowledges that despite several system improvements in recent years the integrity system is a significant distance away from one which adequately protects the wellbeing of participants. This is evidenced by the nature of the issues coming to the

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38 Deception, in this context, is any act or omission that is done or omitted to be done with intent to influence a betting outcome by manipulating the overall result of an activity or any event within an activity.

39 [All animal welfare codes](#)

40 See, for example, [Feedback to support the independent review of greyhound racing and greyhound welfare in New Zealand \(NAWAC, 20121\)](#).

41 [Regulatory Impact Statement: A new sport and recreation integrity entity \(Sport NZ, 2022\)](#)

42 [Sport Integrity Review \(Sport NZ, 2019\)](#)

43 [Report of the Play, Active Recreation and Sport Integrity Working Group \(IWG, 2022\)](#)

attention of the SRCMS, the ongoing issues with athlete treatment and wellbeing in high performance sport and the feedback provided to the IWG.

38. While different players in the system have leadership responsibilities, no organisation is charged with leading, monitoring, or strengthening the integrity of the sport and active recreation system. While Cabinet has already agreed in principle to establish a new standalone entity that would take on this leadership role,<sup>44</sup> Part A considers the full suite of form/governance options within the scope of Cabinet's in-principle decisions, against the status quo and in light of the original problem definition (lack of independence).
- 39.
40. The remaining sections take the preferred option from Part A, with the features already agreed in-principle by Cabinet (that the new entity will assume DFSNZ functions, implement a Code of Integrity, assume some or all of Sport NZ's integrity functions),<sup>45</sup> as the counterfactual, and consider options to further address the following features of the underlying problem definition and some further policy problems/opportunities:

**Part B:** The current institutional arrangements are fragmented. Participants and sector organisations find the current arrangements convoluted, with the roles and responsibilities of government agencies unclear. Significant improvements to participant wellbeing and safety can be made if there is an integrated, connected, and cohesive system.

**Part C:** Non-criminal investigations into integrity issues within sport and active recreation are presently reliant on cooperation and goodwill of organisations and participants. This may impact the ability of investigators to gather all the necessary evidence to put together a complete picture of an integrity breach. The entity will more effectively protect participants with information gathering powers.

**Part D:** The current system lacks clear integrity standards (other than for anti-doping). While Sport NZ has provided some very good resources on its integrity portal, there is no requirement on the Sector to adopt these policies and take-up is mixed. The system can be simplified and made more user-friendly through a national set of integrity standards adopted across the sector.

**Part E:** There is an opportunity to enhance the complaints and dispute resolution process by expanding the jurisdiction of the Sports Tribunal. The Tribunal's member cap may need to be reconsidered so that it has the authority, capacity and capability to adjudicate disputes related to the Code.

### What objectives are sought in relation to the policy problem?

41. The overarching objectives in relation to the above opportunities are to promote and protect the safety and wellbeing of participants in sport and active recreation by:
- preventing and addressing threats to integrity in sport and active recreation, and
  - promoting participants' trust and confidence in integrity within the sport and active recreation sector.

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44 CAB-22-MIN-0210 refers.

45 Ibid.

42. To the extent that the preferred options achieve these objectives, it could be expected to support to the secondary outcomes of increased participation, including by vulnerable and disadvantaged groups, such as tamariki and rangatahi, women, disabled people, LGBTQ+, Māori and Pacific peoples and those from minority ethnic backgrounds.
43. In this context, there are specific objectives addressed in each section:
- a. The objective of Part A is to ensure the entity dealing with integrity issues has actual and perceived independence.
  - b. The objective of Part B is to accommodate the varying needs of participants and provide a simple access point for participants and organisations to address all integrity issues.
  - c. The objective of Part C is to enable the new entity to undertake effective investigations following an alleged integrity breach.
  - d. The objective of Part D is to enable a more consistent interpretation and application of integrity standards across the system, meeting national and international obligations.
  - e. The objective of Part E is to ensure the Sports Tribunal can perform an effective role in the new system and is future-proofed in the context of the recommended changes.

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## Section 2: Deciding upon an option to address the policy problem

### What scope will options be considered within?

#### Relevant Cabinet decisions

44. The analysis in this RIS is in the context of Cabinet's June 2022 in-principle decision to establish a new independent integrity entity.
45. The majority of our analysis has therefore focused on the form, functions, and powers for an Integrity entity, not the need to establish an Integrity entity itself. Measures that could potentially strengthen integrity capability (e.g., a statutory role at Sport NZ),<sup>46</sup> but did not resemble a separate entity in their form, were given limited consideration.

#### Stakeholder feedback

46. As mentioned in the *Limitations and Constraints on Analysis* section, the short timeframe to report to Cabinet limited the opportunity to consult on the preferred options. Consequently, consideration of sector feedback largely relied on the engagement undertaken by the IWG and Sport NZ on the Sport Integrity Review.
47. **Appendix Two** lists the organisations that were engaged with by:
  - a. the Integrity Transition Programme on the options in the RIS
  - b. the IWG on the existing system and the two options for structural change, and
  - c. Sport NZ for the Sport Integrity Review.
48. In 2019, Sport NZ commissioned a feasibility study for a complaints management and dispute resolution service. Stakeholder consultation undertaken as part of the feasibility study further highlighted the challenges that many of the smaller, low-resourced organisations face in managing integrity issues.
49. The Integrity Transition Programme has begun targeted engagement with Māori partners from the sector, drawn from a broad range of codes and organisations. Engagement has focused on the purpose and priorities of the new entity, and on the proposed governance model. Further consultation with the sector, Māori partners and other affected stakeholders will be carried out on detailed design and implementation over the coming months.

### What criteria will be used to compare options to the status quo?

50. Given the objectives above, we have chosen core criteria that represent not just the standard considerations for public organisations (cost, public accountability etc.) but also criteria that represent the ability of the organisation to strengthen and protect the integrity of the sport and active recreation system to ensure all participants are safe, compete on a level playing field, and feel included.
51. The options set out below will be assessed against the following core criteria:

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<sup>46</sup> This option was the subject of significant analysis in the RIS in support of the June 2022 Cabinet decisions.

- a. **Enhancing participant wellbeing and safety:** Does the option effectively enhance and support the wellbeing and safety of participants and make the system more user-friendly?
- b. **Cost effective** – Does the option provide a cost-effective solution (for the establishment and the ongoing operation)?
- c. **Independence from funding and promotion of the sector:** Does the option encourage public trust and confidence in the fairness of the system through independence and independent decision making?
52. As the different sections address different problems, the options in some sections are compared using additional criteria. The options in Part A and C are assessed against the core criteria and the criterion *Effectively deliver functions*. The options in Part C and D are assessed against the core criteria and the criterion *Developing good relationships*. These criteria have the following definitions:
- a. **Effectively deliver functions:** Is the option capable of delivering the proposed functions?
- b. **Developing good relationships:** Does the option encourage participants, sector organisations, and the entity to cooperate in support of the ongoing wellbeing and safety of participants?
53. We have rated the options using the following scale:
- ++ much better than doing nothing/the status quo/counterfactual
  - + better than doing nothing/the status quo/counterfactual
  - 0 about the same as doing nothing/the status quo/counterfactual
  - worse than doing nothing/the status quo/counterfactual
  - much worse than doing nothing/the status quo/counterfactual



## Part A: Form and governance of new integrity

### Problem definition and objective

54. Cabinet has agreed in principle to establish a new independent integrity entity responsible for overseeing integrity in the sport and active recreation system.
55. It remains critical that the organisational form, governance and accountability arrangements achieve actual and perceived independence and independent decision-making which fosters the support, confidence and trust of participants in the system.
56. The IWG heard very clearly from athletes and others that the lack of independence of Sport NZ and HPSNZ from the organisations they fund can make athletes and others in high performance programmes reluctant to raise issues or complaints. Unless athletes and participants feel safe to do this, issues are likely to remain either unaddressed or escalate, causing greater levels of harm to those involved.

### Status Quo

57. As the analysis in the previous RIS was not fully formed, the options under Part A are compared against the status quo of Sport NZ and DFSNZ performing their current integrity-related functions. Sport NZ carries out various activities to support the integrity of the sport and recreation system. These tasks include education, guidance, training, and capability building in relation to good governance, member protection and child safeguarding. Sport NZ also established and funds the independent the SRCMS. DFSNZ is New Zealand's National Anti-Doping Organisation (NADO), which primarily implements the World Anti-Doping Code through the Sports Anti-Doping Rules. They also provide education on anti-doping, undertake drug testing of sports persons, and investigate rule violations.
58. In the absence of structural change, progress on strengthening the integrity system to provide independence and increase participant trust and confidence is expected to continue by progressing the development of an athlete voice mechanism and monitoring the operations of the SRCMS to assess whether it is providing an effective response to integrity issues arising in the sector and targeting appropriate interventions.

### What other options are being considered?

59. In order of increasing independence from Sport NZ, we considered three options for the organisational form of the new entity. Initially, we also considered an Autonomous Crown Entity. This was discarded as it was rated almost identical, but not preferable, to the Independent Crown Entity option because it offers less independence. These options are effectively being compared to a status quo where the absence of an independent entity means that the Crown is not effectively addressing integrity issues in the sport and recreation sector.

### Departmental Agency

60. Under this option, the integrity entity would be an operationally autonomous agency hosted within a public service department, most likely the Ministry of Culture and Heritage. As a departmental agency, it would be headed by its own chief executive who would likely be directly responsible to the Minister for Sport and Recreation for its clearly identified, ring-fenced activities and performance.

### Independent Crown Entity (ICE)

61. Under this option, the new entity could be established as an ICE under the Crown Entities Act 2004. This entity would be accountable to the Minister for Sport and Recreation (and monitored by the Ministry for Culture and Heritage) but would retain independence in terms of giving advice and would not have to give regard to government policy.
62. The entity's Board would have between seven and nine members, including a chairperson. The board members would be required to have knowledge and experience in relevant areas.

### Bespoke statutory entity

63. Under this option, the entity would be established as a bespoke, independent statutory entity with the purpose to act on behalf of sector participants.
64. This body would be independent from government but would not fall within the Crown Entities Act 2004. For analytical purposes, we have assumed that the functions and publicly funded nature of the entity would require some essential financial prudential requirements and accountability to the public. Additionally, half of the board members would be appointed by the Minister and half through a process undertaken on behalf of sector participants (similar to Te Mātāwai under the Māori Language Act 2016).

### How do the options compare to the status quo/counterfactual?

	Participant wellbeing	Cost	Independence	Effectively deliver functions
<b>Status quo</b>	0 Athletes and participants will still be required to deal with multiple parties across the integrity landscape. This will continue to be a barrier to people participating in sport and active recreation as some people stop participating when the process of resolving issues is complex.	0 Current costs of delivering integrity services sit at \$9.6 million per annum, \$5.1 million of which funds the operations of DFSNZ.  Additional funding will be required for both Sport New Zealand and DFSNZ to fully address the issues identified across the sector and in	0 Both actual and perceived independence continue to be a significant barrier to trust and confidence under this option as Sport New Zealand remains responsible for both addressing integrity issues that arise within organisations and funding and	0 DFSNZ is an effective regulator of the WADA Code. It would continue to provide anti-doping education to the sector and enforce the Code through a testing and investigation regime.  Sport New Zealand will be required to continue to balance its responsibilities regarding integrity

	<p>Additionally, participants may continue to be reluctant to raise issues with Sport NZ because of the close relationship between Sport NZ and many NSOs. This increases the risk of prolonging victimisation.</p>	<p>Sport New Zealand's case, retain integrity as a priority.</p>	<p>supporting those organisations to be successful.</p>	<p>with funder and system kaitiaki, which could mean that integrity issues do not receive the priority required to adequately protect the wellbeing of participants.</p> <p>Work could be done to enhance visibility of the dispute resolution pathway offered by the SRCMS but this pathway remains voluntary so it is not accessible to all.</p>
<p><b>Departmental Agency</b></p>	<p style="text-align: center;">+</p> <p>This option provides clear responsibility for an agency to deliver regulatory functions with a single focus on participant wellbeing. With operational autonomy and clearly ring-fenced activities to focus on, the entity would likely enhance participant wellbeing compared to the status quo.</p> <p>However, as the departmental agency would sit within another department, there is a minor risk that participants might still find the system difficult to navigate.</p>	<p style="text-align: center;">-</p> <p>The existing integrity services can be delivered under this option at similar costs.</p> <p>This option could provide minor savings through economies of scale (e.g., sharing back-office functions with the host department).</p> <p>There is an additional cost to establish a new departmental agency and additional funding will be required for the entity to take on further functions.</p>	<p style="text-align: center;">++</p> <p>Under this option, the integrity entity would be independent from Sport NZ and HPSNZ. Participants may therefore be more likely to raise issues.</p>	<p style="text-align: center;">-</p> <p>Under this option, the entity would effectively deliver a Code and provide education to the sector.</p> <p>For reasons of public confidence, investigations should be undertaken independently from Ministerial influence.<sup>47</sup> Under this option, the entity would be directly responsible to the Minister. Ministerial influence, or the perception of influence, could negatively affect its ability to effectively undertake investigations.</p> <p>There is also a risk that under this option, some of the functions would be under-resourced as a departmental agency is typically suitable for smaller organisations.<sup>48</sup></p>

47 [Reviewing the Machinery of Government \(Public Service Commission, 2007\)](#)

48 [Departmental Agencies – Machinery of Government Supplementary Guidance Note \(Te Kawa Mataaho\)](#)

<p><b>Independent Crown Entity</b></p>	<p style="text-align: center;">++</p> <p>This option provides clear responsibility for one entity to deliver regulatory functions with a focus on participant wellbeing. Likewise, participants will likely receive better support as the entity will have integrity issues as its single focus.</p> <p>An entity separated from other agencies, operationally and perceptually, reduces complexity and makes the system more user-friendly for participants.</p> <p>The board structure of an ICE provides an opportunity to incorporate people with a broader range of knowledge and experience than currently involved. Participants will benefit from a board that represents the diversity and breadth of perspective found in the sector.</p>	<p style="text-align: center;">-</p> <p>The existing integrity services can be delivered by an ICE at similar costs.</p> <p>However, there is an additional cost <b>s9(2)(f)(iv)</b> to establish a new entity and additional funding will be required for the entity to take on further functions.</p>	<p style="text-align: center;">++</p> <p>This option is likely to lead to stronger public trust and confidence as it would be operationally independent (actual and perceived) from Sport NZ, HPSNZ and ministerial control.</p> <p>An entity with actual and perceived independence from promoting and funding the sector is more likely to hold the sector to account in an unbiased way.</p>	<p style="text-align: center;">++</p> <p>Under this option, the entity could effectively deliver a Code and provide education to the sector.</p> <p>As it would be independent from Sport NZ it could deliver an effective complaints and dispute resolution function.</p> <p>DFSNZ is currently an ICE, which enables it to best deliver its investigative function. This option would continue the independence from Ministerial influence, strengthening the investigative function.</p>
<p><b>Bespoke statutory entity</b></p>	<p style="text-align: center;">++</p> <p>This option provides clear responsibility for one entity to deliver regulatory functions with a focus on participant wellbeing. Similar to the ICE option, participants will receive better support from an agency focused solely on integrity issues.</p> <p>This option provides more scope to make sure support is tailored to specific sector and participant needs. For example, for analytical purposes, we have assumed that half the board would be selected</p>	<p style="text-align: center;">--</p> <p>The existing integrity services can be delivered by a bespoke entity at similar costs.</p> <p>However, establishing a new entity from scratch would involve significantly higher costs without the Crown Entities Act framework to guide it.</p>	<p style="text-align: center;">++</p> <p>This option would strengthen public confidence in the system as the entity would be completely independent (actual and perceived) from Sport NZ and ministerial control. Stakeholders are more likely to trust that the sector is held to account in an unbiased way.</p>	<p style="text-align: center;">+</p> <p>This option could effectively deliver the functions agreed to by Cabinet, including the complaints, dispute resolution, and investigative functions.</p> <p>The absence of a genuine dialogue between the Crown and the entity in setting expectations and outputs creates a risk that performance may not meet public or government expectations.</p>

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	through a process undertaken on behalf of sector participants.			
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**What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

- 65. An Independent Crown Entity (ICE) is the preferred option for the organisational form. An ICE is most likely to meet the critical criteria of enhancing wellbeing and safety and is an improvement on the status quo in respect of all other criteria except cost.
- 66. In line with this option, stakeholder feedback favoured a stand-alone entity that was independent from Sport NZ and ministerial direction.
- 67. This option provides for the entity to be independent and provide support to sector organisations. The independence provided by this option sends a signal to stakeholders that the new entity is intended to be completely impartial when handling complaints and investigations.
- 68. Establishing the new entity as an ICE also provides independence from Sport NZ and is expected to support a high level of transparency and credibility, by encouraging participants and organisations to engage in a fair and impartial process.

**Part B: A centralised and integrated approach to integrity**

**Problem definition and objectives**

- 69. Clear regulatory roles are critical to regulator accountability and focus, compliance by regulated groups, predictable decisions, and enforcement and regime legitimacy.
- 70. The fragmented coverage of existing regulatory agencies means that participants and sport and active recreation organisations find the current institutional arrangements convoluted, with the roles and responsibilities of government agencies unclear. This undermines the ability for government to ensure all participants are safe, compete on a level playing field, and feel included.
- 71. The functions already agreed for the integrity entity will go a long way towards achieving key objectives. However, there may be further opportunities to support participant wellbeing and make the system more user friendly for athletes and participants.

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## Counterfactual

72. The counterfactual is based on the in-principle decisions made by Cabinet in June 2022.<sup>49</sup> The new integrity entity would:
- a. establish a National Code of Integrity, and
  - b. assume the responsibilities of DFSNZ.
73. Cabinet also agreed that the new entity would “undertake some or all integrity related functions currently performed by Sport New Zealand.” However, for the purpose of analysis, we have treated establishment of the Code as the minimum functions transferred from Sport NZ (the Code being equivalent to the Integrity Framework). Sport NZ would retain its remaining integrity functions, such as education, capability building and the management of the complaints system.
74. Based on the definition of integrity that Cabinet approved, the entity’s function will relate to the areas of anti-doping, competition manipulation, member protection, child safeguarding, anti-corruption, and organisational culture.

## What other options are being considered?

### *Prioritise compliance and enforcement functions*

75. Under this option, on top of the new entity’s functions under the counterfactual, Sport NZ’s compliance and enforcement functions would be consolidated into the new entity.
76. The new entity would prioritise preventing and addressing threats to integrity. The new entity would:
- a. Provide independent, participant-centric complaints and dispute resolution mechanisms (including a disciplinary panel and bicultural dispute resolution options)
  - b. Investigate matters relating to integrity in the sport and active recreation sector, and
  - c. Monitor changes and themes relating to integrity in the sector, including through engagement with participants and organisations.
77. Sport NZ would support the entity by promoting participants’ trust in integrity within the sector by:
- a. Providing support, education, and guidance relating to integrity for participants and the sector, and

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<sup>49</sup> CAB-22-MIN-0210 refers

- b. Leading and coordinating responses to integrity issues in sport and active recreation within government and with international partners.

*Consolidate all functions*

78. Under this option, the new entity would be responsible for all operational integrity functions currently performed by Sport NZ. In addition to the counterfactual and the compliance and enforcement functions of the previous option, the integrity entity will:
- a. Provide support, education, and guidance relating to integrity for participants and the sector, and
  - b. Lead and coordinate responses to integrity issues in sport and active recreation within government and with international partners.<sup>50</sup>

**How do the options compare to the status quo/counterfactual?**

	Participant wellbeing	Cost	Independence
<b>Counterfactual – Establish a Code and assume the responsibilities of DFSNZ. Sport NZ retains its other integrity functions.</b>	0	0	0
	<p>The existing system is confusing, with multiple agencies focused on sport integrity. This will continue to be a barrier to people participating in sport and active recreation after they have experienced an integrity issue as some people stop participating when the process of resolving issues is complex.</p> <p>Sport NZ will be required to continue to balance its responsibilities regarding integrity with funder and system kaitiaki. This would mean that participants might receive less education and support. It could also mean that integrity issues remain under-investigated.</p> <p>Work could be done to enhance visibility of the dispute resolution pathway offered by the SRCMS.</p>	<p>Establishing the Code will involve a minor cost to the new entity.</p> <p>There is also a minor cost to disestablish DFSNZ and establish those functions in a new entity. However, those costs are accounted for under Part A.</p>	<p>Both actual and perceived independence continue to be a significant barrier to trust and confidence under the counterfactual as Sport NZ remains responsible for both addressing integrity issues that arise within organisations and funding and supporting those organisations to be successful.</p>

<sup>50</sup> Sport NZ would retain the policy function for integrity issues and the sport integrity regulatory system.

<p><b>Consolidate compliance and enforcement functions into new entity</b></p>	<p style="text-align: center;">+</p> <p>Consolidating these functions will make it easier for participants to raise integrity issues and engage with the process as participants can find the Code and the process for reporting issues against the Code through the same organisation.</p> <p>A single enforcement agency is also more likely to provide consistent enforcement compared to the counterfactual. Inconsistent enforcement can discourage participation as participants and organisations become unsure how regulators treat their activities. Inconsistency can also be perceived as unfair and undermine the regulators credibility.</p> <p>As with the counterfactual competing priorities within Sport NZ may continue to impact on its delivery of integrity functions.</p>	<p style="text-align: center;">0</p> <p>Retaining a separation of functions between two entities is likely to incur the same costs as the counterfactual.</p>	<p style="text-align: center;">+</p> <p>Participants are also more likely to have confidence that NSOs will be accountable to an entity that is not responsible for promoting and funding sport.</p> <p>Perceived independence could continue to be a barrier to trust and confidence for Sport NZ as it delivers some of the integrity functions. However, this barrier would be reduced compared to the counterfactual as the new entity will be responsible for complaints, dispute resolution and investigations.</p>
<p><b>Consolidate all integrity functions to one entity</b></p>	<p style="text-align: center;">++</p> <p>Consolidating all integrity functions will make it easier for participants to raise integrity issues and engage with the process.</p> <p>Under this option, there is reduced risk that organisations receive contradictory information/guidance related to integrity.</p> <p>Integrating all integrity functions into one organisation prevents gaps between regulatory regimes and means participants' wellbeing is protected in all activities.</p> <p>There is a small risk that the entity is not equipped to deliver all of the integrity functions, especially in its early establishment.</p>	<p style="text-align: center;">+</p> <p>This option will incur minor savings compared to the counterfactual and the other option as duplicated functions (i.e., education about bullying and education about anti-doping) can be incorporated and delivered from one agency.</p>	<p style="text-align: center;">++</p> <p>Under this option, all integrity functions will be delivered by the independent entity, removing issues of perceived as well as actual independence, and strengthening participants' confidence in the system.</p>

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### What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

79. The impact analysis indicates that consolidating all integrity functions currently performed by Sport NZ (except the strategic policy function) into the new entity best meets the assessment criteria. One of the best strategies for dealing with integrity issues in sport is to adopt an integrated approach across all issues, areas and sectors.<sup>51</sup> Isolating integrity functions reduces the opportunities to connect the links between integrity threats and often leads to duplication of work across areas.
80. Adopting an integrated model also facilitates a 'no wrong door' policy. Cross agency co-operation is important, and the new integrity entity will provide a clear entry-point for any complaints or issues relating to integrity in sport and recreation. These can be effectively triaged and responded to by the appropriate agency.<sup>52</sup>
81. Finally, an integrated approach to sport and active recreation integrity will enable stronger partnerships and engagement with stakeholders. A key focus of the new entity will be to build and maintain the capacity and capability of organisations to identify and respond to integrity issues at an earlier stage. Consolidating responsibility for all areas of integrity will make it easier for sector organisations to engage and reduce the likelihood of engagement fatigue.
82. Similarly, the integrity entity will be New Zealand's representative for international agreements and coalitions focused on sport and recreation integrity. The entity will assume responsibility for enforcing the World Anti-Doping Code under the Sports Anti-doping Act 2006 and will be the responsible agency if the Government decides to become a signatory to the Convention on the Manipulation of Sports Competitions (also known as the Macolin Convention).

### Part C: Powers relating to investigations and addressing integrity issues

83. This analysis is intended to support an in-principle decision. We anticipate that a range of stakeholders will have views on the proposed powers to compel information from persons who may not be subject to the Code.

#### Problem definition and objectives

84. One of the proposed functions of the new entity is undertaking investigations into integrity issues. There may be an opportunity to further support efficient and effective investigations.

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<sup>51</sup> [Sport Integrity and Corruption: Best Practice Australian and International Policy & Program Delivery Approaches \(Australian National University, 2021\)](#)

<sup>52</sup> Other agencies already monitor and respond to some aspects of sub-criminal behaviour related to integrity, including Oranga Tamariki, Human Rights Commission, and the Children's Commissioner.

## Counterfactual

85. The new entity would have the existing powers of DFSNZ. These mainly relate to ensuring New Zealand complies and implements the WADA Code and associated Sports Anti-Doping Rules.<sup>53</sup>
86. The entity will receive complaints involving any organisation (signatory and non-signatory) and, with the organisation's agreement, resolve them. Organisations (and their members) that adopt the Code will be bound by that agreement to cooperate with any investigation by the entity. This is approach taken in Australia to facilitate cooperation with investigations.
87. The entity will also be able to investigate potentially serious/systemic integrity issues on its own initiative and report on findings even where an organisation has not adopted the Code. However, those organisations and individuals involved can choose the degree to which they cooperate with an investigation.

## What other options are being considered?

### *Information gathering powers*

88. Under this option, the entity will also have powers to:
  - require any person to furnish information, and to produce documents or things in the possession or under the control of that person, as in the opinion of the entity are relevant to the subject matter of an investigation.
  - summon and examine any person who is able to give information relating to the matter under investigation.
89. The Integrity Transition Programme is currently developing safeguards to ensure the information gathering power is exercised appropriately. This is likely to include the following provisions:
  - the power may only be exercised where the decision-maker has reasonable grounds to believe it is necessary for the purpose of an investigation
  - the power should only be exercised if the entity cannot acquire the information by other means
  - the entity must have policies that cover the range of information gathering activities, so that staff are well supported, and governance is effective

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<sup>53</sup> DFSNZ's powers are outlined in [section 13 of the Sports Anti-Doping Act 2006](#)

- the power must be exercised with regard to the wellbeing of any person who may hold the information concerned.

**How do the options compare to the status quo/counterfactual?**

	Participant wellbeing	Cost	Independence	Good relationships	Effectively deliver functions
<b>Counterfactual – existing powers of DFSNZ but no information gathering powers for investigations</b>	<p>0</p> <p>Participant wellbeing is supported through investigation of potential integrity issues. The entity will be able to investigate doping in sports that have adopted the WADA Code as DFSNZ currently can.</p> <p>The entity will continue to support participants through the SCRMS complaints process but will be limited in their ability to investigate an organisation that chooses not to cooperate.</p>	<p>0</p> <p>The cost of investigating breaches of the WADA Code is expected to remain the same.</p> <p>Undertaking investigations related to the Code and systemic issues will involve additional costs. These are difficult to estimate as the number of potential issues arising from the Code is unknown currently.</p>	<p>0</p> <p>The entity will have independence when undertaking investigations.</p>	<p>0</p> <p>Some organisations will not like being investigated. However, the impact to the relationship with the sector will likely be minimal as organisations that have not adopted the Code will be able to choose the degree to which they cooperate.</p>	<p>0</p> <p>Investigations will be stifled if some organisations choose not to cooperate.</p>
<b>Information gathering powers for investigations</b>	<p>+</p> <p>This option supports participant wellbeing as it enables the entity to discover facts about integrity issues that may be withheld under the counterfactual.</p> <p>There is a risk that compelling participants to provide information or give evidence might retraumatise</p>	<p>0</p> <p>There is a chance that an organisation could incur additional costs if multiple people were required to appear in person as part of a comprehensive investigation.</p> <p>There is likely to be additional costs involved in investigations as a result of</p>	<p>0</p> <p>The option does not have inherit benefits over the status quo.</p>	<p>-</p> <p>There is a moderate risk that the entities relationship with some stakeholders will be damaged if the use of this power is perceived as government overreach.</p>	<p>+</p> <p>The entity may get a more accurate picture of integrity issues in the sector. This will enable targeted improvement where issues are identified.</p>

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	them if they have been victimised.	increased information gathering and processing.			
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**What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

90. The preferred option is to provide the new entity with the power to require evidence.
91. Without the ability to request information, the investigative powers of the entity will be constrained in two situations in particular:
  - a. where the matter under investigation has occurred outside of Code organisation and the organisation or relevant individuals are non-cooperative, and
  - b. where the matter under investigation has occurred within a Code organisation but where critical information is held by a person outside the organisation such as a former participant.
92. We understand that the introduction of new powers warrants careful consideration as they can trespass unduly on personal liberties and rights. However, the ability to require information is a feature of similar entities with an investigative role (for example, the Children’s Commissioner and Fisheries Officers).
93. As outlined above, the ability of the integrity entity to investigate and address issues outside the context of the Code mitigates against the risk of some organisations declining to adopt the Code. This enables the entity to act where necessary to protect participants and support the integrity of the sport and recreation system regardless of the size or status of the organisation.
94. As mentioned above, this analysis is intended to support an in-principle decision. The Integrity Transition Programme intends to undertake further consultation with a range of stakeholders. This work will include developing a range of safeguards on the use of the power to ensure it exercised only where necessary and having regard to the wellbeing of any person who may hold the information concerned.
95. Following consultation, we will report back to Cabinet with further detail on this proposed power.

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## Part D: Establish a Code of Integrity

### Problem definition and objectives

96. The current system lacks clear integrity standards (other than for anti-doping). While Sport NZ has provided some very good resources on its integrity portal, there is no requirement on the Sector to adopt these policies and take-up is mixed.
97. In June 2022, Cabinet agreed in principle that the Integrity entity would establish a Code of Integrity.<sup>54</sup> The Code will form the cornerstone of the sector's integrity system, setting clear minimum standards founded on fundamental human rights and indigenous rights.
98. The objective of this section is to enable a more consistent interpretation and application of integrity standards across the system, meeting national and international obligations.

### Counterfactual

99. The new entity would publish a non-legislated Code and encourage organisations to adopt the Code through education and engagement. Signatories to the Code would be subject to the jurisdiction of the entity for investigation and enforcement of integrity breaches.
100. Adoption of the Code could be encouraged through non-legislative levers. For example:
  - a. Sport NZ might amend its relationship agreements with the entities it funds so that adoption of and compliance with the Code (including by all members affiliated to the NSO/ National Recreation Organisation (NRO)) is a prerequisite to receive funding.
  - b. Sport NZ may also rescind recognition of an organisations status as a NSO if the organisation does not adopt or comply with the Code.<sup>55</sup>
101. Although the Code would not be mandatory, the entity would still have an ability to investigate alleged integrity issues related to organisations who had not adopted the Code either with agreement or where it was in the public interest to do so.

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54 CAB-22-MIN-0210 refers

55 Using the funding and recognition levers to encourage adoption of the Code or compliance with it would ultimately be a decision of the Sports NZ Board.

## What other options are being considered?<sup>56</sup>

### *A non-mandatory Code as secondary legislation*

102. Under this option, the entity would establish a Code as secondary legislation. The legislation would not make the Code mandatory to adopt, but once an organisation had adopted the Code, the organisation would have a duty to implement it and its participants would be bound by its terms as a condition of participation. This would follow the form of the rules made by the DFSNZ board to implement the World Anti-Doping Code 2003.<sup>57</sup>

103. Adoption of the Code could be encouraged through similar non-legislative levers as the counterfactual.

### *Mandate the Code in primary legislation*

104. Under this option, the entity would establish a Code as secondary legislation. Under the primary legislation, the Code would be mandatory for all sport and active recreation organisations, or just a subset of the sector.

105. A limited exemptions scheme could be implemented to accommodate instances where it would not be feasible for an organisation to adopt the Code.

## How do the options compare to the status quo/counterfactual?

	Participant wellbeing	Cost	Independence	Good relationships
<b>Counterfactual – Non-legislated Code</b>	<p>0</p> <p>Adoption of the Code is likely to be low with little improvement to participant wellbeing.</p> <p>Organisations with existing relationships with Sport NZ and</p>	<p>0</p> <p>Establishing the Code and monitoring compliance of signatory organisations will involve a small cost increase.</p>	<p>0</p> <p>The transparency and accountability of sector organisations might increase slightly as the Code will set clear minimum standards and best-practice guidance.</p>	<p>0</p> <p>Most organisations are likely to appreciate the voluntary nature of the Code as the sector is used to self-regulating.</p>

<sup>56</sup> [The IWG also considered allocating funding to the new entity to distribute to sector bodies subject to compliance with the Code. This was not considered as it would compromise the independence the entity in performing its integrity functions.](#)

<sup>57</sup> [Section 16, Sports Anti-Doping Act 2006.](#)

	<p>DFSNZ will likely engage with the entity and adopt the Code. However, many of these organisations are likely already compliant and high performing.</p> <p>Organisations that have not engaged with Sport NZ or DFSNZ are less likely to adopt a voluntary non-legislated Code.</p> <p>There are a range of non-legislative measures that can be explored to encourage adoption and compliance across the sector, including funding and recognition. These levers could reach a significant proportion of the sector without mandating adoption of the Code.</p>			<p>Some organisations and participants will feel that a voluntary Code does not go far enough to address the organisations that do sufficiently protect or support participants.</p> <p>The entity might find it difficult to engage with stakeholders if they do not perceive the Code as authoritative.</p>
<p><b>Code established as secondary legislation but adoption not mandated under legislation</b></p>	<p style="text-align: center;">+</p> <p>Establishing the Code as secondary legislation provides a more formal codification of integrity rules. This option is more likely, therefore, to provide an enduring framework for the protection of participants' wellbeing than the counterfactual.</p> <p>While not mandatory, legislation provides stronger signals to the sector on the importance of participant wellbeing. It can also impose enforceable duties to protect</p>	<p style="text-align: center;">0</p> <p>This option involves similar costs to the counterfactual.</p> <p>There is a minor cost involved in amending legislation.<sup>58</sup></p>	<p style="text-align: center;">+</p> <p>Formalisation of the Code in legislation provides a more concrete accountability mechanism for organisations and the entity. Legislation is likely to be more enduring than a Code simply published on the entity's website.</p>	<p style="text-align: center;">0</p> <p>This option is unlikely to have a different effect than the counterfactual.</p> <p>However, the entity might get better stakeholder engagement when developing the Code as they are more likely to prioritise engaging with a legislative process.</p>

<sup>58</sup> This minor cost acknowledges the difference between the option and the CF. The overall legislative cost for the programme of reform is included in the impact analysis of Part A.

	<p>participants for those organisations which adopt it.</p> <p>Similar levers could be used to encourage adoption and compliance as the counterfactual.</p>			
<b>Mandate the Code in primary legislation</b>	<p style="text-align: center;">++</p> <p>This option provides a permanent framework for supporting participant wellbeing.</p> <p>All sector participants will be protected by the Code, providing more comprehensive protection than the previous options.</p>	<p style="text-align: center;">--</p> <p>This option will involve higher costs to monitor and enforce compliance with the Code.</p> <p>It could also place prohibitively expensive costs on smaller organisations/groups (i.e., a local hiking group).</p>	<p style="text-align: center;">++</p> <p>A mandatory code will increase transparency and accountability across the sector because the entity will be able to more effectively monitor the sector when all organisations must comply with the entity.</p>	<p style="text-align: center;">-</p> <p>Mandatory adoption is likely to harm relationships with sector organisations who value autonomy.</p> <p>In particular, this option might harm Māori-Crown relationships as a mandatory Code could diminish the autonomy of Māori sports organisations.</p> <p>There is also the risk that relationships with some elite athlete groups are damaged as a mandatory Code could override existing agreements with organisations.</p>

**What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

- 106. The preferred option is to establish a code in secondary legislation without mandatory adoption for organisations is the preferred option. The legislation will enable the entity to establish more than one code to enable the entity to address specific integrity risks if necessary.
- 107. By signing up to the Code, organisations and their participants will be subject to the jurisdiction of the entity for sanctions of integrity breaches. This will enable the entity to address the most serious cases of non-compliance. Additionally, the entity will be able to investigate potentially serious/systemic integrity issues on its own initiative and report on findings even where an organisation has not adopted the Code.
- 108. This approach has been used successfully in relation to the Anti-Doping Rules.
- 109. Stakeholder feedback indicates that much of the sector will adopt the Code voluntarily. The focus of the integrity entity, at least initially, is likely to be on larger organisations and those in receipt of significant government funding. The scope of the sport and active recreation sector is extremely



- wide and extends to many small, local and volunteer-based organisations, some of which have multiple purposes of which sport and/or active recreation is just one. These organisations will be less of a priority initially but over time consideration will be given to the benefits and implications (including cost) of them adopting the Code.
110. Depending on uptake, the entity may wish to develop further incentives, such as a certification scheme. The Bill will include a power that enables the entity to charge a fee for delivering a certification scheme. Any fees will be subject to further impact analysis and Cabinet approval to ensure they are not inconsistent with the overall policy objectives.
  111. The nature of the sport and recreation sector means that there are options to further encourage compliance through non-legislated responses, including:
    - a. Making adoption and compliance a requirement for recognition as an NSO or NRO. Recognition carries the benefits of a partnership arrangement with Sport NZ but for NSOs also enables the NSO to receive proceeds from sports betting which can be financially significant.
    - b. Making adoption and compliance a condition of Sport NZ or other government funding criteria,
    - c. Dis-affiliation from National Organisation (where the integrity issue is at the regional or lower level e.g., club).
  112. The use of the recognition lever has been used in relation to anti-doping, where adoption of the World Anti-Doping Code is a condition of Sport NZ recognition as a National Sports Organisation. As discussed above the funding and recognition levers have recently been employed successfully in Australia, as has the funding lever in Canada. Sport NZ has also used funding levers to successfully implement other initiatives such as gender equity on boards.
  113. While a range of effective levers are available, a non-legislated compliance model carries a risk that there could be a small number of large or significant organisations who refuse to adopt the Code or display serious non-compliance.
  114. On balance however, officials consider that the benefits of a collaborative approach with the sector, the large variability within the sector in terms of size and capacity and the availability of a range of non-legislative levers support a non-mandated approach.
  115. It is considered that the ability of the entity to investigate a wider range of integrity issues and report publicly will act as a strong incentive for organisations and will mitigate against the risk of non-adoption and serious non-compliance.

## **Part E: Enhancing the Sports Tribunal to support the complaints process**

### **Problem definition and objectives**

116. The current functions of the Sports Tribunal may limit its role in the context of the recommended options. There may be an opportunity to provide a judicial safeguard for the complaints and dispute resolution process by incorporating the Sports Tribunal.

## Counterfactual

117. The Sports Tribunal is an independent statutory body that determines certain types of disputes for the sports sector. The Tribunal mainly hears anti-doping violations and appeals against selections made by an NSO or the New Zealand Olympic Committee. While less common, it can also hear other “sports-related” disputes if both parties and the Sports Tribunal agree, and matters referred by the Board of Sport NZ.
118. The new entity will have a function of providing complaints and dispute resolution processes to the sector. The SRCMS may be maintained as the mechanism for discharging this function. There will also be the addition of a Disciplinary Panel that will have the ability to impose sanctions for breaches of the code.<sup>59</sup>
119. Based on the current functions of the Sports Tribunal, it could hear an appeal of a decision made in relation to the Code, including by the Disciplinary Panel if it is “sports-related.” However, this only applies if the participant and organisation agree to refer the dispute to the Sports Tribunal. Additionally, it is questionable whether the Tribunal’s functions extend to “active recreation” in addition to Sport.

## What other options are being considered?

### *Expand the Sports Tribunal’s jurisdiction to cover the Code*

120. Under this option, primary legislation would officially recognise determining appeals in relation to disputes about the Code as one of the Sports Tribunal’s functions.

### *Expand jurisdiction and remove member cap*

121. We expect an increase in the Tribunal’s case load if its jurisdiction is extended to alleged breaches of the Code. In addition to expanding the jurisdiction of the Sports Tribunal, this option would remove the current member cap of nine members. This would future-proof the capacity of the Sports Tribunal to fulfil its functions by ensuring it can increase its members proportionate to case load.
122. In addition, this option includes providing the Governor-General with the power to appoint a suitable person as an acting member of the Tribunal. This mechanism is a common feature of other tribunals.<sup>60</sup>

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<sup>59</sup> Organisations that adopt the Code would need to amend their constitutions to accept the jurisdiction of the Disciplinary Panel.

<sup>60</sup> See, for example, the Tenancy Tribunal ([s67A Residential Tenancies Act 1986](#)), Immigration and Protection Tribunal ([s 219A Immigration Act 2009](#)), the Human Rights Review Tribunal ([s 102 Human Rights Act 1993](#)), Copyright Tribunal ([s 209 Copyright Act 1994](#)), Weathertight Homes Tribunal ([s 103A Weathertight Homes Resolution Services Act 2006](#)), Social Security Appeal Authority ([s 12E Social Security Act 1964](#)).

## How do the options compare to the status quo/counterfactual?

	Participant wellbeing	Cost	Independence	Effectively deliver functions
<b>Counterfactual</b>	<p>0</p> <p>The entity could provide further education to the sector about the Sport's Tribunal's possible role hearing sports-related disputes. However, hearing individual disputes would still rely on agreement between the participant, the organisation and the Tribunal itself.</p> <p>There would continue to be a question over whether active recreation participants could use the Tribunal.</p> <p>These limitations mean that in some cases participants will have no appeal route if they are dissatisfied with the outcome of an integrity issue once it has been considered by the integrity entity.</p>	<p>0</p> <p>Operating costs of the Tribunal are currently \$0.2m annually and are not expected to increase.</p>	<p>0</p> <p>The complaints and dispute resolution function will be delivered by the entity, which will be independent.</p>	<p>0</p> <p>The entity will deliver the complaints and disputes resolution function. However, there will be no separate independent body that participants or organisations can make an appeal to.</p>
<b>Expand jurisdiction to cover Code</b>	<p>+</p> <p>Under this option, more participants will have access to the Sports Tribunal for dispute resolution.</p> <p>This will benefit participants and the sports/activities, as better and more consistent justice is likely to be provided by a Tribunal which is totally independent, sits regularly,</p>	<p>0</p> <p>Operating costs are expected to remain at similar levels to the counterfactual in the short term.</p> <p>There will be a minor increase in costs if there is a significant increase in caseload.</p>	<p>+</p> <p>This option provides participants and organisations with another independent body to appeal to if they are unhappy with the entity's decisions around integrity breaches.</p>	<p>++</p> <p>Under this option, the dispute resolution function will be strengthened. The Sports Tribunal provides increased accountability, transparency and trust within the sector. Sector organisations will have more trust in the system as</p>

	<p>and has developed its own jurisprudence.</p> <p>There is a risk that the caseload of the Tribunal could increase over time to the extent that not all disputes can be heard and resolved quickly. This is particularly important for cases dealing with selection for national sports teams.<sup>61</sup></p>			they can appeal decisions made by the new entity.
<p><b>Expand jurisdiction and remove member cap</b></p>	<p style="text-align: center;">++</p> <p>Like the previous option, more participants would have access to the Tribunal for dispute resolution.</p> <p>However, the risk that the caseload becomes too large for the Tribunal is minimised by the increased cap and provision for acting members. These provisions will further protect its ability to fulfil its role.</p>	<p style="text-align: center;">-</p> <p>Operating costs are expected to remain at similar levels to the counterfactual in the short term.</p> <p>Costs will increase if there is a significant increase in caseload. These costs will be more substantial than the counterfactual as the Governor-General will be able to increase the number of members.</p>	<p style="text-align: center;">+</p> <p>This option provides participants and organisations with another independent body to appeal to if they are unhappy with the entity's decisions around integrity breaches.</p>	<p style="text-align: center;">+</p> <p>Increasing the jurisdiction of the Tribunal would lead to increased accountability and transparency of the sector as more organisations are accountable to an independent body that publishes its decisions.</p> <p>Ability to appoint additional members if this is necessary to ensure the Tribunal has the necessary skills and experience to adjudicate on the matters before it. This is likely to increase trust and confidence.</p>

**What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

123. The option to expand the Sport Tribunal's jurisdiction and remove the member cap is the preferred option. The Sports tribunal is a well-respected body that is able to deal with matters quickly and pragmatically. Providing the system with an appeals body will increase participants' and organisations' confidence in the system.

<sup>61</sup> A [2015 review of the Sports Tribunal](#) found that the general consensus was that "nine Tribunal members was 'just enough' but that the matter will need to be closely monitored, particularly if there is growth over time in the Tribunal's workload."

124. Additionally, this programme of reform is expected to lead to an increase in the Tribunal's caseload over time. Removing the Tribunal's member cap and providing the Governor-General with the power to appoint temporary members will future-proof the Tribunal's ability to hear and resolve cases quickly.

*The Integrity Transition Programme is considering an extension of this option*

125. A possible extension of this option would be to provide the Tribunal with the power to order an organisation who is not a signatory to the Code to take steps to adopt the Code or meet equivalent standards.

126. This proposal requires further analysis around the implications for organisations and the Sports Tribunal itself. This proposal would significantly expand the jurisdiction of the Sports Tribunal and there may be other changes that are necessary to facilitate the proposed power. Additionally, primary legislation will need to define the scope of this power regarding the organisations that it applies to.

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## **This combination of options meets all the objectives**

127. Overall, we consider these options will ensure consistent expectations that meet the needs of diverse participants because they:
- a. continue to focus on outcomes and flexible processes that enable organisations to support their members in ways that best meet their needs (enhanced wellbeing and safety)
  - b. encourage organisations to involve participants, as well as whānau, staff, and local communities as they review the adequacy of their policies and processes in meeting the outcomes of the Code (developing good relationships)
  - c. allow organisations to build on the work they are doing to build capability by retaining strengths of existing policies and processes, refining requirements, and adding some new practices (enhanced participant wellbeing and safety & transparency, accountability, and continuous improvement)
  - d. align expectations for all participants, where their needs are shared, to improve clarity for participants and organisations and enhance accessibility (reduced complexity),
  - e. supports and enables organisations to have equitable and culturally responsive practices for supporting participant wellbeing and participants' identity, language, and culture (Indigenous rights & enhanced learner wellbeing and safety).

## **Te Tiriti o Waitangi analysis**

128. Māori are active in the sport and active recreation sector as individual participants, as whānau, and through a range of Māori organisations and groups at regional and national levels. The issue of integrity in the sector therefore affects Māori nationally, but with inevitable variation at the local and regional levels. There are, therefore, a range of potential Treaty partners for the Crown.
129. We have held initial targeted engagement with a small group of Māori involved in the sport and active recreation sector. Not all participants in that engagement supported the establishment of a new entity. However, the group collectively expressed a range of views and highlighted a number of important issues which are relevant to whole sector and the new entity, including:
- a. low levels of trust around leadership of government agencies and funding of the sector
  - b. inequalities and discrimination experienced by Māori in the sector
  - c. desire for autonomy and self-determination of Māori organisations in the sector
  - d. the need for strong cultural competency across the system
  - e. ensuring strong athlete and participants voice and pathways that support their wellbeing
  - f. Māori representation at governance level, not being relegated to advisory roles and the importance of collective decision making and wānanga, and
  - g. lack of protection and integrity for Māori tikanga, cultural expressions (such as haka), language and naming.

130. Previous research and reports largely reinforce these views. For example, Sport NZ's 2020 'Māori perspectives on drivers and implications of change' report highlighted concerns about declining participation rates, and a lack of engagement and partnership with Māori in the sector.
131. We have undertaken an initial assessment of the options to identify the impact that the options may have on Māori and the interests and role Māori may have in the policy development.
132. Informed in part by the consultation undertaken up to this point, our assessment of the options was that there was little or no Treaty implications between the different options and the counterfactual. In our view, the main opportunities to honour te Tiriti o Waitangi are through the specific design of matters such as the entity's governance arrangements, requirements to engage with Māori, and ensuring the entity has a clear focus on addressing inequity and discrimination.
133. To ensure the principles of the Treaty are appropriately taken into account in design and practice, the ITC has established an interim Māori Advisory Group to work closely with the Integrity Transition Programme to:
- a. lead targeted consultation with Māori through each phase of the core design areas
  - b. make recommendations to Committee on next steps
  - c. ensure good communication with key Māori partners, and
  - d. ensure the Committee is meeting its obligations and can respond to strategic opportunities.
134. The Māori Advisory Group will have the ability to report directly to the Minister on actions the Committee is taking to protect and promote Māori rights and interests and apply the spirit of partnerships as envisaged by the Treaty.

## Population Implications

135. As noted in the June 2022 RIS, the current system is likely to have disproportionate impacts on vulnerable and disadvantaged groups, such as tamariki and rangatahi, women, disabled people, LGBTQ+, Māori and Pacific peoples and those from minority ethnic backgrounds.
136. The new entity will have a national outreach with an interest in all individuals' safety and wellbeing, meaning the roughly 80% of New Zealanders who engage in sports activities may benefit from the entity's mahi (directly or indirectly).<sup>62</sup> Women may utilise the new entity in higher numbers than men as they are more likely to find harassment, bullying, and abuse a problem in sports organisations, and have less confidence in sports organisation to adequately handle related incidents.<sup>63</sup>
137. Māori and Pacific peoples and those from minority ethnic backgrounds may benefit from a new entity focused solely on supporting the wellbeing of participants in the sector. Pacific peoples have the lowest rates of participation in sport and recreation of all ethnicities, and this rate has been declining since 2001. A high number of Pacific

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62 [Kiwis' participation in cultural and recreational activities \(Statistics New Zealand, 2018\)](#)

63 [Sport Integrity Review \(Sport NZ, 2019\)](#)

peoples report that they do not participate in sport because of negative experiences, including the behaviour of coaches, teammates, and spectators.<sup>64</sup>

138. The Ministry for Pacific Peoples support the recommended options and the inclusion of racism in the definition of integrity. It advises that Pacific peoples are disproportionately impacted by racism across all levels of the sporting sector.
139. The new entity and the recommended option for the Code will also benefit tamariki and rangatahi. The majority of sport organisations have either not implemented key child protection initiatives or have only implemented them in part.<sup>65</sup> One of the key areas for the new entity is Child Protection and policies in the Code will reflect this focus area.
140. The recommended options could improve the wellbeing of disabled people by ensuring more organisations commit to supporting the full and active participation of disabled people and providing for the social inclusion of disabled people in sport and active recreation. Disabled people are less likely to participate weekly and less likely to participate in a range of sports and activities.<sup>66</sup> Research also indicates that many disabled people feel discriminated against and devalued in physical activity settings and identify others' attitudes as a barrier to positive experiences of participation in PE, sport and active recreation.<sup>67</sup>
141. Finally, LGBTQ+ New Zealanders will benefit from an entity responsible for supporting the wellbeing of participants. LGBTQ+ youth are less likely to participate in sport compared to other young people due to discrimination, bullying, and bigotry. For example, almost 50% of gay and bisexual young males in New Zealand reported they had been the victim of homophobic bullying in team sports.<sup>68</sup> Participation in a safe and supportive environment has further benefits for LGBTQ+ youth, such as improved health outcomes.<sup>69</sup>

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64 Sport and Recreation in New Zealand Pasifika Communities (Gordon, Sauni, Tuagalu, & Hodis, 2010)

65 [Sport Integrity Review \(Sport NZ, 2019\)](#)

66 [Spotlight on Disability \(Active NZ, 2018\)](#)

67 "How can we make it work for you?" Enabling sporting assemblages for disabled young people (Carroll, Witten, Duff, 2021)

68 [The Relationship Between 'Coming Out' as Lesbian, Gay, or Bisexual and Experiences of Homophobic Behaviour in Youth Team Sports \(Denison, Jeanes, Faulkner, & O'Brien, 2020\)](#)

69 [Health Outcomes of Sexual-Minority Youth in Canada: An Overview \(Blais et al., 2017\)](#)



## What are the marginal costs and benefits of the option?

Affected groups	Comment.	Impact.	Evidence Certainty
<b>Additional costs of the preferred option compared to taking no action</b>			
Regulated groups	One-off costs of adapting current policies and practices to Code	Low/medium (depending on incidence)	Medium
	Cost of demonstrating compliance with Code	Low	Medium
	For organisations that are not currently meeting the expectations of the Code or do not have practices in place to deliver on new expectations in the Code, there is a cost of making changes to comply with the new Code	Medium	Medium
	Cost of cooperating with investigations	Low/Medium	Medium
Regulators	Transition cost to establish entity and transfer existing functions	\$5m	Medium
	Ongoing operating cost for entity (4 years)	s9(2)(f)(iv)	High
	Ongoing operating cost of Sports Tribunal (4 years) (assumes no membership increase)	Low/no cost	Medium
Participants	No costs expected. However, some organisations may choose to pass some costs onto participants.	Low/no cost	Medium
<b>Total monetised costs</b>	Ongoing operating cost (4 years) for the entity and the Sports Tribunal.	s9(2)(f)(iv)	High
<b>Non-monetised costs</b>	Assessment of the Code's implications and demonstrating compliance.	Low/medium (depending on incidence)	Medium
<b>Additional benefits of the preferred option compared to taking no action</b>			
Regulated groups	Improved capability and capacity to deal with integrity issues	Medium	Medium
	Strengthened reputation for organisations that adopt the Code	Low	Low
Regulators	Improved planning, coordination and delivery of integrity services	Medium	Medium
	Reduced duplication	Low	Medium
	Improved relationships with sector organisations	Medium	Medium
Participants	Improvements across the following wellbeing domains: <ul style="list-style-type: none"> <li>subjective wellbeing</li> <li>health</li> </ul>	Medium	Medium

	<ul style="list-style-type: none"> <li>• social connections and social cohesion</li> <li>• cultural identity and diversity in sports</li> <li>• knowledge and skills</li> <li>• time use</li> </ul>		
Māori	Improved representation of the rights and interests of Māori as at least two board members must have knowledge of, and experience and expertise in relation to tikanga Māori and te ao Māori.	Low	Medium
Vulnerable and disadvantaged groups	Reduces barriers to participation for vulnerable and disadvantaged groups	Medium	Medium
Wider government	Government agencies that have wider criminal enforcement (e.g., Police) or wellbeing focused (HRC) responsibilities will have better awareness and understanding of integrity threats in the sport and recreation sector. They will also be better informed about what can be done to address those risks	Low	Low
All affected parties	Greater certainty and predictability for how the integrity system works	Low	Medium
<b>Total monetised benefits</b>	Cannot be estimated	Medium	Medium
<b>Non-monetised benefits</b>	Enduring institutional framework to strengthen and protect the integrity of the sport and active recreation system.	Medium	Medium

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## Section 3: Delivering an option

### How will the new arrangements be implemented?

#### The entity will be funded by appropriations and sports betting revenues

142. §9(2)(f)(iv) [REDACTED]  
[REDACTED] Given the Integrity entity will subsume existing DFSNZ functions, the existing 'Sports Anti-Doping' appropriation (\$4.758 million) will transfer to the new entity. §9(2)(f)(iv) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
143. It is proposed that the remaining budget §9(2)(f)(iv) [REDACTED] is funded by a new appropriation created for the sole purpose of funding integrity operations. As a result, implementation is subject to a successful budget bid.
144. This ensures funding remains protected for integrity issues and requires specific reporting (both financial and non-financial performance) as part of Government's accountability requirements. This also provides greater levels of transparency through the Government Select Committee annual processes, Estimate Review, and Financial Review.
145. We also propose a power for the entity to charge fees that are reasonable in respect of the provision of services. This will future-proof the system as the entity may need to implement various levers to encourage adoption of the Code. The Integrity Transition Programme is currently exploring a range of non-legislative levers, such as an integrity certification scheme.<sup>70</sup>
146. If the entity decides to establish a cost recovery mechanism for a programme or service in the future, it will be required to develop a stage 1 and 2 Cost Recovery Impact Statement (CRIS).

#### Interim Entity processes and enabling legislation

147. The establishment of the Integrity entity has and is being actively managed by the Sport and Recreation ITC chaired by Doug Martin. The Committee has considered advice on a range of options and have agreed to recommend the preferred options in this RIS.
148. Further consultation is planned with Māori and other affected stakeholders. As mentioned above, the Committee has established an interim Māori Advisory Group to work closely with the integrity transition unit. Feedback will be incorporated into final policy design before drafting instructions are issued.
149. Additionally, the Ministry for Pacific peoples has recommended targeted engagement with Pacific stakeholders considering the documented inequities faced by Pacific

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<sup>70</sup> A certification scheme would provide organisations with a certificate or mark to show that the organisation complies with integrity standards. This could be implemented with different 'levels' of certification to encourage organisations who would not meet the standards of the Code to continuously improve. See the SIGA [Independent Rating and Verification System](#) (SIRVS) for an example of a sport integrity certification scheme.

peoples in sport and active recreation. The Integrity Transition Unit plans to undertake further targeted consultation with affected groups.

150. Once Cabinet decisions about the form, location and funding for the new entity are made, officials will begin planning to operationalise the entity. Overall, it is anticipated that it will take 18 to 24 months to build the new entity, depending on the timing for the passage of legislation.
151. The preferred options will be implemented through a Sport and Recreation Integrity Bill. The Bill is included in this year's Legislation Programme with a Category 5 priority (instructions to be provided to Parliamentary Counsel in the year). It is anticipated that the Bill will be passed in mid-to-late 2023 to enable the new entity to be operational in 2024 per Ministerial expectations.
152. Subject to Cabinet approval, the Minister for Sport and Recreation will issue drafting instructions to Parliamentary Counsel. Cabinet is also being asked to authorise Ministers of Sport and Recreation, Justice, the Public Service, and the Community and Voluntary Sector to make decisions on any matters of detail consistent with policy that arise during drafting, including consequential amendments to other legislation that may be required.
153. The careful transition of DFSNZ and the SRCMS into the Integrity entity will be an important consideration. DFSNZ is a well-respected organisation, not only within New Zealand, but also internationally. The Integrity Transition Programme will work with DFSNZ to ensure the high level of service is maintained and that its in-house expertise is not lost during the transition.
154. As an independent body, the operational procedure will be left to the discretion of the new entity. It is intended that the entity will be equipped with the expertise, understanding and technical knowledge to develop their own policies and procedures alongside carrying out their educative and awareness raising function.
155. However, broadly speaking it is intended that the entity's initial focus will be:
  - a. implementing the Code
  - b. encouraging sector organisations to adopt the Code
  - c. ensuring sector organisations understand their obligations
  - d. working with organisations to build capability, and
  - e. investigating and dealing with serious cases of non-compliance.
156. It may be challenging for some organisations to comply with their obligations, particularly organisations that are being brought into the regulatory system for the first time. This will be managed by allowing for assistance and time to achieve compliance, in a way that is proportionate to organisation capability.

#### **How will the new arrangements be monitored, evaluated, and reviewed?**

157. It is proposed that the legislation include a requirement to review the implementation of the Code five years after it is first issued in order to make recommendations on the need for any changes to legislative settings.
158. The proposed arrangements for monitoring, evaluation and review of the proposed regulatory regime, has two elements:

- a. Monitoring, evaluation and review within the regulatory system of the performance of sector organisations. This will be a core function of the proposed entity.
  - b. Monitoring, evaluation and review of the regulatory system. This is a stewardship function that provides oversight of the regulatory system. This will be a function of Sport NZ, which will be responsible for the administration of the new legislation.
159. The ongoing framework for the monitoring and evaluation of the entity is still being developed and will be completed as part of the establishment phase. Following the operating framework of DFSNZ, the Ministry for Culture and Heritage will monitor the entity, while Sport NZ will retain the policy function.
160. The implementation and operation of the new entity is expected to be reviewed after five years. Given decisions are still to be made about the detailed design of the entity, key performance indicators have not yet been developed. These will be developed as part of the establishment phase.

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## Appendix One: Previous integrity reviews

Review/Action	Reviewer/Author	Date published	Commissioned by
Cycling Inquiry	Michael Heron QC (Dr Sarah Leberman, Jen Macky, Dr Lesley Nichol)	16 May 2022	Cycling NZ and Sport NZ
Review into Gymnastics	David Howman	February 2021	Gymnastics NZ
Feasibility Study into a Complaints Mechanism/and or Dispute Resolution Service for NZ	Simpson Grierson (Phillipa Muir and John Rooney)	September 2020	Sport NZ
Independent Review of Hockey	Maria Dew	February 2019	Hockey NZ
Sport Integrity Review	Public Consultation	October-December 2018 Released September 2019	Sport NZ
Elite Athletes Rights and Welfare	Stephen Cottrell	5 November 2018 date of Report 6 December press release	Sport NZ
Independent Review of Cycling New Zealand High Performance Programme	Michael Heron QC	12 October 2018 date of report 15 October press release	HPSNZ
Independent Review into NZ Football	Phillipa Muir	3 October 2018	NZ Football
Review of the Sports Tribunal of New Zealand	Don Mackinnon	November 2015	Sport NZ

## Appendix Two: Stakeholder engagement

<b>Integrity Transition Programme (2022)</b>
Ministry of Business, Innovation and Employment
Ministry for Culture and Heritage
Ministry of Education
Ministry of Foreign Affairs and Trade
Ministry of Health
Ministry of Justice
Ministry for Pacific Peoples
Ministry for Primary Industries
Ministry for Women
Crown Law
Department of Internal Affairs
Department of the Prime Minister and Cabinet
DFSNZ
New Zealand Police
Oranga Tamariki – Ministry for Children
Parliamentary Counsel Office
Serious Fraud Office
Sports Tribunal
Te Kawa Mataaho Public Service Commission
Te Puni Kōkiri
Te Arawhiti
Treasury
<b>Integrity Working Group (IWG) (2021/22)</b>
Former high-performance athletes
National Sport Organisations (Badminton NZ, Netball NZ, NZ Cricket, NZ Football, NZ Hockey, NZ Olympic Committee, Paralympics NZ, NZ Rugby, Rowing NZ, School Sport NZ)
athletes groups (New Zealand Cricket Players Association, NZ Athletes Federation, NZ Olympic Committee Athletes' Commission, NZ Rugby Players' Association)

Sports integrity agencies/service providers (Centre for Sports and Human Rights, Immediation New Zealand Ltd, New Zealand Rugby complaints Service, Racing Integrity Board, Sport Integrity Australia, Sports Tribunal)

**Sport Integrity Review (2018)**

NSO Leadership Group (representing 24 NSOs and Paralympics NZ)

Five individual NSOs

DFSNZ

New Zealand Olympic Committee

Two regional sports trusts

Three secondary school sports organisations

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