IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE

CIV-2025-485-000358
[2025] NZHC 2665

IN THE MATTER	of an Application for Judicial Review under the Judicial Review Procedure Act 2016 and Part 30 of the High Court Rules 2016
BETWEEN	NEW ZEALAND GREYHOUND RACING ASSOCIATION INCORPORATED Applicant
AND	THE ATTORNEY-GENERAL Respondent

Hearing: 14 August 2025

Counsel: C F Finlayson KC and J B Kaye for Applicant
K Anderson KC and E G R Dowse for Respondent

Judgment: 15 September 2025

JUDGMENT OF LA HOOD J
(Application for interim relief)

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[1] In December 2024, Cabinet decided to ban commercial greyhound racing in New Zealand from 1 August 2026. These are judicial review proceedings challenging that decision. The New Zealand Greyhound Racing Association Incorporated (GRNZ), the national governing body for the administration and development of greyhound racing in New Zealand,[1] applies for interim relief pending determination of the substantive application for judicial review.[2] The substantive application is set down for a two-day hearing commencing 1 December 2025.

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1 Racing Act 2020, ss 14 and 15. It is an association of its members, which currently comprise seven greyhound racing clubs in Auckland, Waikato, Palmerston North, Whanganui, Christchurch, Otago and Southland.

2 Under s 15 of the Judicial Review Procedure Act 2016.

[2] Following an iterative process of amendment (discussed further below), GRNZ now seeks the following interim relief:

> An interim order be granted and continue in force until the substantive hearing of this proceeding or further order of this Court declaring that no further action ought to be taken by the Minister for Racing, the Ministerial Advisory Committee or the Minister's officials to give effect to a decision made by Cabinet on 10 December 2024 to close the greyhound racing industry because the level of injuries is not acceptable and is unlikely to reduce (at paragraph 4), and which involves encouraging or requiring members of greyhound racing clubs to cease greyhound racing while greyhound racing is still lawful.
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> Provided that nothing in this order is to restrict in any way Cabinet, the Minister for Racing, MAC or the Minister's officials from undertaking preparatory work, planning, providing advice, making decisions, providing drafting services or support in respect of the drafting, introduction and passage through Parliament of the proposed Second Bill to close the greyhound racing industry.

[3] GRNZ says it seeks relief that vindicates its position in respect of the welfare of greyhounds in the greyhound racing industry, and which is required to prevent the Minister and his officials from taking steps to encourage or require members of greyhound racing clubs to stop greyhound racing while it is still lawful.

[4] In a draft third amended statement of claim, GRNZ pleads six grounds of review, namely: failure to consult GRNZ on the decision to close the commercial greyhound racing industry; legitimate expectation that GRNZ would be consulted; procedural unfairness in failing to consult GRNZ; error of law by deciding to close the commercial greyhound racing industry without considering the Racing Integrity Board's (RIB) monitoring and advice on greyhound welfare issues; failure by the Minister's officials to take into account mandatory relevant considerations (the RIB's monitoring and advice on greyhound welfare issues); and failure by the Minister to have regard to and present to Cabinet mandatory relevant considerations relating to greyhound welfare.

[5] I note at the outset that this decision (and these proceedings generally) are not about the merits of the decision to ban greyhound racing in New Zealand. Much of the evidence and submissions focused on the undisputed steps GRNZ has taken to improve animal welfare in greyhound racing, and the impacts of the decision on the livelihoods of those involved in the industry and the broader economy. However,

judicial review is concerned with whether a decision has been made within the legal limits imposed on the decision maker, not on the merits of the decision itself.[3] And an application for interim relief has an even narrower focus on whether interim orders are required to preserve the position of the applicant.[4] Wider considerations are only relevant to the extent they might touch on these issues.

Background

[6] Greyhound racing has lawfully existed in New Zealand for well over a century. Concerns about animal welfare in greyhound racing have also existed for some time. GRNZ's performance in improving the welfare of greyhounds is monitored by the RIB established under the Racing Industry Act 2020 (the Act). RIB reports regularly to the Minister for Racing (the Minister) through the Department of Internal Affairs (DIA).

[7] The last decade saw three reviews into greyhound racing animal welfare issues, in 2013, 2017 and 2021, leading to recommendations for change and two parliamentary petitions to ban the activity.

[8] The 2021 report followed a spate of greyhound deaths in early 2021. The then-Minister wrote to the Chair of GRNZ, foreshadowing the 2021 report and stating that greyhound racing's "social license … is at risk".

[9] The 2021 report raised concerns about the accuracy of GRNZ's data and transparency in the use of that data. The report made recommendations in the areas of greyhound population management, rehoming of greyhounds, track standards, and governance, and recommended that the industry be given 18 months for further changes to be implemented, with the RIB to report on the outcomes. In response to the issues identified in the 2021 report, the then-Minister advised GRNZ that "[i]f these issues cannot be remedied, then the industry will cease to have a social license".

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3 *Unison Networks Ltd v Commerce Commission* [2007] NZSC 74, [2008] 1 NZLR 42 at [53]–[55]; *Patterson v District Court, Hutt Valley* [2020] NZHC 259 at [14]–[16]; and *New Zealand Council of Licensed Firearms Owners Inc v Minister of Police* [2020] NZHC 1456 at [83]–[85].

4 Judicial Review Procedure Act, s 15.

[10] GRNZ and the RIB developed a joint work programme to consider and respond to the 2017 and 2021 reports' recommendations. The RIB reported to the Minister in December 2022 assessing GRNZ's performance, and GRNZ provided a response to this report in May 2023, updating the Minister on its progress. GRNZ and the RIB then commenced reporting quarterly to the Minister on further progress and improvements in addressing welfare issues.

[11] Between December 2023 and November 2024, DIA undertook policy work, scoping both continuation and closure options with respect to greyhound racing. In early November 2024, the Minister indicated his preferred option to recommend closure to his Cabinet colleagues. The Cabinet paper was prepared, seeking Cabinet's in principle agreement to closure, which would be given effect through legislation. On 9 December 2024, Cabinet made the decision now challenged.

[12] On 20 August 2025, the Minister released a 30 May 2025 interim report of the Ministerial Advisory Committee (MAC) advising the legislative, regulatory and operation changes required to implement the closure of the greyhound racing industry, an operational transition plan, and a timeline for closure. On 18 August 2015, Cabinet agreed to progress legislation based on the MAC's recommendations and invited the Minister to issue drafting instructions to the Parliamentary Counsel Office.

Procedural history

[13] The interim relief sought by GRNZ has been revised. GRNZ initially sought the following:

> An interim order be granted against the Applicant declaring that no further action ought to be taken by the Minister for Racing or his officials to give effect to a decision made by Cabinet on 10 December 2024 to ban greyhound racing in New Zealand.

[14] Following the hearing of the application, GRNZ filed a supplementary memorandum amending the relief sought in this application and in its statement of claim. This followed counsel for GRNZ's acknowledgement that GRNZ cannot seek declarations that have the effect of directing the Minister to take no further steps in the legislative process required to ban greyhound racing (due to the principle of non-interference discussed below). The first supplementary memorandum and second

amended statement of claim were filed on 5 August 2025. The amended relief sought added the MAC as a party against which relief is sought, and included other amendments to indicate there was no intention to interfere in the legislative process. It read:

> An interim order that no further action ought to be taken by the Minister for racing, the Ministerial Advisory Committee or the Minister's officials to give effect to the following aspects of a decision made by Cabinet on 10 December 2024 to ban greyhound racing in New Zealand:
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> (a) the decision to ban greyhound racing because the level of injuries is not acceptable and is unlikely to reduce;
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> (b) the consequential decision to close the greyhound racing industry;
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> provided that nothing in the above orders is to restrict in any way the Minister, MAC or the Minister's officials from undertaking preparatory work, planning, providing advice, drafting services or support in respect of the drafting, introduction and passage through Parliament of the proposed Bill to ban greyhound racing.

[15] Following the public release of the MAC's interim report on 20 August 2025, on 28 August 2025 GRNZ filed a second supplementary memorandum amending the interim relief sought (set out at [2] above) and the draft third amended statement of claim (summarised at [4] above).

Test for interim relief

[16] I gratefully adopt Grau J's recent summary of the applicable principles:[5]

> [25] The interim orders are sought under s 15(3) of the Judicial Review Procedure Act 2016 (JRPA), which provides that the Court may make an interim order:
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> (a) declaring that the Crown ought not to take any further action that is, or would be, consequential on the exercise of the statutory power; or
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> (b) declaring that the Crown ought not to institute or continue any proceedings, civil or criminal, in connection with any matter to which the application relates.
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> [26] Such an order may be made by the Court on application of a party if, in the Court's opinion, it is necessary to do so to preserve the position of the applicant.[6] That position must be "as far as possible, the position prior to the

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5 *Whangarei District Council v Director-General of Health* [2025] NZHC 616.

6 Judicial Review Procedure Act 2016 (JRPA), s 15(1).

decision complained of".[7] It has also been said more recently in another challenge to fluoridation that a liberal approach should be taken to that threshold question and:[8]

> It is not limited to preserving the status quo. It can include putting the applicant in the position that it would have been but for the claimed illegality.

[27] In that case Cooke J went on to say that a liberal interpretation of the threshold question was appropriate to allow the Court to retain jurisdiction to grant interim orders in all appropriate cases. The strength of the position sought to be preserved was, however, highly relevant to the decision whether to grant such orders.[9]

[28] If the Court is satisfied that the order is reasonably necessary to preserve the position of the applicant, the Court has a wide discretion to consider all the circumstances of the case, including the strengths or weaknesses of the applicant's claim for review, and all repercussions of granting interim relief, whether public or private.[10]

[29] An order under s 15(3) may be made subject to such terms and conditions as the Court thinks fit and may be expressed to continue in force until the application is finally determined, or until such other date, or the happenings of such other event, as the Court may specify.[11]

Issues

[17] The proposed relief has two aspects that require consideration.

[18] The first is the proposed declaration that "no further action ought to be taken by the Minister for Racing, the Ministerial Advisory Committee or the Minister's officials to give effect to a decision made by Cabinet on 10 December 2024 to close the greyhound racing industry because the level of injuries is not acceptable and is unlikely to reduce", and the caveat to the order, "Provided that nothing in this order is to restrict in any way Cabinet, the Minister for Racing, MAC or the Minister's officials from undertaking preparatory work, planning, providing advice, making decisions, providing drafting services or support in respect of the drafting, introduction and passage through Parliament of the proposed Second Bill to close the greyhound racing industry."

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7 *Bennett v Superintendent, Rimutaka Prison* [2002] 1 NZLR 616 (CA) at [66].
8 *New Health New Zealand Ltd v Wellington Water Limited* [2022] NZHC 2389 at [24].
9 At [24].
10 *Minister of Fisheries v Anton Trawling Company Ltd* [2007] NZSC 101 at [3] citing *Carlton and United Breweries Ltd v Minister of Customs* [1986] 1 NZLR 423 (CA) at 430 per Cooke J.
11 JRPA, s 15(4).

[19] This first part of the proposed relief raises the issue of the principle of non-interference with the legislative process and its application. This in turn raises the related question of the strength of GRNZ's case that Cabinet's decision is subject to legal yardsticks that might allow the courts to review the decision despite the non-interference principle.

[20] The second aspect of the proposed relief that requires consideration is the declaration that "no further action ought to be taken by the Minister for Racing, the Ministerial Advisory Committee or the Minister's officials … which involves encouraging or requiring members of greyhound racing clubs to cease greyhound racing while greyhound racing is still lawful." GRNZ's position is that the executive is unlawfully implementing the ban on greyhound racing without legislative authority.

[21] Therefore, in determining GRNZ's application, I will address the following issues:

(a) Does the relief sought breach the principle of non-interference?

(b) Is Cabinet's decision subject to legal yardsticks, namely a statutory duty to consult the RIB?

(c) Even if there is a duty to consult the RIB, does the strength of the case that such a duty has been breached favour interim relief?

(d) What is the strength of GRNZ's case that the executive is unlawfully implementing the ban without legislative authority?

(e) Do the consequences of the decision favour interim relief?

Principle of non-interference

[22] The Crown submits that I should not grant the relief sought because of the principle that the courts will not interfere with the legislative process.[12] In a recent

[12] The principle is given statutory recognition in the Parliamentary Privileges Act 2014, s 11.

judgment, Boldt J extensively discussed the principle in declining an application for interim relief. The direct applicability of Boldt J's review of the relevant principles warrants replication of substantial parts of his judgment:[13]

> [36] … the Court may not make any order or declaration which affects the formulation, introduction or progress of legislation. The rule has been described as the "principle of non-interference", which is prosaic description of a fundamental pillar of our constitution. The rule reflects Parliament's independence and sovereignty.
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> [37] One authoritative formulation of the rule, which is particularly relevant here because of its emphasis on the freedom of Ministers to introduce legislation whenever and however they see fit, can be found in *Te Runanga o Wharekauri Rekohu Inc v Attorney-General.*[14] That case concerned a challenge to the introduction of legislation giving effect to the landmark 1992 agreement between Māori and the Crown (the so-called Sealord deal). That agreement settled the Crown's Treaty obligations in the sphere of commercial fishing, but legislation was required to give it legal effect. Writing for the Court of Appeal, Cooke P observed:[15]
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> > As held in *Eastgate*, the proper time for challenging an Act of a representative legislature, if there are any relevant limitations, is after the enactment. In our opinion, non-interference with the introduction of a Bill is the corollary of the principle identified by the High Court of Australia in *Nationwide News Pty Ltd v Wills* … and *Australian Capital Television Pty Ltd v Commonwealth (No 2)* … namely that an implied right to freedom of expression in relation to public and political affairs necessarily exists in a system of representative government. That right, which is reflected in the Bill of Rights 1689, being accepted, **it is impossible to suppose that a Minister may be judicially prevented from presenting to a representative assembly a measure for consideration.**
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> > Closely allied is the conclusion that the Courts would not compel a Minister to present a measure to a representative assembly for consideration. **Surely in a democracy it would be quite wrong and almost inconceivable for the Courts to attempt to dictate, by declaration or a willingness to award damages or any other form of relief, what should be placed before Parliament**. The Parliament of New Zealand consists of the Sovereign in right of New Zealand and the House of Representatives … The twofold nature of Parliament is commonly overlooked when the institution is mentioned as if it consisted of the House only, but that point does not alter the outcome of the case now before this Court. The point that

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13 *Te Rūnanga o Ngāti Whātua v Attorney-General* [2024] NZHC 2271, [2024] 3 NZLR 218 (emphasis in original).

14 *Te Runanga o Wharekauri Rekohu Inc v Attorney-General* [1993] 2 NZLR 301 (CA) at 308. In-text citations excluded. Emphasis added.

15 Emphasis added.

> does matter, in our opinion, is that public policy requires that the representative chamber of Parliament should be free to determine what it will or will not allow to be put before it. Correspondingly Ministers of the Crown must remain free to determine, according to their view of the public interest, what they will invite the House to consider.

…

[39] The principle has been reaffirmed on numerous occasions in the years since,[16] and its boundaries have been refined. The courts have consistently rejected pleas to intervene in the process by which legislation is developed, while jealously asserting their constitutional role in determining existing rights despite imminent legislative change.

…

[42] The Supreme Court's decision [in *Ngāti Whātua Ōrākei Trust v Attorney-General* (*Ngāti Whātua*)] discussed both aspects of the principle of non-interference. It was unanimous that the courts may not make an order which prevents the introduction of a Bill.[17] The majority went on to say:

> [46] From the cases to date, there remain questions about the exact scope, qualifications and basis of the principle of non-interference in parliamentary proceedings. As will become apparent, it is not necessary in the present case to resolve the exact metes and bounds of the principle. It is, nonetheless, appropriate to sound a note of caution at the extent to which the principle of non-interference in parliamentary proceedings has been held to apply to decisions somewhat distant from, for example, the decision of a minister to introduce a Bill to the House or from debate in the House. It would be overbroad to suggest that the fact a decision may, potentially, be the subject of legislation would always suffice to take the advice leading up to that decision out of the reach of supervision by the courts. That would be to ignore the function of the courts to make declarations as to rights …

[43] The majority held that two of the declarations *Ngāti Whātua* sought could only be "characterised as a challenge to the decision which has been made to legislate". While the illegality was "said to arise because of some prior lack of process", the substantive effect of the declarations would have been a formal determination that the decision to legislate was inconsistent with tikanga, inconsistent with the Crown's obligations under the Treaty and its principles, and breached international law.[18] Those declarations could not be

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16 See *Comalco Power (New Zealand) Ltd v Attorney-General* [2003] NZAR 1 (HC); *New Plymouth District Council v Waitara Leaseholders Assoc Inc* [2007] NZCA 80; *Milroy v Attorney-General* [2005] NZAR 562 (CA); and *Ngāti Mutunga o Wharekauri Asset Holding Company Ltd v Attorney-General* [2020] NZCA 2, [2020] 3 NZLR 1.

17 *Ngāti Whātua Ōrākei v Attorney-General* [2018] NZSC 84, [2019] 1 NZLR 116] at [36].

18 At [65]–[66].

reconciled with the principle of non-interference, and the majority held they had been properly struck out.[19]

…

[47] Justice Cooke's decision in *Hata v Attorney-General (No 2)* helpfully draws together the principles which govern the relationship between Parliament and the courts when legislation is proposed.[20] In particular, he highlighted the difference between cases raising issues about the legislative or pre-legislative process, which he described as "political questions", and those where the courts are asked to change their approach in existing proceedings because legislative change has been proposed, which he referred to as "legal questions":

> [32] As the majority said in *Ngāti Whātua* the exact boundaries of the non-interference principle are evolving and are becoming more clearly identified. … These developments suggest that the real dividing line is identified by distinguishing between legal questions that are for the court to decide, and political questions that are for parliament. It is of constitutional importance that there is right of access to the court so that parties may obtain determinations of their legal rights. This is a fundamental right at common law which is reflected in the New Zealand Bill of Rights Act 1990. **The court should not, however, exercise this jurisdiction in a way that interferes with the role of parliament. What parliament considers, and does, is entirely a matter for it.** This approach accords with the judgment of Elias CJ in *Ngāti Whātua*, and with the constitutional principles recognised in *Fitzgerald v Muldoon*.
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> [33] Against that background it seems to me that the important point is not so much what the party pleads in its statement of claim, but more what the court does by way of its determinations, and the relief that it grants. In the present case the applicants say that their legal rights have been interfered with … The legal issue preceded the existence of the Bill, and exists entirely independently of it. **But what the Court cannot do when addressing these claims is reach any decisions, or make any orders that purport to prevent, or otherwise interfere with the legislative process.**
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> [34] The fact that parliament chooses to legislate in a manner that may change, or otherwise affect legal rights is a matter entirely for parliament. The courts will not interfere with it so exercising its legislative functions. And if legislation is passed the court has no role in overturning it, although it could have jurisdiction to grant a declaration of inconsistency once legislation is enacted if that is appropriate. But equally the fact that parliament chooses to address such

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19 The remaining declarations, which concerned the rights of Ngāti Whātua in Tāmaki Makaurau and the Crown obligations in respect of those rights, were reinstated, and the claim was allowed to proceed on that basis.

20 *Hata v Attorney-General (No 2)* [2023] NZHC 2919.

> matters should not exclude the right of access to the court that a party has to have its existing legal rights determined. In this way the respective constitutional functions of the court and parliament are maintained, and the rule of law is upheld. I consider this to be a clearer dividing line that accords with principle. …
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> [35] … The applicants are entitled to have access to the Court to have their rights determined. The court will not adjudicate, or otherwise make determinations that purport to interfere with parliament's role when doing so. But that requirement does not prevent the claim proceeding. The applicants' amended statement of claim does not plead any issue associated with the legislative process. It seeks declaratory and not injunctive relief. The claims are against the executive, and they relate to legal rights.

> [48] The formulation of legislation, including all decisions leading to the introduction of a Bill, is inherently political. The processes of Parliament, including decisions made by Ministers when deciding what to put before the House, are, to paraphrase Cooke J, political matters which must be resolved in the political arena.

Does the relief sought breach the principle of non-interference?

[23] In light of the provisions of the Act regulating greyhound racing, the only means by which the executive can give effect to its decision to ban it is by the introduction of legislation. I consider that the post-hearing amendments made to the relief sought do not change the fundamental nature of what GRNZ is asking the Court to do, namely interfere with the law-making process. As Cooke P held in *Te Runanga o Wharekauri Rekohu Inc v Attorney-General*, "Ministers of the Crown must remain free to determine, according to their view of the public interest, what they will invite the House to consider."[21] The following passage of O'Regan J's decision in *New Zealand Maori Council v Attorney-General* is also relevant:[22]

> [60] … Either way, there is no action or proposed action of the Crown, other than the introduction of the legislation, which could be the subject of a declaration. And as both the *Sealords* case and *Milroy* establish, the courts will not grant relief which interferes or impacts on actions of the Executive preparatory to the introduction of a Bill to Parliament, because to do so would be to intrude into the domain of Parliament. …

[24] GRNZ relies on cases where decisions of Cabinet were found to be reviewable, however, those authorities did not involve the Court granting orders of the kind sought

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21 *Te Runanga o Wharekauri Rekohu Inc v Attorney-General*, above n 14, at 308.

22 *New Zealand Maori Council v Attorney-General* [2007] NZCA 269, [2008] 1 NZLR 318.

here.[23] For example, GRNZ principally relies on *Pora v Attorney-General*, which concerned Cabinet's offer of compensation to the Mr Pora, a decision that did not involve a decision to legislate.[24]

[25] GRNZ's carefully amended pleadings do not alter the essential nature of the orders sought. Indeed, despite being specifically asked to do so, GRNZ's post-hearing memoranda do not explain how the orders it now seeks would be of any practical utility to it unless it has the effect of delaying or preventing the process of introducing legislation to ban greyhound racing.

[26] The caveat to the proposed interim order (that nothing in the orders restricts the drafting, introduction and passage through Parliament of the proposed legislation), is irrelevant if the orders sought still have the disclaimed effect. The amended relief's focus on aspects of the Cabinet's decision other than the specific decision to legislate is also an artificial distinction. GRNZ pleads that the reason for the decision to ban racing (the level of injuries and their improbability of improving) is somehow a separate decision in respect of which the Minister, the MAC and the Minister's officials can be directed to take no further action, while still being free to take action to give effect to the ban through legislation.

[27] As the closure can only be implemented by legislation, the reframed interim relief makes no difference to whether the principle of non-interference is engaged. This careful attempt to replead the case simply demonstrates that the aspects of the Cabinet decision that are now said to be reviewable cannot be divorced from the decision to legislate to ban greyhound racing and the steps required to implement that decision.

[28] GRNZ's argument has significant similarity to the applicant iwi's pleadings in the decision of Boldt J referred to above.[25] That proceeding concerned Cabinet's decision to introduce legislation to amend s 58 of the Marine and Coastal Area (Takutai Moana) Act 2011. On 25 July 2024, the Minister for Treaty of Waitangi Negotiations

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23 *Pora v Attorney-General* [2017] NZHC 2018, [2017] 3 NZLR 683 (see below); *Afghan Nationals v Minister of Immigration* [2021] NZHC 3154, [2022] 2 NZLR 102.

24 *Pora v Attorney-General*, above n 23.

25 *Te Rūnanga o Ngāti Whātua v Attorney-General*, above n 13.

sent a letter to Te Rūnanga o Ngāti Whātua (Ngāti Whātua) seeking their views, with a deadline for consultation of 5:00 pm on 15 August 2024.

[29] Ngāti Whātua filed an interlocutory application seeking an urgent declaration that effectively asked the Court to prevent the Minister from closing the consultation period on 15 August, on the basis that it could not participate meaningfully or effectively in the consultation if the 15 August deadline remained. Ngāti Whātua sought a declaration that affirmed the existence of Ngāti Whātua's right to natural justice and proper consultation, arising from the Minister's 25 July letter. Ngāti Whātua repeatedly submitted that its claim was about procedural rights, and not about the legislation Cabinet had agreed to introduce.[26] Ngāti Whātua went as far as accepting that the Minister could freely ignore such a declaration.[27]

[30] Boldt J held that the principle of non-interference prevented the Court from doing anything to affect the Minister's freedom to introduce legislation. Given this, a declaration that the Minister should consult affected parties more extensively would be of no utility. The declaration would be non-binding and unenforceable and amount to a "suggestion". Boldt J held that it is not the Court's role to make suggestions, especially in the context of forthcoming legislation which is likely to be immensely controversial.[28]

[31] This reasoning reflected Boldt J's earlier statement that the principle of non-interference "is too fundamental to be susceptible to innovative pleading, no matter how skilful." The Court must look at the substance of the challenge and the way the Court is being asked to respond, rather than the way the claim is pleaded.[29]

[32] I consider the same can be said here. As already mentioned, GRNZ has not explained how the proposed order preventing further action "to close the greyhound racing industry because the level of injuries is not acceptable and is unlikely to reduce" would have any utility without having the effect of delaying the legislative process.

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26 At [34].
27 At [55].
28 At [58].
29 *Te Rūnanga o Ngāti Whātua v Attorney-General*, above n 13, at [49]; and *Hata v Attorney-General (No 2)*, above n 20, at [33].

GRNZ acknowledges that the Court cannot prevent or delay the Minister formulating and progressing legislation banning greyhound racing yet seeks declarations that will in substance have that effect.

[33] I consider the effect of directing the Minister (or his officials), and the MAC to take no further steps on the specific aspects of the decision now pleaded, is that matters important to the implementation of the proposed legislation will be prevented or delayed. Those matters are so interconnected with the legislative process that they cannot be the subject of interim relief without interfering in that process. For example, the MAC's role in providing independent advice, planning and oversight of the closure of the industry requires it to develop advice as to the legislative, regulatory or operational changes required for the closure. Although the new pleading disavows relief that would interfere with the MAC's legislative or regulatory advice, the effect of the MAC not being able to assist with operational planning to ensure the industry is ready for the ban, will be interference with the Minister's ability to progress the ban through legislation. Self-evidently, if the industry is not ready for the ban, it is almost inevitable that the Minister would need to delay the introduction of the legislation implementing it.

[34] The MAC only exists because of Cabinet's decision to legislate to ban greyhound racing, and everything that it has been tasked to do is for the ultimate purpose of implementing that decision. No amount of careful pleading can alter that the substance of what is being sought is to prevent or delay that ultimate purpose.

[35] Moreover, even if I am wrong that the relief sought improperly interferes with the legislative process, the caveat that any Court order should not have that effect means any interim relief will be of no utility. If any Court order does not have the effect of delaying the introduction of legislation to ban greyhound racing, it will not assist GRNZ to avoid the impact of such a ban on its members. This would mean relief is not necessary to preserve GRNZ's position.

Is Cabinet's decision subject to legal yardsticks, namely a statutory duty to consult the RIB?

[36] The Court does not simply apply the standard judicial review grounds (such as relevant/irrelevant considerations, legitimate expectation or unreasonableness) to political decision making. Before the Court will intervene in Cabinet decisions involving high-level questions of policy and political judgment, there needs to be a basis on which the decision can be identified as not being in accordance with law.[30] Decisions require such a legal "yardstick" against which they can be assessed before the Court will intervene on judicial review.[31]

[37] GRNZ contends that the Act itself provides such a legal limit, as the scheme and purpose of the legislation requires the Minister to not make a decision about banning greyhound racing on animal welfare grounds without first obtaining the advice of the RIB about the appropriateness of such a ban. GRNZ says this statutorily imposed limit on the Minister/Cabinet's decision means that the Court can determine whether it has been breached without engaging the non-interference principle. This is because it is the Court's function to rule on whether statutory requirements have been complied with.

[38] GRNZ's analysis starts with Part 2, Subpart 4 of the Act. Section 42 establishes the RIB. Section 43 provides that the objectives of the Board include "to promote, and ensure compliance with, high standards of animal welfare".

[39] Section 44 sets out the functions and powers of the RIB, which include "to support and monitor the operation and effectiveness of each racing code's animal welfare policies and initiatives" and "to monitor the operation and effectiveness of the racing integrity system on an ongoing basis and to report to the Minister as required on the outcome of that monitoring".[32] Under s 45, the Minister must appoint members of the RIB having regard to "the need for the Board to have available to it, collectively, from its members, knowledge of, or experience in," a number of matters, including

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30 *Afghan Nationals v Minister of Immigration,* above n 23*,* at [133].
31 *Curtis v Minister of Defence* [2002] 2 NZLR 744 at [27].
32 Subsection (1)(d) and (j).

"animal welfare practices", "governance", "industry monitoring" and "performance measurement".[33]

[40] GRNZ submits that these provisions give the RIB a very important role as a statutory regulator and "the sole arbiter when it comes to welfare issues" and indicate that the Minister will not make significant decisions regarding any racing code without first obtaining the advice of the RIB. GRNZ further submits that the statutory scheme gives rise to an implied duty to consult the RIB before making the decision to ban greyhound racing on welfare grounds.

[41] I consider these broad provisions describing the objectives, functions and powers of the RIB (and its members) fall well short of establishing an implied duty on the Minister to consult RIB before deciding to ban greyhound racing on welfare grounds.

[42] The Court of Appeal has recently noted that a telling factor against finding a common law duty to consult was that the Act specifically defined when there was a duty to consult.[34] Here, there are also express duties on the Minister to consult under the Act, including: a duty to consult the Minister for Sport and Recreation (alone) on whether to recommend regulations relating to distributions from betting profits;[35] a duty to consult each racing code (among other organisations) before adjusting or setting (in secondary legislation) charges for offshore betting operators;[36] a duty to consult each racing code, TAB NZ and the Minister for Sport and Recreation before making recommendations for regulations for offshore betting;[37] and a duty to consult the Minister for Sport and Recreation (alone) before recommending regulations to give full effect to the Act (among other things).[38]

[43] The RIB's duties to consult under the Act include consulting TAB NZ and each racing code before providing its budget to the Minister;[39] consulting each of the racing

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33 Subsection (4)(b), (c), (g) and (h)
34 *ALT New Zealand v Minister of Immigration* [2025] NZCA 344 at [85].
35 Section 73(4).
36 Section 114(4).
37 Section 123(4).
38 Section 128(2).
39 Section 46(3).

codes and TAB NZ before providing its statement of intent to the Minister;[40] and consulting each racing code and the TAB in respect of its business plan.[41]

[44] None of these provisions suggest there is a duty on the Minister to consult the RIB, GRNZ or any other party before making a decision to introduce primary legislation relating to racing. And the existence and terms of these provisions support the proposition that there is no such obligation.

[45] Although clearly not determinative, I note the RIB does not itself consider decisions about the future of greyhound racing to be part of its function. Its 2022 Greyhound Review Final Report states "[t]here is a range of possible options for the future of greyhound racing, any decision in that regard is not within the RIB's mandate".

[46] GRNZ notes the courts have previously considered whether a duty to consult may arise in the course of formulating legislation.[42] However, those cases involved consideration of a duty to consult in respect of secondary rather than primary legislation. And cases where a duty to consult has been recognised for secondary legislation generally require the provisions to have a significant selective effect on individuals rather than the public at large.[43] I am unaware of any decision where it has been held that there is an implied or common law duty on the executive to consult before deciding to introduce primary legislation.

[47] In *Te Rūnanga o Ngāti Whātua v Attorney-General*, Boldt J concluded that the Minister was not under a duty to consult with Ngāti Whātua prior to the amendment of the Marine and Coastal Area (Takutai Moana) Act.[44] This conclusion was not altered by the Minister's offer of limited consultation. Boldt J found that there was ample authority that "from the perspective of the courts, pre-legislative steps, provided they are clearly connected with the Parliamentary process, are as inviolable as the

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40 Section 47(3).

41 Section 48(2); there are similar consultation on other bodies under the Act (see ss 16(3), 37(2), 62(3) and 63(2).

42 *CREEDNZ Inc v Governor-General [*1981] 1 NZLR 172 (CA); *ALT New Zealand v Minister of Immigration*, above n 34.

43 *Fowler & Roderique Ltd v Attorney-General* [1987] 2 NZLR 56 (CA).

44 *Te Rūnanga o Ngāti Whātua v Attorney-General*, above n 13.

legislation itself."[45] The Judge discussed a recent Supreme Court of Canada decision in which it was held that a duty to consult could not extend to the law-making process.[46] He then said that the proposed extension of administrative law consultation duties highlights how ill-suited they are to the parliamentary branch of government, noting that every piece of legislation would face a similar challenge. Boldt J concluded that "The Court has no role in supervising the process by which this (or any other) legislation is formulated."[47] Those observations apply with equal force in this case.

[48] It follows that I find unconvincing GRNZ's argument that a legal limit on the executive's policy making powers can be found in the Act. In this case, the effect of GRNZ's argument is that by implication parliament has passed legislation that gives the courts the ability to declare unlawful a decision to amend or repeal that legislation (due to a failure to consult). In other words, it has by implication decided to dispense with the principle of non-interference (or put another way, parliament has waived parliamentary privilege).[48] That is, to put it mildly, a bold proposition and I find no support for it in the Act. Clear and express words would be required to displace the fundamental constitutional principle that the executive is free to make policy decisions to legislate as it sees fit (assuming displacement of the principle is even possible).

[49] I therefore consider there is no basis to suggest the principle of non-interference is not engaged because the Act imposes a legal limit on the Minister's ability to decide to ban greyhound racing on welfare grounds (in the form of a duty to consult the RIB before doing so).

[50] In light of these conclusions, I consider GRNZ is in effect asking the court to make, in the words of Boldt J, a "suggestion" to Parliament that the level of injuries and the improbability of its reducing is not a proper basis for the banning of greyhound racing. Such a suggestion may be useful to GRNZ in the upcoming political battle over whether such a ban is justified and should proceed (which will ultimately be a

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45 At [71]; citing *New Zealand Maori Council v Attorney-General*, above n 22, at [60]; and *Mikisew Cree First Nation v Canada* 2018 SCC 40, [2018] SCR 765 at [2] and [171].

46 At [72]–[75]; discussing *Mikisew Cree First Nation v Canada*, above n 45.

47 At [81].

48 Parliamentary Privileges Act 2014, s 11.

matter for Parliament following introduction of the proposed bill). But for the reasons explained by Boldt J, it would be improper for this Court to make even a respectful suggestion about the appropriate basis for the decision to ban greyhound racing. To do so would be to allow GRNZ to use the courts to "influence the course of the bill" and interfere in the legislative process.[49]

Even if there is a duty to consult the RIB, does the strength of the case that such a duty has been breached favour interim relief?

[51] Even if it could be argued that there was some legal duty to consult the RIB that meant the principle of non-interference may not be engaged, I consider GRNZ does not have a strong case that the duty required the Minister to go beyond what he did in this case.

[52] The Cabinet paper refers to a number of findings of the RIB, including:

(a) GRNZ's animal welfare controls were "substantively adequate and align/exceed industry norms", with GRNZ having "met/achieved six of its ten Key Performance Indicator (KPI) targets for the 2023/24 racing season."

(b) While there has been considerable effort and focus on reducing those injuries that are avoidable, "some level of injury is unavoidable."

(c) RIB's opinion that "greyhound injury rates would be unlikely to significantly reduce because of a change in the responsibilities for governance or regulation of animal welfare, integrity and participant licensing for the sport of greyhound racing, were that to occur." This is because injury rates in New Zealand are currently comparable to those in Australian jurisdictions which have more regulatory oversight similar to the options considered for reform.

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[49] See *R (on the application of A, J, K, B and F) v Home Secretary* [2022] EWHC 360 (Admin), [2022] 4 All ER 615 at [26(ii)]; cited in *Te Rūnanga o Ngāti Whātua v Attorney-General*, above n 13, at [60].

(d) GRNZ's KPIs and welfare targets for the 2024/25 racing season, which the RIB generally viewed to be realistic and provided for a 2.5 per cent reduction in injury rates each year from the 2020/21 baseline.

[53] Further, a summary of information contained in the most recent quarterly progress reports from the RIB and GRNZ is attached to the Cabinet paper in an appendix. GRNZ submits some key information was missing, including specific efforts by GRNZ, overseen by the RIB, to improve animal welfare. However, GRNZ accepts that there is nothing inaccurate about the information that was provided to Cabinet, although it says it relies on very selective data. The essential complaint is that the information failed to state that GRNZ now exceeds by a considerable margin the standards identified in previous reviews and now leads the way with its welfare programmes across the three racing codes.

[54] GRNZ's reliance on a close comparison of the information provided to Cabinet against the information available, and its essential complaint that the overall picture presented was selective, does not bode well for an argument that the alleged unlawfulness is focused on the process rather than the merits of the decision. Even if at the substantive hearing there is found to be some legal limit on the Minister/Cabinet's decision, there can be little doubt the decision was essentially a political and social policy decision for which Cabinet has, at least, very broad (in my view unlimited) decision making power. Therefore, even if there was some duty to consult the RIB, there is not a strong case that it required the Minister to go beyond the RIB information he and his officials obtained and presented to Cabinet.

What is the strength of GRNZ's case that the executive is unlawfully implementing the ban without legislative authority?

[55] The second aspect of the interim relief sought would prevent the Minister, the MAC, and the Minister's officials "encouraging or requiring members of greyhound racing clubs to cease greyhound racing while greyhound racing is still lawful." GRNZ submits that the MAC is encouraging or requiring members of greyhound racing clubs to stop greyhound racing now so that there will be fewer closure measures required and fewer costs to implement the ban on greyhound racing.

[56] GRNZ provides affidavit evidence that the MAC has advised members that they "should already be winding down their activities prior to August 2026, given the Minister's decision was made in December last year", but does not provide any other evidence of correspondence from the MAC to this effect. The affidavit evidence also refers to correspondence from the Chair of the MAC that industry participants would not receive compensation "as [they] have 20 months to wind back activity and exit the industry." Further, GRNZ highlights the Minister's comments in July 2025 that the number of greyhounds that would require rehoming has halved since the policy announcement in December 2024.

[57] This appears to revive GRNZ's argument in their initial submissions that the decision to close the greyhound racing industry is being given effect to without legislation, "potentially raising '*Fitzgerald v Muldoon*' concerns."[50] GRNZ's counsel accepted at the hearing this this was not a strong point.

[58] I accept the Attorney-General's submission that there is no evidence of any attempt by the Minister, the MAC or the Minister's officials to *require* members of racing clubs to cease greyhound racing activity. There was no direction of the kind in *Fitzgerald v Muldoon* that members must cease greyhound racing activity. It appears, on the evidence before me, that the MAC has, at most, advised those involved in the industry to gradually scale down activities in order to prevent greater cost and loss when the legislation banning greyhound racing is passed. As the Attorney-General submits, members are able to ignore any such advice or opinion and make decisions for themselves.

[59] It follows that, on this issue, the merits are weak and there does not appear to be a position for GRNZ to preserve.

Do the consequences of the decision favour granting interim relief?

[60] I need not determine the respondent's submission that there is no position to preserve where there are no immediate legal consequences of the decision (absent enactment of the proposed legislation), only future potential legal consequences.

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50 *Fitzgerald v Muldoon* [1976] 2 NZLR 615 (HC).

However, it seems to me that the liberal approach to the remedies available under s 15 (referred to at [16] above) would not preclude taking into account significant financial, livelihood and social consequences (as advanced here) where there is a strong arguable case that the decision is unlawful. But that is not the position here. Not only is the case weak, but the evidence linking the consequences to the aspects of the decision that are now pleaded to be reviewable is also weak.

[61] Although there can be little doubt that participants in the industry are preparing for the fact that Parliament may ultimately enact the proposed legislation, there is no evidence specifically addressing whether the orders now sought (disavowing any attempt to delay the legislative process) would have any material effect on those consequences (logic and common sense would suggest not). In any event, I am satisfied there is insufficient evidence of such consequences to justify interim relief given my conclusions on the principle of non-interference and the merits of the case.

Conclusion

[62] With respect to the issues set out at [21] above, I conclude that:

(a) The relief sought would breach the principle of non-interference.

(b) Cabinet's decision to ban greyhound racing is not subject to any legal yardsticks, and there is no statutory duty to consult the RIB.

(c) Even if there is some duty to consult the RIB, GRNZ does not have a strong case that this required the Minister to go beyond the RIB information obtained and presented to Cabinet.

(d) The executive is not unlawfully implementing the ban without legislative authority by requiring members of greyhound racing clubs to cease greyhound racing while it is still lawful.

(e) The evidence of the consequences of the aspects of the decision that are now pleaded to be reviewable does not justify interim relief.

[63] I therefore decline the application for interim relief.

Costs

[64] My preliminary view is that the respondent is entitled to costs on a 2B basis (with certification for second counsel). However, if costs cannot be agreed, the parties are to file memoranda within 15 working days of receipt of this judgment and any reply memoranda five working days thereafter. I will determine costs on the papers.

La Hood J

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