

**11. Proposed Constitution Changes on Consultation, Regional and National Forums and HRNZ Director Selection and Election
*by the Harness Racing Governance Working Group & NZ Standardbred Breeders Assn Inc***

* See attached document *

14 September 2023

For consideration at the 2023 Annual General Meeting

Harness Racing New Zealand

The Harness Racing Governance Working Group (HRGWG)¹ with the executive of the N.Z. Standardbred Breeders Ann Inc propose this remit to the 2023 Harness Racing New Zealand (HRNZ) Annual General Meeting for adoption by members:

1. A proposed new clause 10 of the Constitution formally establishing a national and regional stakeholder consultation structure.
2. A new Clause clause10A establishing a Directors Appointments Panel.
3. A new clause10B setting out the process for the appointment of the Board.

These three rules are a package. They are hand and glove. They are modern, timely and presented after a lot of considered study by the Harness Racing Governance Working Group and NZ Standardbred Breeders.²

The proposal is reactive to recent HRNZ practices and concerns by clubs and kindred bodies. That said, the intent is to be forward looking.

The drafters of the rules have considered the *Governance Review of NZ Rugby*³ which contains a relevant analysis of the issues and offers solutions. We have considered this review, drawn from it and current NZ good governance practice in high performing sport.

The HRGWG has met weekly and consulted widely in the last three months.

NZSBA and HRGWG are aware that HRNZ will offer members an alternate Clause based upon the consultations following the 2022 AGM.

Clubs and kindred bodies will be advised of Zoom meeting times for question-and-answer sessions prior to the Conference and AGM.

Proposed Clause 10 – Consultation, Regional Forums and National Forum

Consultation with Stakeholders

The proposed Clause 10 creates a framework from three regional forums to the National Forum through to the Board and management to strengthen information flows and stakeholder engagement.

¹ Members: Penny Baynes, Murray Little, Dave Barley, Greg Wright, John Hartnell, David Branch, Jamie McKinnon and Robert Famularo

² Both contributors had been working separately on governance proposals. With the support of clubs they have worked together to present this single proposal to the 2023 AGM.

³ Governance Review, NZRU, Ko Te kai a te Rangatira ko te korero, August 2023, p 62 copy at <https://www.nzrugby.co.nz/> middle of page.

Remit: new Clauses 10, 10A & 10B replacing current Clause 10 of the Constitution

It mandates HRNZ's obligation to consult on national, regional and local issues.

The regional forums build on the Southern Harness model creating a vehicle for consultation, coordination and communication with HRNZ on local, and regional matters. Clubs and kindred bodies in each region will be members.

The National Forum is a cross-harness code body that, with the best collective interests of the New Zealand harness sport at heart, provide:

- meaningful input to the selection of members of the Board by providing feedback on the required competencies and skills;
- appointment of three members of the Directors Nomination Panel
- perspectives on national matters that will inform the Board's strategic thinking before plans and long-term strategies are finalised; and
- contribute improved governance-level dialogue about matters vital to the future of harness racing.

Members of the National Forum are three persons nominated from the regional forums of the North Island and Upper South Island and two from the southern region, a small club's representative, and nominees of the three kindred bodies. The forum will select its chairperson.

The nexus between a board and its CEO, and management, is retained and the accountability chain is re-enforced.

Proposed Clause 10A - Directors' Appointments Panel

Clause 10A establishes the Directors' Appointment Panel.

The Panel will

- I. With the assistance of a recruitment firm call for nominations, create shortlist, and interview candidates.
- II. Advise HRNZ and the National Forum of the proposed candidates to fill the vacancies.
- III. Then, recommend to the HRNZ Annual General Meeting their nominees for the director vacancies.
- IV. The members will vote on the candidates based on the current Schedule 2 weighted votes or as amended at the 2023 AGM.

In undertaking their task, the Panel will be cognisant of the need to:

1. Meet the competencies and skills needed on the HRNZ board as a whole, and at that round of election in particular; and
2. Ensure a majority of the board has an affinity with and connection to the harness sport; and

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3. At a minimum maintain a majority of directors as representative of the member clubs and kindred bodies as required by s.45 Incorporated Societies Act 2022.

The Panel will consist of:

- a. Three people appointed by the National Forum.
- b. An appointee of the Board.
- c. An independent chairperson.

At the 2024 AGM all seven director positions will be vacant. Current directors may re-apply. Three directors will retire in 2026 and four directors will retire in 2027, all being eligible for re-election.

Proposed Clause 10B - the Board

Why We Need the Best

Challenging and demanding questions are being asked of HRNZ and those that lead it.

The role of the HRNZ directors is rightly attracting far greater scrutiny. Hence this proposal seeks to find the best possible people to serve on the Board.

It is the board of directors who are ultimately legally accountable for setting and overseeing the strategic direction of harness racing.

Directors should be held to high standards for their assessment and management of the strategy and risks – particularly when they are not involved in the day-to-day running of HRNZ and so are assumed to have an extra level of independence and hence responsibility.

The bottom line is that the HRNZ board matter a lot. Why? The buck stops with the Board.

The HRNZ Board matters because it sits between the stakeholders⁴ the executive and management, but increasingly, between society and the impact of the wagering and horse racing on the community, our social licence.

The HRNZ board needs to raise its game because the challenge is complex and intense.

Ultimately responsible for the direction and oversight of harness racing, and one step removed from the day-to-day running of HRNZ, the Board should be perfectly placed to oversee and support a far-reaching transformation.

HRNZ needs experience and diversity of perspective on the board to test and challenge thinking, to consider decisions from a range of potential perspectives and scenarios, and to provide heavyweight support with critical stakeholders to create space for effective change and transformation. Business as usual is not an option.

⁴ Not just the clubs and kindred bodies as formal members of the incorporated society

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So that horse racing and wagering, perceived to be social ills by one-third of New Zealanders, can operate and sustain itself over the long term the sport must pay full attention to the context in which it operates, however complex and uncertain.

While the statutory duty of directors is to HRNZ the incorporated society as a whole, the whole of community perspective is unmissable.

This is the primary responsibility of the board, as a part of its high-level strategic direction and oversight role. The risk landscape in our sport is changing very rapidly and very dramatically.

We need a board and management that is not blind-sided or flat-footed in response to sudden change.

The Board

We need the best HRNZ board possible.

A seven-person Board is proposed, elected by members at the 2024 AGM after a competitive, skills seeking, merit-based application and nomination process managed by the Panel. ATC and NZMTC appointed positions abolished.

Existing seven members plus the newly elected member Todd Anderson are retained until then.

These changes and the size of the Board will be reviewed in 2026.

Term of office is three years, maximum of three terms.

Conclusion

Harness racing stakeholders know that the future is not easy. It will be tough and may require major resets and tough investment decisions.

Stakeholders want increased transparency and clarity on how the sport is engaging with these key issues and forming responses, quickly.

Proactive engagement with clubs, kindred bodies and key stakeholders will sustain change.

This framework will enhance transparency and engagement with stakeholders.

So, the opportunity that now presents itself is for the Board and individual directors to step up and take responsibility and provide this leadership, with support from our sport.

In doing so, greater courage will be needed.

We need our directors to take that additional step that is the hallmark of true independence: the willingness to pose the really difficult questions and to challenge even the holiest of cows. All without looking over their shoulders or being second-guessed.

John Hartnell
Harness Racing Governance Working Group

Colin Hair
NZ Standardbred Breeders Assn Inc

10.0 REGIONAL AND NATIONAL FORUMS

Regional Forums

- 10.1 The Regional Forums are the:
- 10.1.1 “North Island Regional Forum” comprising of its members located in the North Island.
 - 10.1.2 Upper South Island Regional Forum comprising of its members located north of Oamaru.
 - 10.1.3 Southland Otago Regional Forum comprising of its members located in Oamaru and south.
- 10.2 Totalisator clubs and any affiliate or branch of a kindred bodies in a region must form a regional forum.
- 10.3 Members of a regional forum are:
- 10.3.1 the totalisator clubs in the region; and
 - 10.3.2 the affiliate or branch of any kindred body in the region and if there is no affiliate or branch a person nominated by the national kindred body for that region;
- 10.4 Members of a regional forum may include:
- 10.4.1 Any other registered club or affiliated entity in that region referred to in the First Schedule,
 - 10.4.2 Any key stakeholders in the region including organisation that run trials and workouts.
- 10.5 The purpose of regional forums includes:

- 10.5.1 To enhance regional harness racing operational, organisation and funding matters at a local and regional basis.
- 10.5.2 To provide communications, coordination, and planning for supporting the National Forum functions described in clause 10.9.
- 10.5.3 To appoint members to the National Forum.
- 10.6 Regional forums are self-regulating with membership (other than of totalisator clubs and kindred bodies) and governance arrangements at their sole discretion.
- 10.7 The regional forums shall document their membership and procedures in a charter document that will be publicly available on the HRNZ website.
- 10.8 If members of a regional forum cannot reach a consensus on a matter and a vote is requested each totalisator club in clause 10.3 shall have the votes set out in Schedule 2 and each kindred body one vote, unless otherwise agreed and recorded in the charter.

National Forum

- 10.9 The Harness National Forum (“National Forum”) is a cross-harness code body that, with the best collective interests of the New Zealand harness sport at heart, can provide:
 - 10.9.1 meaningful input to the selection of members of the Board by providing feedback on the required competencies and skills;
 - 10.9.2 the direct appointment of three members of the Directors Nomination Panel, who do not have to be members of the National Forum;

- 10.9.3 perspectives on national matters that will inform the Board's strategic thinking before plans and long-term strategies are finalised;
- 10.9.5 future of harness racing; and
- 10.9.6 a forum for cross-sport conversations and networking across the sport.

(This wording is taken directly from the NZ Rugby Governance Review 2023, p 86)

10.10 Membership of the National Forum shall consist of:

- 10.10.1 three members nominated by the North Island Regional Forum;
- 10.10.2 three members nominated by the Upper South Island Regional Forum;
- 10.10.3 two members nominated by the Southland Otago Regional Forum;
- 10.10.4 one member, and an alternate, elected by the small clubs as defined in the Racing Industry Act 2020 following a ballot conducted by the Chief Executive;
- 10.10.5 one member nominated by the N.Z. Standardbred Breeders' Association Incorporated;
- 10.10.6 one member nominated by the NZ Trotting Owners Association Incorporated;
- 10.10.7 one member nominated by the New Zealand Harness Racing Trainers and Drivers Association Incorporated;

- 10.10.8 a member co-opted by the National Forum, limited to two at any one time, for a specific purpose or project and for a fixed term not greater than two years.
- 10.11 The appointing bodies named in clause 10.10 (other than small clubs under clause 10.10.4) shall have sole discretion in determining the method for selecting or removing their nominee to the National Forum, including the appointment of an alternate.
- 10.12 The members of the National Forum shall hold office at the discretion of their nominating body with a maximum term of nine years, cumulatively.
- 10.12 The members of the National Forum:
 - 10.12.1 Shall elect a member as chairperson at their first meeting after the HRNZ annual general meeting to hold office until the end of the next annual general meeting.
 - 10.12.2 May remove the chairperson by majority vote two weeks after notice in writing and signed by four members have been received by the secretary.
- 10.13 The National Forum shall:
 - 10.13.1 Document their membership and procedures in a charter document, after consulting HRNZ, that will be publicly available on the HRNZ website.
 - 10.13.2 Meet as required, usually virtually, but at least once a year in person.
 - 10.13.3 The nominators of the National Forum members shall be responsible for the out-of-pocket expenses of their nominee's participation.

- 10.13.4 Through the chairperson of the National Forum send a report to the annual general meeting and at least quarterly to the Board.
- 10.14 HRNZ shall:
 - 10.14.1 make budget provision for the annual remuneration of the chair of the National Forum at 50% of the rate for the chair of the Board as determined at the annual general meeting;
 - 10.14.2 provide a member of its staff to be the secretary to the National Forum; and
 - 10.14.3 establish an annual budget for the secretariat's and chairperson's out-of-pocket and secretarial expenses.
- 10.15 For the avoidance of doubt the National Forum, and the Regional Forums established under this Constitution:
 - 10.15.1 do not have separate corporate status;
 - 10.15.2 are consultative forums, not a decision-making body, or another layer of governance; and
 - 10.15.3 are independent of HRNZ in their composition and functioning.

Consultation

- 10.16 HRNZ will undertake consultation on a regular basis with the National Forum on the initiation, development and implementation of strategies for the promotion, strategic development, and welfare of the harness racing sport.
- 10.17 HRNZ will undertake consultation on a regular basis with the regional forums to facilitate the function in clause 10.5.

10A DIRECTORS' NOMINATION PANEL

- 10A.1 The Board shall establish a Directors' Nomination Panel (the Panel) comprising:
- 10A.1.1 A chairperson nominated by the President of NZ Institute of Directors and endorsed by the Board of HRNZ.
 - 10A.1.2 Three persons nominated by the National Forum established under Part 10A.
 - 10A.1.3 A person nominated by the Board who is not necessarily a member of the Board.
- 10A.2 A person who would not be eligible to be appointed as a member of the Board is not eligible to be appointed or continue as a member of the Panel.
- 10A.3 Every person appointed to the Panel shall hold office for three years and be eligible to be reappointed with a maximum term of nine years, cumulatively.
- 10A.4 Any vacancy in the Panel may be filled by the appointing body in clause 10A.1.

Panel Procedures

- 10A.5 The quorum for the Panel is three members attending in person or virtually.
- 10A.6 Within five months of being first appointed, and on an as required basis thereafter, the Panel shall document its procedures for:
- 10A.6.1 the recruitment and nomination of directors in accordance with best practice for the recruitment of directors in NZ high performance sport organisations, this Constitution and the Incorporated Societies Act 2022.

10A.6.2 for the retirement of panel members in the first two years.

10A.7 The Panel will consult the National Forum on its procedures and then submit its procedures to the HRNZ Board for approval. HRNZ will publish the Panel's procedures on its website.

10A.8 On or before 31 March each year the Panel Secretary will notify the appointing bodies established under clause 10A.1, the clubs, the kindred bodies, the National Forum, the Regional Forums, and the Chief Executive, if any member of the Panel's term is due to expire in that year.

10A.9 The Panel shall appoint a secretary (Panel Secretary) who may be an employee of HRNZ.

10B THE BOARD

Composition of the Board

10B.1 The Board of HRNZ shall comprise eight persons, reducing to seven persons (to be known as "directors") at the end of the 2024 annual general meeting.

(Clause 2.1 "meeting means either an annual general meeting or a special general meeting or both (as the case may be) of HRNZ")

10B.2 In the event that the Board and the Panel determine that a significant skills gap exists within the Board members the Panel may appoint an additional person to the Board for a term that expires at the end of the next annual general meeting.

(There may be a rare occasion when the Board is left without a desired set of expertise. This clause enables the position to be filled until the next formal appointment round)

Eligibility for election or appointment

10B.3 A person is not eligible to be elected or appointed as or continue to be a director who:

10B.3.1 Is a paid official of HRNZ.

10B.3.2 Has at any time been or is disqualified for any serious racing offence under the Clauses, the Clauses of Racing or a corrupt practice under the former New Zealand Clauses of Harness Racing, Clauses of Racing or any equivalent rules of any recognised Harness Racing Club, Racing Club, Authority or Body in New Zealand or any country.

10B.3.3 Has at any time been convicted of an offence or crime referred to in Schedule 1 of the rules made under section 40 of the Racing Industry Act 2020.

10B.3.4 Has at any time been struck off the role of a professional body or had their name removed from the register of a professional body and not restored to that register.

10B.3.5 Is disqualified as holding office under the Incorporated Societies Act 2022.

10B.3.6 Has from the 2019 annual general meeting of HRNZ been a member of the Board for a total of nine (9) years either consecutively or otherwise, unless approved by special resolution of HRNZ.

Director Vacancy

10B.4 The office of any member of the Board shall become vacant:

10B.4.1 after the annual general meeting in their third year of office, except as provided in clause 10B.30:

10B.4.2 if they resign in writing addressed to the Chief Executive;

- 10B.4.3 if they are absent without leave of the Board for more than two successive Board meetings;
- 10B.4.4 if they suffer from incapacity affecting performance of duty, neglect of duty, or misconduct, established to the satisfaction and in the sole discretion of the Board;
- 10B.4.5 if they die or become ineligible to continue to hold office under clause 10B.3;
- 10B.4.6 if they are removed from office by resolution of a meeting of the Board or HRNZ;
- 10B.4.7 if they become bankrupt; or
- 10B.4.8 if in the opinion of the Board they have brought the sport, the Board or HRNZ into disrepute irrespective of whether the conduct is related to the sport or not.

Recruitment of Directors

- 10B.5 Prior to each recruitment for a director(s) the chief executive, after consulting the National Forum, shall:
 - 10B.5.1 advise the Panel of skills, competencies, and diversity that the Board and the National Forum believes need strengthening within their current group;
 - 10B.5.2 provide a generic position description for the role of member of the Board, including terms and conditions of remuneration; and
 - 10B.5.3 confirm with the National Forum if a professional recruitment firm is required to assist with the recruitment process including but not limited to recommending a short list of candidates to the Panel, and contract that firm.

(There may be an instance where a vacancy arises and an agreed candidate is suitable for the position and a recruitment firm is not needed.)

- 10A.6 In the event that the National Forum cannot reach a consensus on their three nominees to the Panel the Panel Secretary will conduct a ballot of each member of the National Forum with each member having three votes each which may be split.

Nomination Process

- 10B.7 The Panel Secretary shall notify the Panel, the clubs, kindred bodies, the National Forum, and the regional forums:
- 10B.7.1 no later than 30 April for the number of pending vacancies to be filled that year at the annual general meeting; or
 - 10B.7.2 within one month of a casual vacancy arising (except when a director's position term has less than a year left on the Board).
- 10B.8 The Panel Secretary shall initiate the recruitment process in consultation with the Panel chair by notifying the Chief Executive, the clubs, the kindred bodies, the National Forum, and the regional forums as the Panel's approved procedures require.
- 10B.9 The Panel shall notify the Chief Executive and the National Forum of the name of the person or persons it is proposing to nominate as a potential director, with a supporting brief of the qualifications for each nominated person and a general overview report on the recruitment process:
- 10B.9.1 by 20 August in any year for the usual cycle leading to the annual general meeting: and
 - 10B.9.8 a least eight weeks prior to a special general meeting called to fill a casual vacancy.

10B.10 The National Forum may, not later than two weeks after receiving the advice under clause 10B.9 ask the Panel to reconsider a candidate for director if they identify a serious impediment in a candidate's ability to perform their duties in a professional and independent manner and the Panel shall review its decision to nominate that person and may either:

10B.10.1 confirm its decision; or

10B.10.2 propose a new candidate for the vacancy.

10B.11 The Chief Executive shall notify the clubs and kindred bodies of the Panel's nominees for membership of the Board according to the notice period of the meeting in this Constitution, including with the meeting's papers the Panel's qualification's brief.

10B.12 The Panel will ensure:

10B.12.1 that their nominations comply with the requirements of section 45 and 47 of the Incorporated Societies Act 2022;

10B.12.2 that a majority of the board have an affinity with and connection to the harness sport.

10B.13 The Panel shall recommend to a meeting of HRNZ the exact number of eligible candidates as they have been notified to be filled, provided they have suitable candidates.

10B.14 The meeting of HRNZ shall consider each vacancy individually and vote for or against the recommended candidate.

(The election of directors will usually be at the HRNZ annual general meeting in October.)

10B.15 Notwithstanding any other clause in this Constitution, a representative of a club or kindred body entitled to attend the meeting, or their duly appointed substitute may vote on the appointment of a director and has

the number of votes listed in the Second Schedule for the club or kindred body they represent. A candidate shall be declared elected on achieving a majority of the votes cast.

10B.16 If a vote under clause 10B.14 is tied it shall be deemed lost.

10B.17 In the event of:

10B.17.1 the Panel not being able to recommend sufficient candidates to fill the vacancies; or

10B.17.2 a nominated candidate being unsuccessful at the meeting -

the director's position shall remain vacant until filled under clause 10B.18 unless the Board and the Panel agree that a director who retired at that meeting shall remain in office until his or her vacancy is filled.

10B.18 When a vacancy is not filled at a meeting of HRNZ the Panel may:

10B.18.1 offer an alternate nominee from that recruitment round at that meeting; or

10B.18.2 start the recruitment round again.

10B.19 If a vacancy occurs in any director's position that has less than a year left in the term the Board may fill the position with its nominee provided the Panel by majority vote endorses the nominee and that person shall fill that term for the balance of the term.

10B.20 Every person elected to be a member of the Board under this Constitution shall, subject to the provisions of this Constitution and unless he or she sooner vacates office, come into office from the conclusion of the meeting at which he or she shall be declared to be duly elected.

10B.21 A director who vacates office may be re-elected providing they are not otherwise ineligible for election.

Procedural Error

10B.22 No act, proceedings, determination or matter of the Panel or the Board or the National Forum of any person acting as a member or officer of the Panel or the Board or the National Forum shall be invalidated because of a vacancy in the membership of the Board, Panel, or National Forum at the time of the act, proceedings, determination or matter or because of the subsequent discovery that there was some defect in the election or appointment of any person so acting, or that he or she was incapable of acting or being a member.

Transitional Provisions

10B.24 Prior to the 2023 annual general meeting there was an election for a board member and that person shall take office at the end of the 2023 annual general meeting and hold office for one year until the end of the 2024 annual general meeting.

10B.25 The Auckland Trotting Club Incorporated nominated position for a member of the Board created under former clause 10.24 will cease to exist at the end of the 2024 annual general meeting. All provisions in the former clause 10 about the appointment of a person to that position shall apply until the end of the 2024 annual general meeting.

10B.26 The New Zealand Metropolitan Trotting Club Incorporated nominated position for a member of the Board created under former clause 10.25 will cease to exist at the end of the 2024 annual general meeting. All provisions in the former clause 10 about the appointment of a person to that position shall apply until the end of the 2024 annual general meeting.

10B.27 All the remaining five members of the Board at the end of the 2023 annual general meeting must retire at the conclusion of the 2024 annual general meeting.

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10B.28 Prior to the 2024 annual general meeting the Panel will nominate seven persons for the Board to take office after that meeting and to hold office for a term as determined under clause 10.39..

10B.29 Immediately after the conclusion of the 2024 annual general meeting the Board shall hold a meeting and after the election of the chairperson and vice chairperson the Chief Executive shall conduct a ballot to determine the initial term of office for each board member by:

10.29.1 placing in a container three (3) samples marked "Two Year Term until the end 2026 annual general meeting" and four (4) samples marked "Three Year Term until the end 2027 annual general meeting";

10.29.2 asking each member to draw from the container a sample that determines that person's initial term of office.

10B.30 For the avoidance of doubt the 2026 annual general meeting will fill three vacancies on the Board and the 2027 annual general meeting will fill four vacancies, and then the annual rotation continues.

REMIT RESOLUTION

That the above new Clauses 10, 10A and 10B are inserted into the Constitution after Clause 9 and current Clause 10 is repealed, subject to the saving provisions of clauses 10B.25 and 10B.26.