



**2023**

## **Constitution Amendments - Governance**

The proposed amendments to the Constitution of Harness Racing New Zealand Incorporated, to be considered at the 2023 Annual General Meeting of Harness Racing New Zealand Incorporated on 14 October 2023 at Christchurch are outlined below.

The proposed amendments to the Constitution will come into force as set out in the remits.

These proposed amendments to the Constitution will follow presentation of the remits in relation to the Rules of Harness Racing, and Constitution relating to finance matters, provided separately.

### **10. Club Consultation Model**

***by the Board on behalf of Clubs and Kindred Bodies following consultation***

#### **Special Resolution (to come into force on 17 November 2023)**

Amend the Constitution by inserting a new definition for director and deleting clauses 10.1 to 10.47 and inserting new clauses 10.1 to 10.50 (excluding footnotes, which have been added for delegates' information) that state:

***director means in the context of the Board of HRNZ a member of the Board and vice versa.***

### **10. *The Board***

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#### ***Function***

10.1 From the end of each annual general meeting until the end of the next, HRNZ shall be governed by the Board, which shall be accountable to the members for the advancement of the HRNZ's objects and functions and the implementation of resolutions approved by any general meeting.

#### ***Composition***

10.2 The Board of HRNZ shall comprise seven directors<sup>1</sup> elected or appointed as follows:

10.2.1 Five national directors elected by the member totalisator clubs and the kindred bodies; and

10.2.2 Two independent directors appointed by the Governance Appointment Panel.

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<sup>1</sup> Currently under s 45 of the Incorporated Societies Act 2022 the majority of directors must be representative of the totalisator clubs or kindred bodies. This may change under future regulations.

### ***Eligibility for election or appointment***

- 10.3 A person is not eligible to be elected, appointed as, or continuing to be a director who:
- 10.3.1 Is a paid official of HRNZ.
  - 10.3.2 Has at any time been or is disqualified for any serious racing offence under the rules of harness racing, the rules of racing or a corrupt practice under the former rules of harness racing, rules of racing or any equivalent rules of any recognised harness racing club, racing club, authority or body in New Zealand or any country.
  - 10.3.3 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.
  - 10.3.4 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.
  - 10.3.5 Is disqualified as holding office under the Incorporated Societies Act 2022.
  - 10.3.6 From the 2019 annual general meeting of HRNZ has been a member of the Board for a total of nine years either consecutively or otherwise, unless approved by special resolution of HRNZ.

### ***Skills matrix for nominees***

- 10.4 Prior to calling for nominations the Board, in consultation with the chief executive, shall identify any particular skill matrix or other criteria that the Board considers appropriate for any nominees.

### ***Nominations for and election of persons by totalisator clubs and kindred bodies***

- 10.5 The chief executive shall notify the member totalisator clubs and kindred bodies of the number of pending vacancies that year to be filled by the nomination and election of directors by totalisator clubs and kindred bodies and of any skills matrix prepared under clause 10.4.
- 10.6 In the month of July each year or such other date, as the Board decides, each totalisator club and each kindred body may nominate one person for nomination as a director for each notified pending vacancy.
- 10.7 The nominee must consent in writing to be an officer of HRNZ and certify they are not disqualified from being elected as an officer of HRNZ.<sup>2</sup>
- 10.8 A nomination must be in writing, signed by the chairperson and the secretary of the nominating club or kindred body (or persons of equivalent office), and by the person nominated.
- 10.9 The chief executive must receive a nomination no later than 4:00 pm on 20 July in the applicable year or such other time and date as the Board decides.
- 10.10 If the number of nominations the chief executive receives does not exceed the number of pending vacancies, the person(s) nominated shall be declared elected.

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<sup>2</sup> Section 47(2) of the Incorporated Societies Act 2022.

- 10.11 If no nominations are received, the Board in office must appoint an eligible person as a director for each pending vacancy for which there is no nomination. Every person appointed by the Board is deemed to be elected as a director by the totalisator clubs and kindred bodies.

***Nominee information and review by the Governance Appointment Panel***

- 10.12 A nominee may provide information about their background in a form prescribed by the chief executive and must provide any relevant information concerning any skill matrix identified by the Board.
- 10.13 The Board may refer any nomination and information provided to the Governance Appointment Panel for review.

***Voting***

- 10.14 If the number of persons nominated exceeds the number of pending vacancies, the chief executive shall prepare voting papers. The voting papers must include the following:
- 10.14.1 The number of pending vacancies;
  - 10.14.2 The names of the nominees;
  - 10.14.3 The method(s) by which the voting may be submitted; and
  - 10.14.4 The time and date at which voting closes. If no date is set, voting closes at 4:00 pm on 20 August in the applicable year.
- 10.15 The information provided by the nominee is to be included in the voting papers or sent with the voting papers.
- 10.16 The Board may approve one or more methods by which voting may be completed and submitted.
- 10.17 The chief executive shall forward one voting paper to each totalisator club and kindred body.
- 10.18 After receipt of the voting paper each club and kindred body must, by its committee or equivalent body, vote for one nominee for each pending vacancy.
- 10.19 The voting paper must be signed by the chairperson and the secretary of the club or kindred body (or persons of equivalent office) and returned to the chief executive on or before the date and time voting closes.
- 10.20 If the number of nominees is reduced by withdrawal or otherwise to a number which does not exceed the number of pending vacancies before the counting of votes is commenced, the remaining nominee(s) shall be declared elected.

***Valid and informal votes***

- 10.21 A vote that is not an informal vote is a valid vote.
- 10.22 A vote is an informal vote if the voting paper is not:
- 10.22.1 completed; or

- 10.22.2 submitted by an approved method; or
- 10.22.3 signed by the chairperson and the secretary of the club or kindred body (or persons of equivalent office): or
- 10.22.4 received by the time and date voting closes is an informal vote.

### ***Counting of votes***

- 10.23 The chief executive is the returning officer and must fix a date for counting votes.
- 10.24 The chief executive may appoint two scrutineers.
- 10.25 On the day fixed for the counting of votes, the returning officer shall receive the votes in the presence of any scrutineers and, after setting aside all informal votes, count the number of valid votes.
- 10.26 Where there is one pending vacancy the nominee who receives the highest number of votes shall be the duly elected director.
- 10.27 Where there are two pending vacancies the two nominees who receive the highest number of votes shall be the duly elected directors.
- 10.28 Where there is an equality of votes between nominees the returning officer shall, in the presence of the scrutineers, determine by lot which nominee has been elected.
- 10.29 The returning officer and the scrutineers shall report to the Board the election result. The scrutineers shall hand the votes adequately sealed to the returning officer, who must retain them for three months and then destroy them, including any electronic record of voting papers.
- 10.30 The chief executive shall publish the result of the election.
- 10.31 The chief executive and any scrutineers are not required to disclose the number of votes any nominee received.

### ***Appointment by Governance Appointment Panel***

- 10.32 When required, the Board shall establish a Governance Appointment Panel comprising of:
  - 10.32.1 one person representing HRNZ appointed by the Board (HRNZ appointee);
  - 10.32.2 one person appointed by the Board who has expertise in governance recruitment (governance appointee); and
  - 10.32.3 one person appointed by HRNZ appointee and governance appointee.
- 10.33 The chief executive may provide to the Governance Appointment Panel any skills matrix being sought from any independent director.
- 10.34 The Governance Appointment Panel shall call for applications and appoint the independent director.
- 10.35 In any year the Governance Appointment Panel may appoint a member to the Board the Chair of the Governance Appointment Panel must after the election and before 4:00 pm on 20 September or such other time and date as the Board decides, notify the chief executive the name of the person appointed by it as a member of the Board.

10.36 The appointee must consent in writing to be an officer of HRNZ and certify they are not disqualified from being elected as an officer of HRNZ.<sup>3</sup>

#### **Failure to appoint**

10.37 In the event the chief executive does not receive notification of the name of the person to be appointed under clause 10.35, the Board shall appoint an eligible person as an independent director and every person so appointed is deemed to be appointed by the Governance Appointment Panel.

#### **Term of Appointment**

10.38 Subject to this Constitution's provisions, every person elected or appointed to be a director shall come into office from the conclusion of the annual general meeting of HRNZ at which they are declared duly elected or appointed unless they sooner vacate office.

10.39 A director vacates office after the annual general meeting of HRNZ in their third year of office.

10.40 A director who vacates office under clause 10.39 may be re-elected or re-appointed providing they are not otherwise ineligible for election or appointment.

10.41 If for any reason the election or appointment of a director has not been concluded before the annual general meeting the director who would otherwise vacate office at the conclusion of the AGM may continue in office until his or her successor is appointed or elected.

#### **Vacancies**

10.42 The office of a director shall become vacant on their vacating office at the end of their term or if the director:

10.42.1 dies or resigns in writing addressed to the chief executive;

10.42.2 is absent without leave of the Board for more than two successive Board meetings;

10.42.3 suffers from incapacity affecting the performance of duty, neglect of duty, or misconduct, established to the satisfaction of the Board;

10.42.4 becomes ineligible to continue to hold office by reason of the fact that he or she has at any time been or is disqualified for any corrupt practice or serious racing offence as described under clause 10.3.2;

10.42.5 becomes disqualified from holding office under the Incorporated Societies Act 2022;

10.42.6 is removed from office by resolution of HRNZ; or

10.42.7 in the opinion of the Board, the director:

10.42.7.1 has failed to comply with the obligations of an officer under the Incorporated Societies Act 2022;

10.42.7.2 has acted in a manner unbecoming or prejudicial to the objects and interests of HRNZ or harness racing in New Zealand; or

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<sup>3</sup> Section 47(2) of the Incorporated Societies Act 2022.

10.42.7.3 has brought HRNZ or harness racing into disrepute.

- 10.43 In any case where the Board grants a director leave of absence for a period of more than three months, it may appoint a substitute for that member during such absence, provided that where the Governance Appointment Panel appointed the director the Board shall invite that committee to appoint a substitute member.
- 10.44 Whenever the office of a director becomes vacant, the vacancy shall be filled:
- 10.44.1 Where the vacancy is of a director elected by the totalisator clubs and kindred bodies by the chief executive calling for nominations from the totalisator clubs and kindred bodies and clauses 10.4 to 10.31 shall apply with necessary modification.
- 10.44.2 Where the vacancy is of a director appointed by the former Independent Appointment Committee or the Governance Appointment Panel by the chief executive inviting the committee to appoint a new member to fill the vacancy by a date determined by the Board and clauses 10.32 to 10.36 shall apply with necessary modification.
- 10.45 A director elected or appointed under clause 10.44 shall remain in office for the remainder of the term of the vacating member.
- 10.46 No act, proceedings, determination or matter of the Board or of any person acting as a director shall be invalidated because of a vacancy in the membership of the Board 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 was incapable of acting or being a director.

### ***Transitional Provisions***

- 10.47 The current members of the Board shall continue in office for the remainder of their current terms.
- 2023 Elections and appointments*
- 10.48 Prior to the 2023 annual general meeting there shall be an election of two directors by the totalisator clubs and kindred bodies.
- 2024 Elections and appointments*
- 10.49 Prior to the 2024 annual general meeting there shall be an election of one director by the totalisator clubs and kindred bodies, and one appointed by the Governance Appointment Panel.
- 2025 Elections and appointments*
- 10.50 Prior to the 2025 annual general meeting there shall be an election of two directors by the totalisator clubs and kindred bodies, and one appointment by the Governance Appointment Panel.

### **Reason**

Implementing an updated governance model for the HRNZ Board structure and voting model in accordance with feedback from clubs and kindred bodies.

Following the 2022 Annual Conference, HRNZ collated the feedback from clubs and kindred bodies regarding the proposed new Board structure and voting model for HRNZ, and identified areas where greater clarity was sought from clubs and kindred bodies.

To better understand the views of clubs and kindred bodies and clarify some areas relating to the earlier governance discussions, a survey was sent on 17<sup>th</sup> March 2023. There was a good response from clubs and kindred bodies.

The HRNZ Board has reviewed the responses from clubs and kindred bodies and has detailed the proposed Board structure and voting model above. The feedback from clubs and kindred bodies is to get the best people on the Board and for the Board to perform a strategic and governance function, which is the intention behind the Racing Industry Act 2020 (the Act).

The proposed governance model is detailed as follows:

## **GOVERNANCE MODEL**

- Board size of seven, comprising:
  - five national directors
  - two independent directors
- No direct appointments by the Auckland Trotting Club (ATC) or the New Zealand Metropolitan Trotting Club (NZMTC)

## **VOTING MODEL**

- The current voting model will continue, such that:
  - the maximum number of votes per club will continue to be capped at 16. This cap on votes currently affects the NZMTC but does not affect any other club or kindred body
  - clubs not issued with a betting licence in the previous year will have a vote in the current year plus one more year
- The same voting model applies to both the appointment of directors, and the approval of matters at Annual and Special General Meetings

## **PROCESS FOR APPOINTING DIRECTORS**

- **Governance Appointment Panel (GAP)**
  - A GAP will be set up comprising:
    1. a representative of HRNZ appointed by the Board
    2. an independent governance expert identified by the Institute of Directors, appointed by the Board
    3. an independent governance person appointed by 1 and 2
- **Skills Matrix**
  - the Board in consultation with the Chief Executive will prepare a skills matrix which will vary depending on any skills gap on the current board at the time a vacancy for a director exists
  - the skills matrix will consider skills that the Board should possess including; knowledge of the harness racing industry, governance, strategic planning, legal, financial, IT, marketing, HR, and business skills
  - the skills matrix will be published
- **Position Description**
  - a position description will be developed for each of the elected and independent director roles which will include the following:
    1. Overview of role
    2. Time commitment
    3. Skills and attributes sought
- **National Directors**
  - will be nominated by clubs and kindred bodies for national positions

- clubs and kindred bodies are encouraged to use the skills matrix when looking at the suitability of nominees
- the GAP may review the applications against eligibility criteria in any skills matrix, and then may refer the nomination back to the nominating organisation if there are concerns regarding the nominee meeting the requirements of the skills matrix
- clubs and kindred bodies vote for their preferred candidate, or candidates where there is more than one national vacant position
- will be voted on nationally
- **Independent Directors**
  - applications from candidates will be called for, reviewed, shortlisted and interviewed by the GAP
  - a skills matrix reflecting governance experience, independence and listed skills will be used during the selection process
- **Governance Training for the Board**
  - there was support for mandatory governance training for all Board members

## TRANSITIONAL PROVISIONS

In order to retain the intellectual property currently existing within the Board it is sensible for there to be a transitional period which will allow the current board of eight to move to a board of seven, without the entire Board retiring at the same time, at the conclusion of the 2023 Annual General Meeting. The following table shows the date that the term expires for the current Board members:

Board Member	Elected or Appointed	Term expires
Kevin McNaught	Elected	2023 AGM
Robert Dunn	ATC appointment	2023 AGM
Bill McDonald	Elected	2024 AGM
John Grainger	NZMTC appointment	2024 AGM
Phil Holden	Independent Appointment Committee appointment	2024 AGM
Cam Bray	Elected	2025 AGM
John Coulam	Elected	2025 AGM
Anna Gallien	Independent Appointment Committee appointment	2025 AGM

In accordance with the proposed new Board structure, the ATC position will cease at the end of its term at the 2023 Annual General Meeting (AGM), and Kevin McNaught who holds an elected director position will retire by rotation at the end of the 2023 AGM. The NZMTC position will remain until the conclusion of its term at the 2024 AGM. The following is suggested as a transition to the new Board structure:

### Elections 2023 and Onwards

- In each year where there is to be an appointment of an independent director by the GAP, the appointment shall take place after the elections to enable any skills matrix and weightings being sought to be reviewed after the elected person(s) are known.

### Transitional 2023

- Kevin McNaught (elected) and the ATC appointee terms end.
- Election held for two national positions.

### Transitional 2024

- Bill McDonald (elected) and Phil Holden (GAP appointment) terms end and an election of a national Board member and one appointment by the GAP.
- NZMTC appointee term ends.

### Transitional 2025

- Remaining existing Board members' terms end and an election for two national positions and one appointment by the GAP.