



BOARDWORKS  
*International*

**New Zealand Thoroughbred Racing**  
**Governance Review**

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## **1. Introduction**

In 2008, New Zealand Thoroughbred Racing ('NZTR') initiated an independent assessment of the suitability of current governance arrangements to meet future challenges. In doing so it recognised that changes that have occurred in the wider racing industry in recent years have highlighted the need for responsive and effective leadership at the governance level of the New Zealand Racing Board ('NZRB') and the three racing codes. NZTR wished to ensure that it was well positioned to meet the needs of its stakeholders in what it expects will continue to be a very dynamic and challenging environment.

### **1.1 Terms of reference and approach**

The NZTR board appointed Graeme Nahkies ('the reviewer') a director of corporate governance consultancy BoardWorks International to undertake the review which was to have the following key components.

#### **1. A description of the existing NZTR governance model and key governance systems and processes.**

To address this aspect of the review the reviewer has examined relevant legislative and constitutional documentation, examined NZTR's internal documentation of governance processes, board papers, and observed an NZTR board meeting.

#### **2. An examination of the efficacy of the existing NZTR governance structure and processes.**

This aspect of the review has involved wide consultation with industry stakeholders, the NZTR board and executives, and the NZRB. Representatives of a wide cross section of industry stakeholders participated in four well attended regional workshops held in Auckland, Hamilton, Palmerston North and Christchurch during October and November 2008 (see Appendix 1).

The reviewer presented a progress report on the review to the NZTR Annual General Meeting at Christchurch in November 2008. NZTR members and other industry stakeholders were invited to make submissions on the initial options for change outlined by the reviewer at that time (Appendix 3).

The reviewer has also analysed governance related survey data collected by NZTR during 2007.

#### **3. Evaluate the relevance and applicability to NZTR of other governance models**

To assist in examining the applicability of emerging Australian state racing authority models the reviewer and the NZTR Chief Executive, Paul Bittar, traveled to Australia in January 2009 to interview the chairs and chief executives of a number of Australian

thoroughbred racing authorities to assess their responses to many of the same governance challenges facing NZTR (see Appendix 1).

An assessment has also been made of relevant New Zealand models taken from other sectors where attempts have been made to address the needs of complex stakeholder interests within the overall governance structure.

#### **4. Recommend changes in governance structure and processes if thought necessary.**

On the basis of the previous steps the reviewer was invited to recommend changes in the governance structure and processes of NZTR if these were thought appropriate and necessary. Consequently, this report outlines:

- the key components of an effective governance model;
- recommends changes to the current governance arrangements that would benefit the industry; and
- recommends a process for implementing any recommended governance changes.

### **1.2 Acknowledgement**

The completion of this review would not have been possible without the support, commitment and participation of, in particular, the NZTR board and management. Other key industry stakeholders have also been willing contributors to, and positive supporters of, the review. Their openness and input to the process has been greatly appreciated.

## 2. The Existing NZTR Governance Model and Key Governance Systems and Processes

### 2.1 Governance Structure

#### 2.1.1 General duties

The board of NZTR is responsible for managing the business and affairs of all aspects of the thoroughbred racing industry in New Zealand. In particular, it is the board's responsibility to:

- control, in accordance with the Rules and with the provisions of the Racing Act 2003, all thoroughbred racing conducted in New Zealand;
- ensure that all the requirements of the Rules are duly observed by all persons and bodies to whom they apply;
- initiate, develop and implement policies conducive to the economic development and financial welfare of thoroughbred racing;
- maintain and strive to improve the integrity of the thoroughbred racing industry;
- promote good industry relations;
- adopt and regularly review a strategic plan for thoroughbred racing (which should include goals and objectives and be structured in a way that allows the planning process and subsequent decision making and monitoring to be measured effectively); and
- do all things necessary to ensure that the business of thoroughbred racing is efficiently administered and managed.<sup>1</sup>

In terms of its own constitution, therefore, NZTR's responsibility for the leadership and control of the thoroughbred industry is unequivocal. What is markedly lacking, however, is the *authority* to match this responsibility. Much of the power to make the decisions that directly affect the performance and well being of the industry rests either with the NZRB or the racing clubs.

#### 2.1.2 Membership

NZTR is an incorporated society. Its members are registered racing clubs. These are either 'Totalisator' or 'Non Totalisator' clubs and are further divided into three geographical regions (Northern, Central and Southern).

Each Totalisator Club is entitled to elect or appoint a representative (who must be a Committee member) to attend a General Meeting of NZTR on behalf of the Club. Non totalisator clubs have no vote and their status is somewhat unclear.

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<sup>1</sup> For that purpose and for the better control of thoroughbred racing NZTR may give such orders and directions to and require such particulars and information from Clubs, owners and persons licensed or holding certificates or permits or who are registered under the Rules as it deems necessary.

In addition to funding from other sources NZTR is entitled to charge a General Purposes Levy levied on Totalisator Clubs - the equivalent of a membership fee - to fund its work.

Constitutional changes require a resolution passed by a three-fifths majority of all Representatives present and voting at an Annual General Meeting, or a Special General Meeting.

Legal issues have been raised about the role of Non-Totalisator clubs within the code (e.g. in terms of NZTR's accountability for their performance in respect of health and safety matters) and these should be addressed as part of any future constitutional changes. Of greater concern, as discussed further in this report, is the relative lack of recognition and influence this club-based membership structure allows to other central industry stakeholders.

### **2.1.3 Board composition**

The board of NZTR consists of ten members as follows:

- 2 directors for each of the 3 Regions;
- 1 director, appointed by Small Clubs<sup>2</sup>
- 1 director, appointed by the New Zealand Thoroughbred Breeders Association (NZTBA);
- 1 director, appointed by the New Zealand Trainers Association (NZTA); and
- 1 director being an owner of a racehorse currently racing or being prepared for racing, or a financial member of the New Zealand Thoroughbred Racehorse Owners' Federation Inc (NZTROF), appointed by the NZTROF.

The 7 'Club' directors are elected by Totalisator Clubs. Clubs may only vote for candidates nominated in their Region and only the Small Clubs are entitled to vote for the Small Clubs representative. Voting is weighted according to the number of Race Dates each club holds (each club is entitled to 1 vote for each current Race Date it holds).

Directors are elected/appointed for a 2 year term. They are remunerated at a level of fee set by the AGM.

The board chairman is elected annually by the board from among its members.

As this report later explains, this board composition is a significant factor in the organisation's ability to tackle the challenges facing the industry.

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<sup>2</sup> A club having 1, 2 or 3 race dates.

## **2.2 Governance processes**

### **2.2.1 Board meetings**

It is in the regular board meeting that the principal work of governance leadership is carried out. NZTR board meetings are typically held on a monthly cycle and each meeting usually extends over 6 hours or more. From this perspective there is more than enough time to get the important work of the board done.

However, whether or not the board is focused on 'important work' is a moot point. The structure and content of board meeting agendas follows a similar pattern each month and tends to be left to management to determine. There are improvements that could be made to both the structure and content of meetings that would assist the board to focus far better on its governance responsibilities and to provide more effective strategic leadership of both the organisation and the industry. These opportunities are the subject of a separate report to the board. In brief, there is a need for the board to take greater control over the setting of its own meeting agendas both for its own benefit and that of management. From observation and from an analysis of board meeting papers and minutes, the board has a tendency to allocate a disproportionate amount of its total meeting time to matters which have little to do with its own strategic plan and are of comparatively little significance in relation to the strategic leadership challenges facing the industry.

This situation is not unique to NZTR. It is typical of governing boards that have a representative structure. When, individually, board members feel a primary duty to the interests of constituent parts of their industry a board's attention is inevitably distracted down into relatively detailed operational matters and/or the 'political' issues that affect or motivate those constituencies. When these conditions are present it is almost always at the expense of addressing 'the big picture' and thinking through and taking the 'hard decisions'. The failure to govern proactively and productively is also a consequence of the difficulties an organisation with a representative governance structure has in ensuring that its board members have the attributes, skills, knowledge and experience to carry out governance functions at a 'best practice' level.

### **2.2.2 Board committees**

The board has established certain committees to assist it in its work. At present time the committees are:

1. Staffing Committee
2. Finance Committee
3. Integrity Committee
4. Funding Committee
5. Dates Committee

Other ad hoc board committees are set up as and when the need arises (e.g. the Auckland Blueprint/Synthetic Tracks Committee and the Participation Committee).

Initial observations and comments would suggest that these perform to varying degrees of effectiveness.

Although many of the matters covered are important and should be reported to the board in some form, the terms of reference of the Staffing Committee hint at much more extensive board level involvement in operational level staffing matters than would be the case in many other organisations. There is a risk that the use of a small committee to address these matters may exclude the board from the consideration of some matters for all directors are accountable.

The Finance Committee covers the usual board level financial monitoring and internal control issues. Such a committee is potentially of great importance and, as in most boards, is intended to obviate the need for the whole board to be involved at a very detailed level. It apparently does not meet regularly and an amalgamation with the Funding Committee could be considered. It is more usual today to have an 'Audit and Risk' committee with a broader brief to stimulate initial board thinking about non-financial as well as financial risk.

The job of the Integrity Committee is to report to the Board on all matters concerning the integrity and the perception of integrity within the thoroughbred code as well as provide oversight of the Rules of Racing. It is an active and effective committee that meets regularly and keeps the board well informed.

The primary purpose of the Funding Committee seems to be related to managing the NZTR's interface with the NZRB – notably over future funding and its allocation to and within the thoroughbred code. It also monitors the NZRB's performance. The Committee is intended to avoid the need for the whole board to be involved in the detail of the annual negotiation with NZRB and Stakeholders on the funding round. In many organisations such negotiations would be primarily an executive function. Amalgamation with the Finance Committee could be considered.

The Dates Committee also interfaces closely with the NZRB, in this case in relation to the racing calendar date setting process. It meets occasionally, as required and is said to work effectively. Again, the existence of the committee is intended to avoid the need for the whole board to be involved in dates matters. This – as in relation to other committees - begs the question whether these are the board's issues (rather than the responsibility of management) and, if they are, should not the whole board have a greater involvement.

In relation to these 5 committees there is no requirement (or expectation) that membership will be restricted to board members. Indeed one of the Committees (Integrity) is chaired by the Chief Executive. While it would be commonplace that board committees should receive close support from staff, the current NZTR practice raises questions of committee purpose and accountability.

The role of a board (i.e. governance) committee is to assist the board do its job not assist staff do theirs. A board committee should not supplant collective board decision making but should do 'pre-board' work that, for example, assists the board to understand an issue better and/or to shape its decisions more efficiently and effectively.

On the surface, the current pattern of NZTR committees suggests that there are wider issues of clarity regarding what matters the board should be involved in and what should be delegated to management.

### **2.2.3 Consultation**

There is provision in the Rules for the board to convene meetings in each Region to provide a forum for the exchange and development of ideas and policies in the common interest of Totalisator Clubs and Sector Groups within the Region. Reports of such forums are to be published.

A majority of the Board is required to be present for at least one of the Regional Forums in each Region during each Racing Year.

Clubs themselves may requisition 'Regional Meetings'.<sup>3</sup>

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<sup>3</sup> Such requisition must be in writing signed by not less than 20% of the Totalisator Clubs in the Region. The same proportion constitutes the quorum for such meetings.

### **3. The Efficacy of the Existing NZTR Governance Structure and Processes**

This Chapter identifies many of the leadership challenges facing the thoroughbred racing industry in New Zealand; reviews the perceived strengths and weaknesses of the current governance arrangements and assesses whether the existing governance structure and related processes are likely to be effective in meeting those challenges.

#### **3.1 Challenges facing the thoroughbred racing industry in New Zealand**

The consultation process has revealed a broad consensus about the following issues and challenges facing the industry.

- Racing depends on the wagering dollar and this is severely under threat due to competition from other gambling products including, for example, ‘virtual racing.’<sup>4</sup> Many of these are technology-based and accessible to anyone with an internet connection. Alternative gambling products often also provide better odds and better returns to those who would otherwise be punting on thoroughbred races.<sup>5</sup>
- While the industry is undoubtedly affected by the global economic recession, the economics of breeding and owning racing thoroughbreds – particularly for domestic as opposed to export purposes - has been deteriorating for some time. One reflection of this is the long run decline in the size of the foal crop. For various reasons it would also seem that there are fewer people who can afford (or are willing to accept) ‘the 90% failure rate’.<sup>6</sup>
- In New Zealand, the ‘racing’ part of the historical ‘rugby, racing and beer’ culture has diminished. This in part reflects changing social attitudes to gambling (and highly politicised concerns about ‘problem gambling’). This is in contrast to Australia where racing and related wagering are still valued and socially acceptable dimensions of the national culture. Added to high-profile probity issues (including both human and equine drug taking) and a lack of professionalism in many areas, the industry is not seen as ‘clean and green’.
- This is exacerbated by racing’s increasing reliance on profits from gaming machine operations. That source of revenue must be considered to be under increasing threat from Government intervention.
- With some exceptions the industry has been poor at recognising racing as a sporting and entertainment product that is competing with many other professionally and commercially managed alternatives.

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<sup>4</sup> Ladbrokes the leading UK betting shop has commented publicly (The Guardian, 16 November 2007) that horse racing is not as relevant to its customer base as it once was. Its customers are much more interested in machines and virtual horse racing. They bet on-demand now rather than spending time studying form in the newspaper. In the UK, 25% of thoroughbred racing wagering has now gone to virtual racing (source: personal communication, Alan Jackson).

<sup>5</sup> For a more extensive review of the global forces acting on the racing wagering revenue stream see the BCG report to Racing NSW in response to the Independent review of wagering in NSW 31 July 2008. ([http://www.olgr.nsw.gov.au/pdfs/Racing\\_NSW\\_Vol\\_2\\_BCG\\_Report.pdf](http://www.olgr.nsw.gov.au/pdfs/Racing_NSW_Vol_2_BCG_Report.pdf))

<sup>6</sup> This expression is based on the idea that only 10% of racing thoroughbreds cover their costs. Other estimates of this figure go as high as 30%.

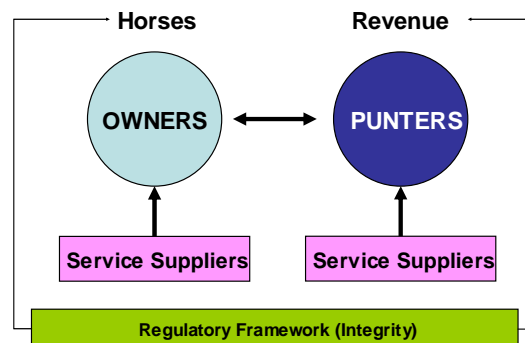
- Changing farming economics (e.g. the expansion of the dairy industry) and rural lifestyle patterns have also impacted negatively on the traditional role of horse breeding and horse racing in rural New Zealand.
- Thoroughbred racing has a major asset utilisation problem (New Zealand has 51 currently active thoroughbred racing venues – and 67 racing clubs for a population the size of Birmingham).
- The human capital side of the industry has been neglected – poor training systems, insufficient people with the right character and capabilities to staff the industry – with a consequential impact on the quality of the product and the attraction of the industry to potential new entrants.
- Not enough thought has been given to how young people, in particular, are brought into racing. There is concern that there is no easy pathway into the industry for new participants be they interested in making a career in the industry, making an investment (e.g. as an owner) or simply enjoying racing and wagering as a ‘customer’.
- For these and other reasons there has been declining media investment and interest in racing which only adds to a deteriorating industry outlook.

### **3.2 Particular concerns about the governance structure of the industry**

Because of these challenges the premium for effective industry leadership has never been greater. To their credit the board and management of NZTR have recognised this in commissioning and supporting this review process. During the review it has become obvious that there is widespread concern about governance effectiveness in the thoroughbred code. In particular, there is a feeling that the present governance structure, which has evolved over 100 years, no longer reflects the way industry operates and needs to operate. The following issues, many drawn from the observations of racing people themselves, are illustrative of the extent of that concern.

- The ‘representative’ governance structure of NZTR encourages parochialism. It encourages the different parties to focus on ‘getting our share’. The obverse side of this is the pressure on the NZTR board to be seen to be fair. That makes decisions that may disadvantage some clubs or other interests but would benefit the industry overall, very difficult.
- There is a ‘delegate’ mentality and voting process. There are innumerable anecdotes told within the industry about ‘delegates’ who have been punished for not voting as instructed or expected.
- The present structure does not reflect the pattern of industry participation and influence. It is a ‘club-centric’ structure when racing clubs are only one service delivery component of the industry (via the provision of venue and related services) as the following diagram illustrates.

### Thoroughbred racing: key system components



- There is poor decision making. Industry bodies including clubs are said to make decisions in isolation focusing on their own business and narrow interests. There is set to be a lack of continuity and cohesion in decision making.
- There is generally a low level of understanding of, and respect for good governance principles. One reflection of this is an apparently limited awareness about, and poor handling of, conflicts of interests and conflicts of duties both of which are widespread. Another is confusion between the different roles and responsibilities – including overlaps and gaps in accountability. For any industry structure to be efficient and effective it requires decisions to be made at the most appropriate level. That is not happening. A particular problem is widespread confusion right up to the code level about the difference between governance and operational roles.
- The three region geographical basis for NZTR board representation does not reflect the distribution of the horse population and the need for future industry investment.
- Even within the club segment of the industry, the structure and process of governance does not reflect the considerable differences between, for example, large metropolitan clubs which are major real estate and entertainment/events management businesses and small rural clubs that host one or two meetings per year.
- Many people have a sense that high-level governance of the industry is a closed shop. Related to this is the perception that that access to board positions has been controlled by groups that have traditionally been influential and that the constitution of NZTR has been manipulated for the purposes of power retention.
- Among key industry players there is poor communication and attendant distrust. Too many people whose livelihoods are dependent on the well-being of the industry feel they do not have a voice. There is a sense of marginalisation among many stakeholder groups. Owners, in particular, feel they poorly served but they, themselves, are not well organised as a group which makes engagement with them difficult.
- Racing is a complex, multi-million dollar industry. It is said, however, that in its present form it is a professional industry run, even at the national level, by well-intentioned amateurs whose decisions are influenced more by emotion and tradition than solid analysis and good business judgment applied to current realities. At the

club level the quality of club committees is “at the whim of members”. The challenge is bridging the best of tradition with modern commercial and professional needs. A major challenge is to get younger people onto club committees.

- There is very little industry-wide dialogue on 'industry-first' issues. The incentive is to focus on short-term rather than long-term concerns; local and sub-group interests dominate national, industry-wide interests. There is widespread concern that was described as ‘a lack of thought leadership’ concerning the medium and long-term strategic direction of the code NZTR’s strategic planning process does not appear to engage the various industry components in the process nor connect them in an overall integrated industry strategy. Nor does there seem to be any widespread sense of urgency about the need to address these matters although the reviewer had a sense that this was changing as the review progressed. The formal requirement for strategic planning in the industry is discussed at greater length later in this chapter.
- Despite the emergence of coordinating clusters of racing clubs many industry players still feel that there is a major coordination problem. The ultimate challenge is *to get right horses on the right courses on the right day*.
- The board of NZTR is said to be operating at the wrong level/on the wrong things. Many of those consulted suggested that there is no need for a code level body.
- Many in the thoroughbred racing fraternity are distrustful of the NZRB but interface arrangements are neither as efficient nor as effective as they need to be. One example of this the attenuated strategic business planning processes prescribed in the Racing Act 2003 that are supposed to integrate the overall racing industry and the three codes.

The ‘bottom-line’ is that the industry – under the present arrangements - is unlikely to be able to attract (and retain) sufficient directors with the competencies required. The same is equally true of the industry’s ability to attract and retain the necessary executive and professional staff.

### **3.3 Strategic and business planning**

NZTR’s rules require the board to adopt and regularly review a strategic plan for *thoroughbred racing* which should include goals and objectives and be structured in a way that allows the planning process and subsequent decision making and monitoring to be measured effectively. Note that this is a strategic plan for the *industry* not for the organisation alone.

The Racing Act 2003 (s.23) requires that each racing code must prepare a statement of intent (SOI) and business plan and provide this to the NZRB before the commencement of each racing year. It must relate to the forthcoming year and each of the two subsequent racing years. The content of the SOI must include:

- the code's rules, as required by section 6 of the Incorporated Societies Act 1908;
- the objectives of the code;
- the nature and scope of the activities to be undertaken by the code;

- a statement of the code's policy for distributing funds received from the Board to racing clubs registered with the code in accordance with section 25;
- the performance targets and other measures by which its performance may be judged in relation to its activities; and
- a statement of accounting policies.

The NZRB then has one calendar month to either approve the statement and plan or set out the reasons why it has not. The NZRB has the right to decline to approve a racing code's proposed SOI or business plan if the Board considers that:

- the code's objectives are inconsistent with its own objectives (the NZRB's own draft plans are required to be prepared in time for them to inform the preparation of the codes' planning statements); or
- any of the code's rules are:
  - unreasonable;
  - undemocratic;
  - unfairly discriminatory;
  - unfairly prejudicial; or
  - contrary to law.

The code may resubmit its SOI and business plan.

These parallel requirements are not inconsistent and should provide a catalyst for the board of NZTR to address the various strategic leadership issues identified in this review. The pattern, however, has been for the strategic planning process to be relatively perfunctory. There is a sense, acknowledged by the NZTR management team, that the organisation is primarily fulfilling a requirement under the Racing Act. There appears to be a number of shortcomings with the process and approach. For example:

- there is a focus on the short-term – two to three years at best. This contrasts with, for example, the Racing Victoria Ltd 'Racing to 2020' strategic planning document.
- the documents are primarily written by NZTR senior management and receive relatively little analysis or debate at the board level;
- the preparation of the documents lack consultation although the NZTR believes that it consults with its stake holders more than the NZRB consults with the codes; and
- consequently, the strategic and business planning statements do not receive the attention they deserve at the board level. A review of board agendas and related papers reveals little reference to these documents when they should focus the board's attention and drive its agenda.

Ideally, the commencement of the formal strategic planning cycle each year should be started by the board itself taking a high-level view of the industry and the organisation and what it wishes to achieve and the priorities it has among its objectives. It may wish to do this in conjunction with key stakeholders. Consultation is far more productive when options are still open than when decisions have more or less been taken and have to be 'sold' to

stakeholders. Once the board has created a strategic framework in this way it is relatively safe to leave management to get on and develop the detail of strategic and business plans.

Another major change that needs to occur in the way the NZTR board engages with its strategic leadership role is to ensure that the board meeting agenda is focused on strategic issues which have not yet resulted in decisions and in reviewing progress with the implementation of strategies already in place.

These or similar initiatives are needed to reduce the likelihood of the board's attention being too focused on the short-term and the tendency for the preparation of the strategic and business planning documents required by NZTR's own rules and the Racing Act to be perfunctory, compliance related activities as they are at present.

## **4. Relevance and Applicability to NZTR of Racing Industry and Professional Sports Governance Models**

The governance challenges facing NZTR are comparable to those experienced by many other industries and organisations in New Zealand and elsewhere. Potentially there is much to learn from the way in which others have addressed similar challenges. Consequently, the reviewer was asked to examine, in particular, the applicability of emerging Australian thoroughbred racing industry governance models. This Chapter also examines relevant models taken from other sectors which have faced the need to improve governance effectiveness and efficiency while at the same time facilitating the participation, and accountability to, diverse stakeholder interests within the overall governance process.

### **4.1 Australian Thoroughbred Racing Governance Models**

There is a close relationship between thoroughbred racing in New Zealand and Australia. The relationship features elements of both competition and collaboration. While racing and wagering on thoroughbred horse racing, in particular, appear to have a more central (and valued) role in the Australian national psyche than in New Zealand the challenges the Australian industry faces are not dissimilar to those in New Zealand. The limited scope and functions of the Australian Racing Board mean that it cannot be directly compared to the New Zealand Racing Board but thoroughbred racing authorities at the state level provide a valuable reference point.

A consistent feature of recent changes to the governance of most state racing authorities a number of which are described in brief below, has been the creation of boards of directors sufficiently ‘independent’ of specific industry stakeholders to be able to consistently make decisions in the best interests of the industry as a whole. A widely expressed view among state-level racing authorities is that such changes were needed because:

*The representative race club control model has been tried and failed and in doing so paralysed the industry for 10 years, through conflict of interest and marginalised decisions.<sup>7</sup>*

#### **4.1.1 Queensland Racing Ltd (QRL)**

QRL is the peak body for the thoroughbred racing industry in the State of Queensland coordinating, managing, and regulating the industry. A company limited by guarantee, incorporated under Corporations law and operating under the Racing Act, it has been granted a control body licence to administer the thoroughbred code in Queensland for a period of six years commencing in 2006. The Minister of Racing has broad powers of oversight.

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<sup>7</sup> Bob Bentley, Chairman of Queensland Racing Ltd, quoted in QRL Press Release: “Rubbish recycling plant in full production: QRL chairman not resigning.” 27 September 2008.

QRL is now governed by an appointed 5 person<sup>8</sup> board although the steps towards the current model began tentatively as long ago as 1992. Appointment to the board is via a selection process:

- A recruitment company is hired to advertise for interested persons and to present a short-list of about 20 qualified persons.
- A selection panel<sup>9</sup> appointed by the Minister of Racing then selects the board from the short-list.

An appointment must be made by the unanimous resolution of the selection panel.

Candidates are ineligible if, among other things, they are:

- a person who is licensed by the Thoroughbred Racing Board, including, for example, as a licensed racing bookmaker, jockey, owner-trainer, strapper or trainer;
- a member of a committee of, or employee of, any of the following -
  - a licensed club;
  - a racing association;
  - another association formed to promote the interests of one or more participants in the thoroughbred racing industry;
- a person who is employed by the board; or has been employed by the board in the last 2 years; or
- a member or employee of the Harness Racing Board or Greyhound Authority.

Initially it was the case that members of the board were to hold office for 2 years with eligibility for reappointment for one further term. With the approval of the Australian Securities and Investment Commission (ASIC), a change was made to appoint all members for an initial period of 4 years. This was to ensure board stability during a period when considerable change was expected.

#### **4.1.2 Racing NSW**

During 2008 changes to the Thoroughbred Racing Act were made to refine the governance of thoroughbred racing in New South Wales.

The centrepiece of the reforms has been the creation of an *independent*, 5 person Racing NSW Board<sup>10</sup> selected on the basis of criteria relating to skills and merit. The previous structure had created the expectation among nominating bodies that their nominees would promote their narrow, factional interests. Eligibility for appointment now requires the severing of any factional ties. The Act states clearly that it is the duty of each appointed member of Racing NSW to act in the public interest and in the interests of the horse racing industry as a whole in New South Wales.

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<sup>8</sup> The Chairman, Bob Bentley advised that 7 members would be preferable to assist in succession planning.

<sup>9</sup> The panel tends to have one person representing TAB clubs, one representing non-TAB clubs and a person chosen by the Minister.

<sup>10</sup> The Chief Executive is the sixth member of the board but does not have a vote.

The current board was appointed by the Minister on the recommendation of an independent three-person board of 'eminent people'. Part of the process for identifying suitable candidates was a public advertising process. The panel was assisted by a probity advisor and the NSW Department of the Arts, Sport and Recreation. When announcing the appointment of the new board in December 2008 the Racing Minister, Kevin Greene, noted that:

*The role of these members is to represent the entire NSW racing industry by providing strong leadership to protect the ongoing industry viability. This independent structure enables the NSW racing industry to benefit from modern best practice governance.*

There were well publicised difficulties with the previous selection process which attempted to utilise a nine person stakeholder based panel and the 'eminent people' approach was adopted as a stop-gap measure. The Minister announced late last year that the NSW Government is to commission a further review to determine options for board appointments in the future.

In the future, directors will be appointed for terms of four years but in the establishment of the new board appointments were of varying terms to aid in succession management and operational efficiency. Directors have a maximum eight-year term to ensure that there is a regular reinvigoration of talent.

The new legislation is also notable for requiring Racing NSW to undertake formal consultation on a regular basis with the newly established Racing Industry Consultative Group (RICG) and other horse racing industry stakeholders in connection with the initiation, development and implementation of policies for the promotion, strategic development and welfare of the horse racing industry.

Racing NSW does not have ownership of broadcasting rights but has been given an express power under the new legislation to prohibit race clubs from entering into any future agreement for the broadcasting of races unless first approved by Racing NSW. It was accepted that Racing NSW should be able to prevent an individual race club, or group of race clubs, exercising broadcast rights in a manner which would be detrimental to the industry as a whole.

Racing NSW now has the power to compel race clubs to provide information and documents, which will enable Racing NSW to undertake its statutory consultation functions, including developing an industry strategic plan.

#### **4.1.3 Racing Victoria Ltd (RVL)**

RVL's constitutional objectives are to develop, encourage, promote and manage the conduct of the racing of thoroughbred horses in Victoria.

As in some other Australian States the progressive evolution of the governance of racing authorities has been a stop/start affair. Changes were made in Victoria in 2001 but it was soon realised that further changes to the governance structure were needed. In 2007 the

RVL Board appointed David Crawford<sup>11</sup> to conduct an independent review of RVL's governance structure with a view to give the governance of the industry greater independence from sectional interests.

RVL reached agreement on the outcomes of the Crawford review with the four members of the company.<sup>12</sup> As a consequence:

- the membership of RVL was expanded to include other stakeholders (subject to those members satisfying minimum qualification criteria before being eligible to vote);
- a vote of 66.66% is required to pass all resolutions other than a special resolution (which will continue to require a vote of 75%);
- a new independent board was appointed with effect from the close of the 2007 Annual General Meeting; and
- Directors retire by rotation and are appointed by direct election of the members.

Membership of the company was expanded from four to 14. New members (collectively called the Industry Body Members) added to the existing members included representatives of the owners', breeders', trainers', and jockeys' associations, and representatives of unions, bookmakers and the Australian Jump Racing Association.

Under the system of voting entitlements the club sector of the industry is still dominant (25 out of 35 votes). In addition, the rights of the Industry Body Members to vote on resolutions are limited to resolutions relating to:

- the appointment and removal of Directors;
- the appointment and removal of the Auditor; and
- procedural matters arising in connection with the proceedings of or the conduct of a general meeting of members.

In order to be entitled to exercise its right to vote, a Member must be an 'Eligible Voting Member', which means the Member must:

- be a body corporate with a written constitution;
- have more than 50 members (except in the case of CRV);
- have a governing board or committee which is elected by the members;
- not be controlled by the Company or another Member.<sup>13</sup>

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<sup>11</sup> David Crawford, who was consulted as part of this NZTR review, has been at the forefront of numerous reviews of governance structures of sporting organisations in Australia including the AFL and Soccer Australia.

<sup>12</sup> Victoria Racing Club Limited (VRC), Victoria Amateur Turf Club (incorporating Melbourne Racing Club) (MRC), Moonee Valley Racing Club Incorporated (MVRC), and Country Racing Victoria Limited (CRV)

<sup>13</sup> For the purposes of the Constitution, a Member would be controlled by the Company or another Member if the Company or that other Member were in a position to determine the outcome of decisions about the first Member's financial and operating policies.

The RVL board has 11 directors including the Chief Executive. The process for appointing Directors since the initial transition period is that:

- the Board establishes a Nominations Committee with the function of identifying appropriate independent persons to act as Directors of the Company;
- the Nominations Committee consults with an advisor nominated by the Minister for Racing;
- the Nominations Committee reports to the board identifying suitable persons to fill the positions of those Directors who will retire at the Annual General Meeting;
- the Board considers and approves the report which is then provided to Members;
- if no alternative candidates are nominated by the Members, the persons identified by the Nominations Committee are appointed with effect from the next Annual General Meeting;
- if additional candidates are nominated by the Members, an election is held.

#### **4.1.4 Racing and Wagering Western Australia (RWWA)**

The RWWA Act 2003 gives RWWA broad powers, in relation to the management of its affairs and also in the management and regulation of the Western Australian Racing Industry. Many of these are akin to the functions of either NZTR or the NZRB.

RWWA's commercial wagering activities are regulated by the Western Australian Gaming and Wagering Commission.

The management of the business and affairs of RWWA is under the direction of its governing board which comprises:

- a chairperson appointed by the Minister responsible for RWWA;
- 4 members selected for their expertise in management, finance, business, commerce or information technology; and
- 3 members representing each of the racing codes - 1 representative from each code.

While the RWWA is neither a Crown agency nor subject to Government direction, it is:

- subject to the *Financial Administration and Audit Act 1985* and the *Freedom of Information Act 1992*;
- required to report to Parliament;
- subject to borrowing restrictions;
- required to provide the responsible Minister with access to information;
- regulated by the Gaming and Wagering Commission;
- required to prepare and submit for approval an annual strategic development plan; and
- required to prepare and submit for tabling in the Parliament, an annual statement of corporate intent.

The RWWA Act requires the Board to establish procedures for consulting with prescribed racing bodies: clubs/associations of clubs and other organisations that have an interest in the racing industry (industry associations). There are code-specific consultative groups for greyhound, harness and thoroughbred racing, which meet with RWWA representatives on a quarterly basis. The composition of these groups includes nominated representatives of the racing clubs, industry associations and industry participant groups.

The Thoroughbred Racing Consultative Group (TRCG) has the following membership:

- RWWA Nominated Director (Chair)
- RWWA CEO (Alternate Chair)
- RWWA Executive General Manager Racing
- RWWA Chairman of Stewards
- RWWA Manager Thoroughbred Racing
- Metro – 2 nominees from the Western Australian Turf Club + CEO ex-officio
- Provincial – 1 nominee from the Western Australian Provincial Thoroughbred Racing Association
- Country – 1 nominee from the Country Racing Association
- Owners – 1 nominee from the Western Australian Racehorse Owners' Association
- Breeders – 1 nominee from the Western Australian Bloodhorse Breeders' Association
- Trainers – 1 nominee from the Western Australian Racing Trainers' Association
- Jockeys – 1 nominee from the Western Australian Jockeys' Association
- Bookmakers – 1 nominee from the Western Australian Bookmakers' Association

Representation on the TRCG is on the basis that each of the industry participants' nominees should represent all participants of that specific category group within the State.

Among other things, the purpose of the TRCG is to:

- consult with RWWA on the formation of policies and strategies for the further development of the racing industry in Western Australia;
- consult on the ongoing review of the rules of racing with the objective of ensuring that racing in WA is conducted in accordance with national and international practices;
- consult with RWWA on issues affecting the general well-being of the racing industry in Western Australia;
- nominate representatives for special industry task forces; and
- participate with RWWA in the promotion and education of racing to the WA public.

Meetings are held on a quarterly or an 'as required' basis.

The existence of code specific consultative groups like the TRCG does not prevent any other individual, organisation or party associated with thoroughbred racing contacting

RWWA directly nor does it prevent RWWA from requesting discussion outside of the nominated group.

#### **4.1.5 Observations on the Australian experience**

From this review of recent Australian experience, the following observations can be made or conclusions drawn.

- The role of State governments has been important in bringing about governance change. In some cases it was the State government with its various forms of vested interest (e.g. in industry tax revenue) that was pressing for change. There was widespread recognition that racing would be forced to change whether it wished to or not. However, the Australian advice was to keep the Government, so far as possible, at arms length. State racing authorities in Australia are very vulnerable to changes in state level government and even to changes of Minister.
- Control of state level racing authorities has, historically, been dominated by racing clubs – many of the reforms have been to ensure that other stakeholders gain a more direct role in the governance process.
- Private ownership of the TABs (except in Western Australia) has created the need for the various parties involved in thoroughbred racing to address important industry relationships e.g. with Tabcorp, as a common issue.
- During the various governance change processes, the dominant metropolitan racing clubs were keen to maintain their position but rural racing clubs have had considerable political leverage.
- The principal objective of changes to governance structures has been to replace representative, club focused boards with skills-based boards to gain both an industry best interests focus and to improve the calibre of leadership.
- Although their influence at the governance level has been deliberately reduced, racing clubs are still considered a very important component of the industry but in terms primarily of ‘putting on the show’ (i.e. mounting race meetings, gaining local sponsorship, providing a good on-course experience etc).
- There is general agreement about the preferable size (7-9) and necessary skills of boards capable of effective governance of the racing industry. These include racing industry knowledge, financial literacy, commercial savvy, political nous, ability and willingness to participate in the industry. Boards at the larger end of the size range are considered preferable because of the perceived workload (including the need for board members to be visible at racing events and other industry gatherings).
- Appointments should initially be of sufficient length (three to four years) to enable directors to get on top of the job and to enjoy extended but not unlimited terms (up to eight or nine years) provided their performance is satisfactory.
- Ideally, boards would be able to follow the corporate model completely and direct the process of succession and replacement themselves but there is recognition that stakeholder input is desirable and probably unavoidable. The ‘panel’ process is considered the next best alternative. Where there have been ‘panel’ type pre-selection processes prior to members’ votes there should be more candidates proposed than the available places (i.e. there should be contestability in the process).

- Fully integrated models are preferable – i.e. combining industry leadership, racing operations, integrity and wagering within the same organisation. For most racing organisations in Australia this is no longer completely possible, wagering on horse racing having been privatized in most states. East Coast State thoroughbred racing authorities seem to have relatively little interest in combining with other racing codes perhaps reflecting their market share dominance.
- Most current governance structures are compromises in the face of political realities and there are still unfulfilled ambitions for governance change – particularly in terms of the peak body having greater control over industry assets for the sake of achieving greater efficiency and effectiveness (e.g. distribution of venues, marketing, etc).
- Effective communication and consultation with clubs and other industry stakeholders is essential. There has to be meaningful participation by stakeholders.
- There are still too many venues and too many clubs incurring unnecessarily high (in total) administration costs. Clusters have not been successful (at least in Victoria) with a diminished community effort said to be a consequence. A better alternative is a shared services model which allows implementation of a strategy to reduce administration not create an additional layer. Such a strategy is needed to enable country racing to remain viable.
- Changes in governance structures and processes must be owned by and driven by the board.

#### **4.2 British Horseracing Authority**

Prior to the British Horseracing Authority's (BHA) launch in July 2007, the sport was governed by the British Horseracing Board and regulated by the Horseracing Regulatory Authority. The new BHA has responsibilities that are wide ranging as it is both the governing and regulatory body. BHA functions include:

- Strategic planning and policy for Racing
- Central promotion of Racing
- Encouraging and fostering the breeding of bloodstock
- Representing Racing in dealings with Government
- Liaison with the Betting Industry
- Representing British Racing abroad, which includes membership of the Executive Council of the International Federation of Horseracing Authorities

The BHA has 4 'guarantors' as follows:

- Racecourse Association - 3 shares
- Racehorse Owners Association - 1 share
- Licensed personnel\* - 1 share
- Thoroughbred Breeders Association - 1 share

*\*The National Trainers Federation represents the interests of licensed personnel at any*

*guarantor meeting*

The governing board of the BHA meets on a monthly basis, and considers itself among the most independent of its kind in British sport. Its eight member board is comprised of:

- an independent Chairman;
- 2 independent directors with regulatory experience;
- 2 additional independent directors;
- 2 nominee directors - industry practitioners – 1 nominated by the Racecourse Association and 1 by the other 3 guarantors (the Racehorse Owners Association, Thoroughbred Breeders Association and Licensed Personnel); and
- the Chief Executive.

Directors may serve a maximum of 3 consecutive 3-year terms.

Licensed personnel and anyone employed by them are not eligible to serve on the board nor are directors or employees of Racing Enterprises Ltd (REL), a new joint venture between RCA and Horsemen's Group.

A Nominations panel to select future directors will be chaired by the BHA chairman plus 2 others (non-BHA directors agreed by the guarantors).

The BHA regulatory unit structure has a non-executive chairman (who is also a member of BHA board), the BHA chief executive, and a minimum of 3 independent non-executive directors (1 of which also member of BHA board). Its meetings will be attended by the senior BHA executives responsible for racecourse standards, disciplinary and licensing, security, equine science and welfare<sup>7</sup>

### **4.3 Professional sports governance models with possible relevance to thoroughbred racing**

In addition to the Australian and British racing models described above, there are two other types of governance structure which should be considered because they are widely used in professional sporting environments around the world.

#### **4.3.1 The Commissioner Model**

This model is widely used in professional sports leagues in the US. It has:

- a governing board made up of delegates of the clubs in the league; but, most importantly,
- an all-powerful, independent Commissioner in charge of many aspects of the sport.<sup>14</sup>

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<sup>14</sup> See Paul Horvath (2007) 'Best Practice in Metropolitan Football Leagues in Victoria'. This section draws in part from this paper presented to the Australian and New Zealand Sports Law Association (ANZSLA) Conference.

While the Commissioner is appointed by the board of the sport and, as chief executive, is an employee of the league, he/she has many additional powers that are independent of the board. These additional powers, for example, include the power to negotiate television rights (and other league-wide contracts); to over-ride actions taken by the league considered adverse to spectators and others; to mediate between owners, and between owners and players; and to create and enforce an internal disciplinary process for both team players and owners.

When exercising his/her disciplinary power, - as investigator, prosecution and decision maker - US courts have supported the Commissioner's interpretation of what is in the 'best interests' of the sport as long as a decision does not unfairly infringe a person's rights and there is no breach of federal laws. Courts have been unwilling to intervene in matters that involve the business operations of professional sports organisations or the affairs of a voluntary association whose members have agreed to be bound by the rules.

From a good governance perspective there are fundamental shortcomings in the Commissioner model.

- Because of the additional independent powers the Commissioner, as an employee, is not completely under the control and supervision of his/her own employer. In fact, the Commissioner has disciplinary power over his own employer.
- The Commissioner has an inherent conflict of interest. He/she has the power to supervise, sanction and even suspend team owners under the 'best interests' provision but these same owners elect the board that determines his/her tenure and remuneration. From a non-owner stakeholder's perspective it seems very likely that the Commissioner would try to avoid a dispute with owners and make decisions in the owners' favour.
- The (club) delegate structure of the board creates the opportunity and incentive to breach anti-competition laws.

Not surprisingly there has been a proliferation of litigation in US professional sports leagues.

In US sports leagues, clubs are under private ownership and profit-making is the objective. It was in the historical context of private team ownership that the need for Commissioners arose - partly to oversee and conciliate all of the partisan interests, and partly to discipline players who were engaged in improper gambling.

In contrast, racing clubs and other sporting clubs are essentially membership based not-for-profit organisations established to meet the needs of their members. The business success (or more particularly the economic viability) of the club is important but not a primary rationale for the existence of the organisation.

While there has been some local experimentation with this model (e.g. the Australian National Basketball League) unless there was a desire to have thoroughbred racing in New

Zealand governed by “a benevolent but absolute despot,”<sup>15</sup> there is not a great deal to commend this model.

#### **4.3.2 The Independent Commission model**

The Australian Football League (AFL) is considered by many to be the pre-eminent football code in Australia. It has expanded from its State of Victoria origins to include 16 clubs from five Australian States.<sup>16</sup> In the mid 1980's, however, the then Victorian Football League (VFL) clubs faced serious financial problems which threatened the financial stability of the League. There had been hyperinflation in the costs for football clubs to the extent that the viability of several clubs was threatened. The VFL board comprised club delegates (local sporting aficionados rather than trained, experienced professional and business people) and was described as ‘a confederation of sworn enemies’<sup>17</sup> a reflection of the way the parochial interests of clubs tended to dominate their actions.

The self interest displayed by the VFL clubs was a major asset when harnessed for club objectives but was not helpful when it came to deciding major policy or strategic objectives for the League. The AFL recognized that there were certain common matters which should be put above the interests of the clubs - that should be run and from co-ordinated by an independent and central body. Rather than having clubs duplicating resources there were also economies of scale to be obtained from the centralisation of resources.

A governing board of a sport comprised of competitor clubs is not impartial, and will not make decisions solely based on what is in the best interests of the sport as a whole. It is very likely (at times) to make emotional decisions based on the separate interests of its component members. It also places conflicting loyalties on the directors of the peak body who also owe a duty of loyalty to their parent clubs. Where the board comprises an independent group of directors, the board is duty bound to act in the best interests of the league as a whole, not any particular club. This helps to ensure that the objective of competitive balance is always being pursued. Consequently, to deal with these shortcomings, the previous group of club delegates was replaced with an independent Commission whose mission is clearly about the overall success of the code and the League.

The AFL Commission is considered to have been a great success. Traditionally formed as amateur organisations and governed by volunteer boards, they are now multimillion dollar enterprises governed by boards of directors (who are, in turn, accountable to members or shareholders in line with their constitutions) who employ professional sports administrators.

Decisions of the Commission are made in the interests of the league as a whole. Commissioners are non-partisan and the independent board has acted in an essentially corporate manner, running the sport as a business. The AFL competition has blossomed in both financial terms and in terms of spectator and television viewer interest.

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<sup>15</sup> Horvath (2007, 10)

<sup>16</sup> See also Julie A Foreman (2006) Corporate Governance in the Australian Football League: a Critical Evaluation. Unpublished doctoral thesis, Victoria University, Melbourne (downloaded 18 February 2009 from <http://wallaby.vu.edu.au/adt-VVUT/uploads/approved/adt-VVUT20070426.122146/public/01front.pdf>).

<sup>17</sup> David Crawford, interview.

Many racing people in Australia believe it is a model that has a lot to offer racing in terms of the model and the lessons learned in its implementation. For example, a particular lesson from the experience of the AFL has been the need for strong and effective communication not only between the League and constituent clubs but with other stakeholders such as players, umpires and support groups. The experience of both the International Olympic Committee (IOC) and the Federation of International Football Associations (FIFA) supports the conclusion that that weak communication to constituents compromises the planning and control roles of the boards of organisations like these.<sup>18</sup> In any changes to the governance structure of thoroughbred racing in New Zealand, these examples of a failure to properly communicate and consult ought to be avoided at all costs. Key constituents, including the racing clubs should have the opportunity to provide regular input into matters that affect them.

The AFL experience has underlined the need to balance and protect the various stakeholder interests. This is not least because clubs and other functional components of professional sports are economically interdependent. Regardless of strong rivalries between clubs, for example, they must agree on a wide range of issues, from the seemingly simple, such as scheduling games, to the very complex, such as player salary caps and revenue sharing. In addition, the League must put in place rules and strategies to ensure that *all* teams are competitive and that no one team can *buy* competitive success.

Of particular relevance to the subject of this report is the fact that the AFL Commission is primarily responsible for the long-term development of the game and the successful operation of the national competition. It negotiates issues such as merchandise licences, broadcast rights, stadium development, and player collective bargaining agreements on behalf of the clubs. The Commission also has specific policies to ensure equalisation within the competition such as equal distribution of dividends; a national draft with priority picks for lower placed teams; a salary cap and limited player transfer fees. Competition matches are played at a relatively small number of high-quality stadia (e.g. the MCG) and Melbourne based clubs do not have their own match venues.

#### **4.4 Other New Zealand Models**

The models outlined here have been selected to outline a range of options within a democratically controlled organisation, to obtain the best qualified board members possible while still retaining a strong 'industry' engagement.

##### **4.4.1 An example of a 'federation': The New Zealand Rugby Football Union**

A number of national sports organisations have reformed their governance structures in recent years in an attempt to ensure that performance 'off the field' is as 'professional' as the on field performance. One such example is the New Zealand Rugby Football Union (NZRFU). Like NZTR the NZRFU is an Incorporated Society.

Membership of the NZRFU comprises different classes of membership: Affiliated Unions, Associate Members, Life Members and the New Zealand Maori Rugby Board. The affiliated

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<sup>18</sup> Cited by Horvath, p.16

unions, the equivalent of racing clubs in the NZTR structure are the 27 provincial rugby unions. Associate members include special interest organisations such as the New Zealand Defence Force Sports Committee, the New Zealand Marist Rugby Football Federation, the New Zealand Universities Rugby Football Council and the New Zealand Schools' Rugby Council.

Voting rights at an AGM are proportional to the number of teams<sup>19</sup> within each affiliated union (from a low of two votes to a high of five votes).

The board has a maximum of 9 members being:

- 6 Zonal Representatives (two each residing in the North Zone, the Central Zone and the South Zone respectively)
- 1 Maori Representative
- 2 Independent Board Members

To form the board, any affiliated union may nominate persons for *election* as representatives for any of the zonal representative offices that are vacant or will become vacant. Each affiliated body may also nominate one representative of Maori. Nominees are interviewed by an **Appointments Committee** which makes recommendations for the available positions. Unsuccessful applicants may still stand for election against those recommended by the Appointments Committee.

Prospective independent board members apply for appointment by the Appointments Committee. The Appointments Committee consists of;

- 1 board member who is not seeking reelection;
- 3 chairpersons of affiliated unions (one from each division in the union's National provincial championship)
- 2 independent persons appointed by the other members of the appointments committee

The Appointments Committee elects its own chair who has a casting as well as a deliberate vote.

Board members are elected (or appointed) for a three year term for a maximum of three consecutive terms. This term may be extended in exceptional circumstances (e.g. where the director is appointed an Officer of the International Rugby Board). Terms are staggered so that no more than three directors retire each year.

The board elects its own chairperson and deputy chairperson annually.

The NZRFU also has an **Appeal Council**. There is a right of appeal from the decision of the board (or its delegate) on all matters coming within its power (with certain exclusions). The Appeal Council has between three and five permanent members with its chairperson

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<sup>19</sup> Teams in this context means all teams affiliated to an affiliated union during the previous year including secondary school teams.

having the power to co-opt temporary members for the consideration of a particular matter. The permanent members of the Appeal Council must be persons who have a high standing in rugby circles and who have demonstrated outstanding qualities as rugby administrators and who are capable of operating as objective arbitrators.

#### **4.4.2 An example of a cooperative: Fonterra**

A dairy cooperative, Fonterra is New Zealand's largest company. It is one example of many democratically controlled organisations, both commercial and non-commercial, that have taken steps to separate 'governance' and 'representation' processes.

Fonterra has a governing board directly elected by its shareholder members. It comprises up to 13 directors. Nine directors are elected from the shareholder base (elected directors) and four are appointed by the board and approved by shareholders at the annual meeting (appointed directors). There are no executive directors.

The Fonterra Constitution does not distinguish between 'independent' and 'non-independent' directors. However, unlike the elected directors, who must be shareholders who have a supplier relationship with the company, the appointed directors are independent and free of any direct relationship with the company.

Appointed directors are considered to have a significant role to play in providing a balance of independence, skills and experience to the board, complementing the deep understanding of the dairy industry provided by the elected directors. Consequently, appointments are only made after a process involving an extensive search based on detailed criteria. Appointed directors are appointed for a term specified by the Board. Their appointment is subject to shareholder approval.

Candidates for the elected positions have the option of going through a pre-election assessment process which involves interview by an assessment panel.<sup>20</sup> The output of the panel is a matrix (made available to electors) that rates each candidate taking part in the process against 6 governance competencies in terms of whether they are 'experienced', have 'potential' or the competency is 'not demonstrated'.

There is then a postal ballot and successful candidates are elected for a three-year term.

All directors comply with the legislative requirements for disclosing interests, and Fonterra has a Securities Code of Conduct, which guides and regulates both directors and management in their personal dealings with Fonterra securities and those of related companies.

In addition to the main governing board there are two other important components in the Fonterra governance structure: the Shareholders Council and the Milk Commissioner. Historically, the dairy industry has been very political. When Fonterra was formed in 2001 the Shareholders Council was established for two complementary reasons:

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<sup>20</sup> Currently 5 members 2 nominated by the board, 2 nominated by the Shareholders Council with an independent chair.

- to create a specialised vehicle by which the cooperative's 11,000 members could have an effective voice in the governance of the Co-op; and
- to free the directors, as far as possible, from 'representation' issues to enable them to concentrate on company direction and performance.

**The Shareholders' Council** is made up of 35 shareholders representing 35 wards covering the whole of the country. The Council has a significant degree of independence within the company and its main responsibility is to make sure the needs of supplier shareholders are understood and recognised by the Board. The terms of engagement between the board and the Council are reflected in a formal interface agreement which is interpreted and implemented via regular meetings between the two bodies at chair, board and executive levels.

The **Milk Commissioner** is appointed by the Shareholders' Council to mediate any disputes between Fonterra and its shareholders.

#### **4.4.3 Example of an advisory council: the Motor Trade Association**

The Motor Trade Association of New Zealand (MTA) is one of a number of membership and industry organisations in New Zealand that have a separate advisory body that has a regular engagement with the board. The MTA Council consists of the Board of Directors and the 34 branch presidents (or, when necessary, their alternates). It meets formally twice per year to address major issues affecting the industry and to provide advice and counsel to the board. This arrangement has been in place for many years and works well in keeping the board and key stakeholders in close communication.

## 5. General Considerations In Relation To Good Governance Design

To link the earlier analysis of governance challenges facing NZTR and possible options for addressing those issues reflecting the experience of comparable organisations, with recommended changes in Chapter 6, this chapter reviews a wide range of generic governance design considerations. These are considerations which should be kept in mind when final choices are being made.

### 5.1 What is governance?

Over the last 20 years there has been a growing recognition, often occasioned by corporate failure, of the importance of good governance in companies and other organisations. Through the initiatives of a multitude of ad hoc task forces, regulatory and governmental bodies, professional associations and judicial reviews, there have arisen many published definitions. The following are illustrative of the common themes of most such definitions:

*Good governance is the effective separation, management and execution of the relationships, duties, obligations and accountabilities of an entity, such that the entity is best able to fulfill its purpose.<sup>21</sup>*

*...a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.<sup>22</sup>*

*...the system by which companies are directed and managed. It influences how the objectives of the company are set and achieved, how risk is monitored and assessed, and how performance is optimised. Good corporate governance structures encourage companies to create value (through entrepreneurship, innovation, development and exploration) and provide accountability and control systems commensurate with the risks involved.<sup>23</sup>*

### 5.2 Good governance and why it is important

Good governance in thoroughbred racing is necessary for the effective development, indeed the survival, of the thoroughbred racing industry. Good governance enhances organisational performance, increases stakeholder and community confidence and trust and underpins organisational learning and adaptive management. These factors will improve the industry's capacity to act strategically – for example, by prioritising sector investment, to encourage behaviour change (and performance improvement) by stakeholders and to incorporate the best available relevant knowledge into everyday decision-making.

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<sup>21</sup> Institute of Directors in New Zealand (2007) The Four Pillars of Effective Board Governance: Principles of Best Practice for New Zealand Directors, p.3

<sup>22</sup> OECD (1999) Ad Hoc Task Force on Corporate Governance, p.2.

<sup>23</sup> Australian Stock Exchange (2003). Principles of Good Corporate Governance and Best Practice Recommendations. p2.

Good governance is reflected in the exercise of power in the making of decisions in a principled manner.

The following table is an indication of a range of applicable principles and the different dimensions of their application.<sup>24</sup> These principles are a helpful basis to assess the current state of governance in the thoroughbred industry and on which to evaluate possible future changes.

<b>Principles of good governance in the thoroughbred racing industry</b>	<b>Illustrative dimensions of the principles</b>
Legitimacy	<ul style="list-style-type: none"> <li>• Authority to make decisions on behalf of others conferred by transparent mandate</li> <li>• Earned through stakeholder acceptance of authority</li> <li>• Adequate power to make scale-appropriate decisions (subsidiarity)</li> <li>• Acceptance of integrity and commitment</li> </ul>
Transparency	<ul style="list-style-type: none"> <li>• Visibility of decision-making</li> <li>• Clarity of reasoning and communication</li> <li>• Ready availability of information about performance</li> </ul>
Accountability	<ul style="list-style-type: none"> <li>• Allocating and accepting responsibility for decisions and actions</li> <li>• Demonstrating how obligations are met as the basis for organisational learning and adaptive management</li> <li>• Multi-directional (upwards, downwards and sideways)</li> </ul>
Fairness	<ul style="list-style-type: none"> <li>• Diverse opportunities to participate in decision-making and action</li> <li>• Inclusive and respectful of a range of values</li> <li>• Deliberative and consistent with an absence of personal or institutional bias</li> <li>• Sharing of costs, risks and benefits of actions and trade-offs</li> </ul>
Interconnectedness	<ul style="list-style-type: none"> <li>• Relationships between decision-making bodies at multi levels</li> <li>• Cross-scale, cross-level decision-making and action</li> <li>• Agreement on, and coordination of, common purpose</li> <li>• Active and dynamic collaboration and partnership</li> </ul>
Capability	<ul style="list-style-type: none"> <li>• Skills and leadership to meet responsibilities and be responsive</li> <li>• Quantum, flows and continuity of investment to efficiently and effectively deliver agreed outcomes</li> <li>• Knowledge for evidence based decision-making</li> <li>• Processes, systems, plans and tools suited to responsibilities</li> </ul>
Adaptability	<ul style="list-style-type: none"> <li>• Networks across and between scales and levels as feedback loops</li> <li>• Inbuilt responsiveness to changing internal and external signals</li> <li>• Systematic reflection on individual, institutional and system performance and improvement</li> <li>• Anticipation and management of opportunities and risks</li> <li>• Incorporation of monitoring, evaluation, purposeful learning, alternative futures and innovation into decision-making.</li> </ul>

<sup>24</sup> Adapted from Davidson et al 2006, Governance Principles for Regional NRM, UTAS, Hobart.

## **5.3 Governance structures**

### **5.3.1 The source of governance structures**

The governance structure of an organisation is typically spelt out in its constitution or equivalent document. In some instances this is enshrined at a higher level of law in a dedicated Act of Parliament.

A constitution (known as the Rules in relation to Incorporated Societies) is a legally binding contract between the 'owners' and the legal entity. A common mistake is to expect the constitution to serve more purposes than it should. Ideally, a constitution should contain 'less' rather than 'more'.

A well designed constitution makes clear the means by which the owners (members) exercise ultimate control of the legal entity by controlling the composition of the board, the organisation's purpose and its governing rules. In addition to stating the organisation's objects and powers, most constitutions also codify a number of administrative procedures such as those that govern General Meetings of Members. A constitution also defines the size and role of the board, the directors' tenure and places limits on the delegation of power and authority to the directors. Simultaneously a constitution assigns to the board sufficient freedom for the directors and management to successfully 'run' the operational entity; the board 'at a distance' and management 'close-up'.

In most organisations the constitution/Rules provides for the board to be the organisation's main decision-making body with the authority to determine its processes and policies for its effective and efficient running between Meetings of Members. Board and organisation processes are best captured as policies and procedures that can be modified by the board as and when modification is required.

As noted earlier, the board also employs the Chief Executive who, in turn, employs and is responsible for all further employees.

Broadly speaking, governance structures can be divided into either 'federal' or 'unitary' structures.

### **5.3.2 Federal structures**

Many sporting and similar bodies like NZTR have a 'federation' structure. A federation structure has 'branches' (in the case of NZTR, the clubs) and a central or national body. The branches are usually separate legal entities that operate with a relatively high level of independence. The branches, not the individual organisation members are the 'owners' of the federation/nation entity. Individual members are 'owners' of the branches.

In terms of historical evolution, the branches are typically the first formed with the national body being created when the need for central co-ordination, regulation and advocacy is recognised. In New Zealand, the pattern of branch facilities and activities, as in the distribution of thoroughbred racing venues, is often reflective of what were significant historical/geographical constraints at one time but which have long since ceased to be so relevant (e.g. travel time and transport mode constraints).

In a federation, branches typically elect representatives or ‘delegates’ to serve on the national board. It is not uncommon for there also be a separately elected president who might or might not also serve as the board chairperson.

### **5.3.3 Unitary structures**

A unitary structure, by comparison, is controlled directly by its ‘owners’ who are typically the individual members or shareholders. While there might be branches or other specialist structures, these bodies are not separate legal entities and thus do not ‘own’ or control the national body. It is not uncommon, however, for organisations structured as unitary bodies to also have defined stakeholder constituencies and to ascribe particular rights to these bodies such as the right to appoint members to the national board. In a unitary structure there is a greater likelihood that at least a proportion of board members will be appointed as ‘independent’ members of the board than as representatives or delegates of particular constituencies.

## **5.4 The role of the board**

Directors are charged with a number of legal duties which, together with commonly agreed responsibilities, define a board’s role. In essence a governing board:

- provides oversight of the operational organisation, ensuring that it meets its legal obligations and performs to the standards and criteria that underpin its purpose, plans, policies and directions;
- employs a Chief Executive and manages all matters relating to that person’s employment, including setting performance expectations and remuneration and, if required, after evaluating performance, terminating the contract of employment;
- establishes (albeit in partnership with senior management) the organisation’s future or strategic direction as the basis for all further operational planning; and
- serves the owners’ (or members’) interests by ensuring that organisational performance results in individual and collective benefit and organisational continuity and success.

While a board has the primary responsibility for setting organisational direction, for making major decisions and for providing day-to-day oversight of the organisation’s performance, management’s job is to support the board and work within a strategic, policy and decision-making delegation framework created and handed down by the board. What this means is that the board must do its job first. There are many signs within NZTR that the board – probably over a long period of time – has abrogated its leadership role to management.

The other major input to the governance process besides management is from the organisation stakeholders. Because the board is always acting on behalf of the organisation’s owners (whether proprietary or ‘moral’) it has a moral duty to remain up-to-date with the concerns and expectations of owners and other stakeholders and to ensure that these receive proper consideration at both board and management level. The board also has a moral obligation to keep all members and relevant stakeholders informed about current and future organisational matters of concern to them. Stakeholders potentially provide invaluable input

to the governance of the organisation. The information and ‘wisdom’ of stakeholders is a valuable commodity which directors need to appreciate and seek out.

## **5.5 Director requirements/duties**

Board members have two primary common law obligations:

- the duty of loyalty and good faith. These duties include the duty of acting in good faith and for the benefit of the entity as a whole; a duty to act for a proper purpose, a duty not to fetter discretions and a duty to prevent conflicts of interest; and
- the duty of care and diligence (or care, skill and attention).

These obligations are increasingly reflected in ‘black letter’ law (e.g. the Companies Act 1993 and the Crown Entities Act 2004).

### **5.5.1 Standards of care and skill required**

While these ‘fiduciary’ duties have arisen largely in the domain of commerce it is generally accepted that committee members of an incorporated association are under the same common law obligations as company directors. Compared to Australia, the application of these duties to directors in the not-for-profit sector in New Zealand has seldom been put to the test. It is a matter of speculation, therefore, whether the courts here would apply a standard to the performance of a part-time non-executive director of a not for profit entity different to the standard expected of a director of a profit-making company. It is acknowledged throughout the racing industry, however, that locally elected ‘committee members’ do not necessarily bring the same skills and expertise to organisational governance, as one would expect from independent directors appointed ‘on merit’. While most racing clubs and other industry stakeholder bodies are likely to continue to rely primarily on volunteer board members who may, or may not, have the required skills, this is no longer acceptable in the higher echelons of the industry. There is widespread agreement that thoroughbred racing needs greater professionalism in the governance of the industry as a whole.

### **5.5.2 Conflicts of interest**

A conflict of interest exists where:

*...a reasonably informed objective observer would infer from the circumstances that the director’s judgment is likely to be influenced to the detriment of the company’s best interests.<sup>25</sup>*

The broad duty to prevent conflicts of interest includes a director’s duty to disclose any other interests and a duty not to improperly use his or her position or information gained by dint of that position. Best practice governance would suggest that NZTR directors must be concerned with what is in the best interests of the thoroughbred industry overall rather than have a narrow interest or conflict of interest or, more likely a conflict of duty or loyalty because, for example, they are a nominee of a club or some other constituency.

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<sup>25</sup> Institute of Directors (2007) The Four Pillars of Effective Board Governance: Principles of Best Practice for New Zealand Directors, p.35.

The new structure adopted by the AFL, described in previous section, did not alter the tribal nature of and passion within individual football clubs. Fierce loyalty to one's own team or club and a converse rivalry with other clubs remains one of the great attributes of this and other sports. For this reason it will always be difficult to avoid conflicts of interest in a representative (or 'delegate' or 'nominee') board structure.

With a board comprised principally of club representatives (the current NZTR model) there is always likely to be a conflict of interest between the club representatives' duty to the national body and *its* best interests, and to the interests of their own clubs. Even allowing that each club representative has a genuine *intention* to act in the best interest of NZTR and the industry as a whole, from an outside perspective there will always be the appearance of a conflict.

Unless the direct knowledge of club needs and operations means that NZTR board members would be better equipped for their role as directors, a conflict of interest (between national/industry interests and those of clubs) is unavoidable on a board comprised of club representatives.

A consistent theme of various Australian reports into the governance of both thoroughbred racing and other sporting bodies is the conclusion that governing boards should be able to adhere strictly to appropriate governance principles free of any conflict of interest of a financial, personal or representational nature, acting in the best interests of the industry or sport as a whole.

No matter what approach is taken to the process of director appointment, there is a need for boards to not only require that a director declare any other interests he or she may have, but also to register such interests, and agree to be bound by a specific conflict of interest policy and procedures for dealing with conflicts when they arise. Current NZTR board processes fall short of best practice in this regard.

### **5.5.3 The selection and role of co-opted or 'independent' directors**

The democratic process of electing members of the governing board is still widely valued in many organisations despite concerns about conflicts of interest and/or duty and the competencies and performance of directors selected in this manner. To manage the 'risk' inherent in an electorally selected governing body there has been a widespread trend evident across sporting and related sectors to make provision for the selection and appointment of additional directors to ensure that the board as a whole has the knowledge, skills and experience regarded as essential for effective governance. Where additional directors are co-opted in this way they typically form a minority on the board and often serve shorter terms in office than the elected directors with no right of reappointment. They nonetheless shoulder all the duties and liabilities of directorship.

In any governance setting 'independence' must be carefully defined. During the course of this review it became apparent that many people have interpreted independence to mean 'unconnected to the racing industry'. It would be highly unlikely that the quality of NZTR

board recommended later in this report could (or should) be recruited that met this criterion. A more appropriate definition of independence would be ‘the absence of conflicting duties’.

#### **5.5.4 Financial accountability**

For commercial and non-commercial entities alike, perhaps the most important legal duty relates to the financial well-being of the entity. Whether they are populated by ‘directors’ or ‘committee members’, boards must ensure that proper accounts are kept. Whether board members are financially literate or not they are required to provide an assurance that published accounts give a fair and true view of the organisation’s financial position. Board members are also required to provide an assurance that the organisation is solvent, i.e. that it can meet its debts.

There is agreement that directors of commercial entities are entitled to take calculated risks, particularly financial risks, exercising reasonable business judgments as a part of the process of growing their enterprise. It is arguable, however, whether the board of an incorporated society has quite the same mandate to take risks.

#### **5.6 Board size**

Effective decision-making by a governing board is contingent upon a number of factors. These include having the ‘right’ people with the ‘right’ skills, perspectives, experience and intellectual capacity; data and information that support the decision-making process; and effective group leadership and group processes. There is a relationship between the size of the group and the efficiency, if not the effectiveness, of board decision-making. Put simply, the larger the group the more cumbersome the decision-making process. Large groups are harder to manage and provide many participants with challenges that result in their contribution being less than they and their peers might desire.

The provision of time and intellectual input is a board member’s greatest gift to the board and the organisation governed. It behoves an organisation to make the best use of these vital ‘gifts’ by ensuring that the board is constructed in a manner that maximises their contribution.

While there is a marked trend in all sectors towards smaller boards, typically with no more than seven directors, larger boards are not uncommon where there pressure to accommodate the widest possible range of ‘representatives’. As noted above, however, larger boards face challenges associated with efficiency and effectiveness and these often result in the establishment (officially (e.g. ‘executive committee’) or unofficially) of a board subgroup that effectively controls the governance process. There is an ever present risk, where this occurs, of marginalising the directors who are not part of that ‘in-group’ thereby creating a ‘board within a board’.

## **5.7 Board leadership**

Leadership of the board by its chair is a vital factor in the success of any governing board. That individual's knowledge, skills and experience play a big part in determining the effectiveness of the group. These days few board leaders are elected by organisation members at large. Reflecting modern thinking about governance best practice, the chair is more often elected by the directors from among their number as is the case in NZTR. This generally offers the best chance that a person with the right skills and standing will assume the board leadership.

Whether there is a role for a deputy chair is a matter about which there are divergent opinions. Some argue that there is no meaningful role for a deputy chair; that any director should be able to take over the role of chair in an emergency. They argue that, for the most part, a deputy chair does little or nothing beyond the role of an ordinary director. Others argue that the deputy should be able to take over the chair role at a moments' notice and thus needs to be equally 'on top of' critical board matters. There is more agreement that the role of deputy should not be an automatic route to the chairmanship; that a good deputy will not necessarily make a good chair.

## **5.8 The partnership relationship between the board and the chief executive**

Because of a governing board's primary responsibility for organisational well-being there is no clear line separating governance and management. Except in relatively rare cases, often prescribed in legislation, management functions are delegated from the board. One of the keys to effective corporate governance is clarity and agreement about the separate roles, functions and accountabilities of the board and the chief executive. In any organisation of substance, the role of a board is to ensure that the organisation is well managed, not to do the managing itself. When suitably qualified and experienced personnel are appointed to manage the organisation, a board is able to step back and attend to its own special duties and functions, leaving the day-to-day operational direction and management of the organisation to those with appropriate expertise.

Boards that manage this interface to the greatest effect have commonly codified the separate but interdependent in governance and management roles in the form of a board charter (defining the board's role and accountabilities) and a statement of executive delegations (defining the chief executive's delegated authorities and accountabilities).

When there is clarity around the two roles, a productive working partnership can be formed that enables board and management to each benefit from the expertise of the other without either overlaps (conflicts) or gaps (omissions) in the assignment of decision-making rights.

A problem identified by the Review Committee into Soccer Australia was that there was "inappropriate conduct by directors including micro-managing day-to-day business at the

expense of their broader strategic and compliance responsibilities”.<sup>26</sup> From observation, research and anecdote there is much to affirm a similar pattern in the governance of thoroughbred racing.

There needs to be a healthy relationship involving mutual trust and respect between the board and the chief executive. To avoid inconsistency of instructions and board views being given to the chief executive, the position typically preferred in the literature and by practitioners is that the chair of the board will be the first and major point of contact for the chief executive. For this reason, this relationship, in particular, must be healthy and positive. This is another reason why directors (and particularly the chair) should be chosen for their competence rather than who they represent.

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<sup>26</sup> Cited by Horvath, p.29

## 6. Recommended Changes in Governance Structure and Processes

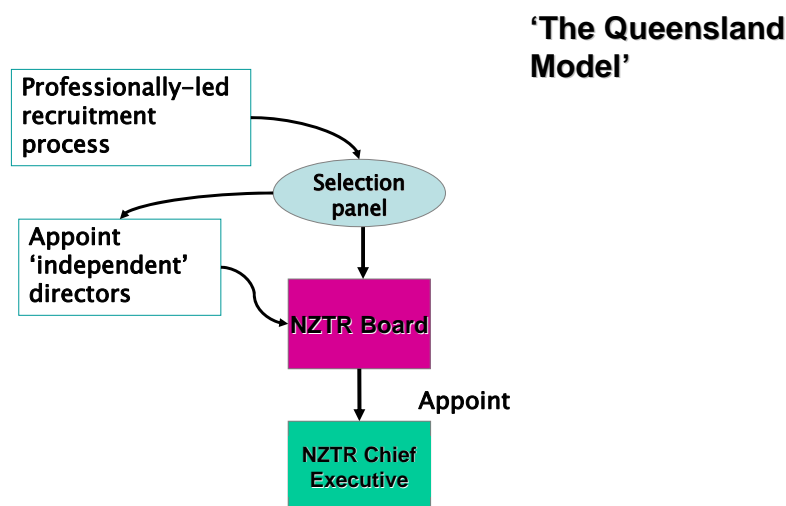
In this Chapter a range of possible alternative governance structural options previously announced is described further. On the basis of feedback on these and the analysis and principles outlined in this report, a recommended option is proposed. A sequence of steps and time-line for implementation of the proposed changes is suggested.

### 6.1 Possible alternative governance structures for NZTR

In November 2008 three broad conceptual options were presented to the NZTR AGM for further consideration. Those options were as follows:

#### 6.1.1 Option 1: 'The Queensland Model'

The significant features of this alternative is the selection of 'independent' directors through a panel-based selection process following a recruitment process that would be more akin to that typically used to select the senior executives.



The purpose of such an approach would be to ensure that the board was populated with the best qualified people available.

Issues that arise with this model include:

- Accountability to members – ideally, members (the equivalent of shareholders) would retain ultimate control over the composition of the board and, in particular, retain

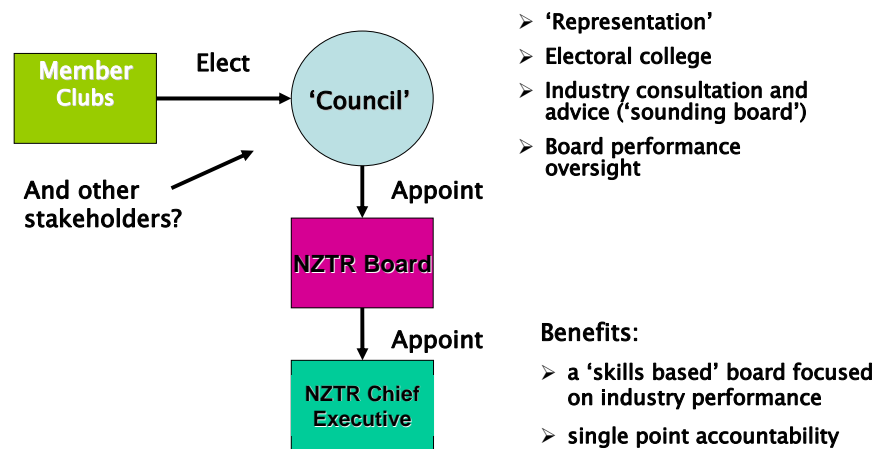
the ability to replace the board or individual directors if there is dissatisfaction with performance. A common variation on this model that would address this issue would be to make the panel's preferences/recommendations subject to a final decision of members (e.g. at an AGM).

- Definition of independence. This is a wider issue that is dealt with later in this Chapter.

### 6.1.2 Option 2: 'The Electoral College Model'

In this option, a further evolution of Option 2, members of the organisation elect or appoint another group (usually of members) to undertake a *selection* process. This separate group is often referred to as an 'electoral college' but it may also have a wider set of related functions such as monitoring the performance the organisation and the board.

#### The Electoral College Option



The electoral college option has been widely adopted in industry associations and similar types of organisation. The primary reason for adopting such a device is have a process (ultimately still member controlled) for *selecting* rather than *electing* board members. Many organisations that are looking to enhance their governance performance have recognised that an electoral process can be biased towards popular and better known candidates. Other members who have an interest in governance and the potential to contribute at the governance level are often reluctant to go through the 'political' process of election.

In the NZTR context the electoral college (referred to as the 'Council' in the diagram above) might consist of other stakeholder groups as well as member clubs.

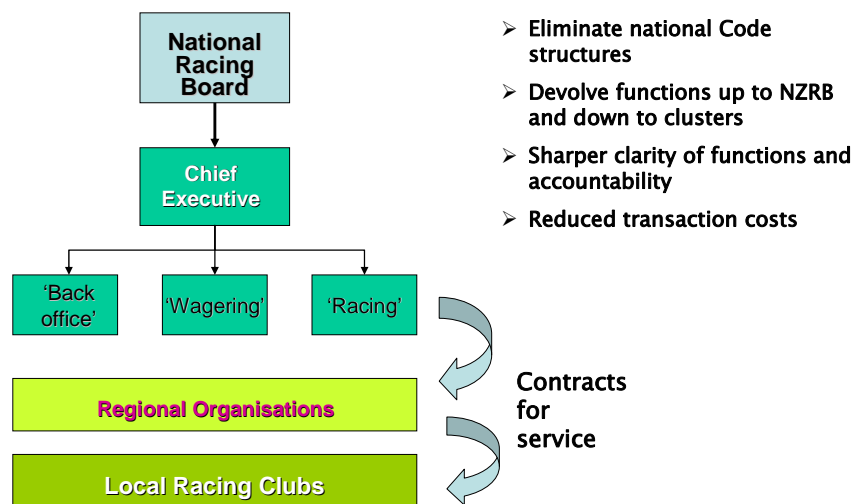
It is common where such electoral colleges exist that they also are given the broader role of representing the views of members to the board and monitoring the performance of the entity and the board. There is potential in this model, therefore, for improved communication between member representatives and the board. There is also likely to be

more direct accountability in this option than in the present circumstances of NZTR where the board is effectively only accountable to an Annual General Meeting.

### 6.1.3 Option 3: 'The West Australian (tri-code) Model'

During the consultation and submission process many in the thoroughbred industry said that the code level (i.e. the separate national thoroughbred organisation and its harness and greyhound equivalents) was an additional but unnecessary layer of decision making that was adding value neither to the individual codes nor to the racing industry in New Zealand overall. Their solution was to create a tri-code structure as has been done in Western Australia. This would mean folding the separate code structures into the New Zealand Racing Board to create a governance structure akin to the 'Commission' model described earlier.

#### 'The West Australian Model'



Many racing people in eastern Australian states see this 'horizontal' and 'vertical integration' as an ideal model but not completely obtainable because of the privatisation there of the TAB. Because of the dominance of the thoroughbred code they are also ambivalent about the value or need for the two other codes to be part of the structure.

In the New Zealand context, however, this model recognises the high level of interdependence of the different components of the racing industry and builds on advantages that racing already has in New Zealand where ownership of the TAB has been retained. The model in the diagram above acknowledges that regional organisations such as the evolving thoroughbred industry 'clusters' could become important components of the racing delivery system. Local racing clubs would continue to perform their current functions although there is an expectation that functional interrelationships would become more transparent (and arguably more transparently transaction focused through service delivery

contracts) and there would be clearer lines of accountability for their performance within the overall system.

## **6.2 Recommended changes to the current governance arrangements**

### **6.2.1 Desired outcomes**

Given the outcome of the consultation process and the analysis in this review report the broad nature of the changes required is clear. What is required to take the industry forward is a governance structure that is:

- more *efficient* - in terms of the utilisation of industry resources – both people and physical infrastructure; and
- more *effective* – that is, it would be better able to provide the industry-wide leadership needed to assure sustainability and success.

To achieve these performance improvements the governance structure and its related systems and processes needs to be both:

- more *inclusive* of non-club racing interests; and
- more *independent* of any dominant interests.

A useful definition of corporate governance is ‘the assignment of decision-making rights’. An important additional outcome of any change should be the reallocation of decision-making rights to ensure that there are neither gaps (decisions for which there is no clearly defined accountability) nor overlaps in decision-making rights (i.e. duplication) and that decisions are taken at the lowest possible competent level.

### **6.2.2 Recommendation: Integrate with NZRB**

As the process of preparing this report was drawing to its conclusion, it was increasingly apparent that to achieve these outcomes many in the thoroughbred industry were inclining towards what has become referred to as ‘Option 3’ (the tri-code model). Following the logic of the analysis in this report, the reviewer has reached a similar conclusion.

There are many reasons for proposing that NZTR seek to more closely integrate its affairs with NZRB but principally it is because:

- the NZRB controls many of the decisions that go to the heart of the viability and future of the thoroughbred racing industry; and
- NZTR cannot meet its own responsibilities (see 2.1.1) not only because it does not sufficient authority but the resources on which thoroughbred racing depends are largely ‘handed down’ from the NZRB.

Apart from the NZTR functions that would be easily accommodated within the NZRB (with an appropriate focus on thoroughbred racing – thoroughbred racing is at least 50% of the total industry) there are other NZTR functions that could be devolved down to – and be at least as well performed by ‘regions’ or clusters of clubs.

Removing the NZTR 'layer' would improve efficiency by reducing some costs. More importantly, however, by removing a layer of decision making in the industry it would increase accountability - at both NZRB and club/cluster level. Increased accountability for complementary aspects of industry performance would no doubt force the remaining parties to confront the hard decisions that will face the industry in the future if not already.

Removal of the NZTR 'intermediary' will also improve communication between the NZRB, the peak body for racing and the clubs which provide vital ingredients in the delivery of the racing product.

While, as part of this process, it would be desirable to incorporate the other two racing codes in a single, well resourced racing industry body in New Zealand this is not considered essential for significant gains in efficiency and effectiveness to accrue to both the thoroughbred racing industry and the NZRB. This review has not examined their situations or aspirations but the harness racing and greyhound codes will make their own judgement about whether there is value to them in also joining with NZRB.

If the other codes decide not to participate, it would be reasonable to expect that there would be advantages accruing to thoroughbred racing of NZTR being the 'first (and largest) mover' in any integration with NZRB.

For the integration of NZTR and NZRB to be complete there will ultimately need to be changes made to the Racing Act. With a new Government actively pursuing its own legislative priorities this may be a season or two away. There would seem to be no reason, however, why NZTR and NZRB could not, as soon as possible, begin the process of operational integration. There are many worthwhile steps that could be taken (e.g. the development of a shared management team)<sup>27</sup> even prior to the extent of integration that would be legislation-dependent.

Once the appropriate legislation could be passed, NZTR as a separate corporate body could be wound up. In the meantime the legal entity and the board, supported by a small management team, would continue to exist to oversee 'business as usual' and to act on behalf of Member and other stakeholders interests as the transition plan takes shape.

While many may be tempted to see what is being recommended here as a simple, one-way process involving the absorption of relevant NZTR operations into the NZRB, the outcome envisaged by this report is not simply 'NZRB with some additional functions'. This is for two principal reasons:

- many in thoroughbred racing are reticent about engaging too closely with NZRB as their experiences have not always been positive;
- there is also widespread concern about the risk of losing a thoroughbred racing identity if NZTR was 'absorbed' into a broader based organisation; and

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<sup>27</sup> There are successful precedents in other industries (e.g. the health sector)

Experience with successful ‘strategic alliances’ suggests an integration option has the greatest likelihood of success if it is approached as the creation of a new and potentially quite different organisation.

Even if this were not the preferred approach, applying the governance design principles outlined in this report would suggest NZTR stakeholders would want to see changes in both NZRB governance and management structures before agreeing to an integration option.

To advance the recommended new enterprise option, it is recommended that an ‘integration task force’ be formed. Its brief would be to scope, plan and implement the integration option. Consisting of credible racing industry people with applicable business and organisational skills sets this group would be jointly appointed by the boards of NZTR and NZRB. It would address:

1. the opportunities to combine the management of certain functions and operations of NZTR and NZRB (achievable in the short term (0-18 months); and
2. the creation of a new statutory organisation - ‘Racing and Wagering New Zealand’ (achievable in the medium term (18 months +).

The Task Force would advise the boards of NZTR and NZRB jointly on the steps they should take to implement the integration option. Each board would be able to make their own assessments of the Task Force’s proposals.

### **6.2.3 Possible ‘internal’ governance changes to NZTR**

While the initial focus of this review process was to improve, in isolation, the governance structure of NZTR it is a moot point whether this is necessary (or worthwhile) if the integration option is to proceed.

However, if the integration option were to be rejected, NZTR would once again need to confront the need for a substantial internal (i.e. NZTR specific) governance change. Details of a possible new governance structure for NZTR, based on the analysis in this report of the challenges facing the industry and the inadequacies of the current governance structure and processes, are described in Appendix 4.

## **6.3 Recommended process for implementing proposed governance changes**

It is proposed that as soon as practicable the following steps are undertaken.

It is recommended that the NZTR board:

1. Consider and adopt, in principle, the principal recommendations in this report (or of agreed variations);
2. Consult with the board of NZRB about the report’s recommendations;
3. Release the report to member clubs and other key stakeholders (including the other racing codes and the Minister of Racing);

4. Jointly establish with NZRB a high level implementation task force;
5. Consider the Task Force's preferred approach and jointly agree with the NZRB the necessary changes to the Racing Act and the Rules of NZTR.
6. Seek the approval of Members at a SGM or AGM; and
7. Proceed with implementation.

The critical ingredient in the implementation of any of these changes is the effective leadership of the change process by the NZTR and NZRB boards. The need for shared commitment, energy and drive at the governance level of NZTR, in particular, to achieve the changes proposed in this report should not be underestimated.

At the same time, it should be acknowledged that the support throughout the industry for change along the general if not the specific lines suggested in this report, has increased perceptibly since this review commenced in August 2008. The review process has assisted to create a focus for the concerns many have about the state and performance of the industry. There is a desire for, and openness to, change. There may never be a more propitious time.

*There is a tide in the affairs of men,  
Which, taken at the flood, leads on to fortune;  
Omitted, all the voyage of their life  
Is bound in shallows and in miseries.  
On such a full sea are we now afloat,  
And we must take the current when it serves,  
Or lose our ventures.*

Brutus in Shakespeare's Julius Caesar Act 4, scene 3

## Appendix 1: Consultations

### Regional Workshops

Participants are listed in Appendix 2. A number of others were invited but were unable to attend.

### New Zealand Racing Board – directors and Chief Executive

#### Australia:

Queensland Racing Ltd  
Bob Bentley, Chairman (and also Chairman ARB)  
Shara Murray, Corporate Counsel/Company Secretary

Racing New South Wales Ltd  
Peter V'landys, Chief Executive

Racing Victoria Ltd  
Michael Duffy, Chairman  
Rob Hines, Chief Executive  
Mark Close, Manager, Government Relations

The Australian Racing Board  
Andrew Harding, Chief Executive

Also, David Crawford – author of an independent review of the governance of racing in Victoria and numerous other independent governance reviews (including AFL and Soccer Australia).

## Appendix 2: Attendees at Regional Workshops

	<b>AWAPUNI 23/10/08</b>	<b>RICCARTON PARK 24/10/08</b>	<b>TE RAPA 3/11/08</b>	<b>ELLERSLIE 6/11/08</b>	<b>WELLINGTON (SECTOR GROUPS ONLY) 20/10/08</b>
<b>CLUB COMMITTEE MEMBERS</b>	David Bennett David Archibald John Dodson Wayne Guppy Steak Goodin	Derek Mayne Tony Cook Jeff McCall Vince McLachlan	George Simon Peter McCowan Peter Silson John Tucker John Lloyd Don McLraith	Bill Gianotti Steve Cole Russell Warwick Victoria Carter	<u>NZTROF</u> Neil Oldfield Ian Hackett  <u>NZTBA</u> Peter Francis Michael Martin
<b>CLUSTER NOMINEES</b>	Laurence Redshaw	Tim Mills	Tony Enting	Chris Weaver	NZTA and NZJA invited to attend and to nominate a second participant (if they wished)
<b>OWNERS &amp; BREEDERS</b>	Tom Jamison Bruce Perry	Kevin Hickman Nick Wigley Richard Yardley		Mark Chitty Wayne Larsen	
<b>TRAINERS</b>		Shane Marr	Lance Noble Paul Moroney		
<b>COMMENTATORS &amp; MEDIA</b>		David McCarthy	Steve Davis David Bradford		
<b>OTHER</b>	Darin Balcombe Tony Severinsen John McGifford	Keith Neylon Murray Acklin Dean McKenzie	Greg McCarthy David Ellis Dennis Sexton	Graeme Andrew	

## **Appendix 3: Submissions**

Written submissions were received from the following:

Organisations:

Canterbury Racing  
New Zealand Thoroughbred Breeders Association  
NZTR - management  
Race (Inc)  
Trac (Inc)

Individuals:

Murray Acklin  
Susan Archer  
Mary-Jane Francis  
Ashley Hayes  
Dean McKenzie  
Colin Wightman

## Appendix 4: Details of Possible Internal Governance Changes

If NZTR decides that there should continue to be a separate thoroughbred racing code organisation the following is an outline of desirable governance changes that flow from the analysis in this report.

### Board related:

1. That the present 10 member 'representative' board be replaced by a 7 member board comprised of directors selected for:
  - their 'independence' from direct governance or management responsibility<sup>28</sup> to other industry organisations (the one exception to this being the appointment of a member of the NZRB board); and their
  - assessed experience and ability, or potential ability, to contribute to the work of the board at the level of governance competence required to provide effective industry leadership and stewardship.

As well as these attributes, a majority of the members of the board should be able to demonstrate a commitment to, an understanding of, and personal credibility and standing in, the thoroughbred racing industry.

Any person who would not otherwise be considered ineligible for board selection<sup>29</sup> would be entitled to put forward an application to be considered for selection as a director.<sup>30</sup>

2. That selection of the members of the board be the responsibility of a panel<sup>31</sup> consisting of:
  - the chair of NZTR;
  - the chair of NZRB;
  - two additional members to be agreed jointly by the two chairs; and
  - a member nominated by the New Zealand Institute of Directors who would also be the chair of the panel.

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<sup>28</sup> This means a member of the NZTR board could not contemporaneously be a board member or employee of an industry related body including a racing club.

<sup>29</sup> For example, for reasons of bankruptcy, mental ill-health, etc.

<sup>30</sup> Several Australian state racing authorities and the BHA, consistent with commercial tradition, have appointed their chief executive to their board. However, the concept is rejected in relation to NZTR because the practice of making the board's principal employee a member of the governing (i.e. employing) board is fundamentally unsound. It compromises both the board and the chief executive as a fundamental conflict of roles and responsibilities is created. The problem has been further compounded in those situations where the chief executive has been forced to take on the additional responsibilities of a director without an associated voting right.

<sup>31</sup> It was suggested by the Australian state racing authority chairs consulted and Australian corporate governance authority David Crawford, that the board, as is the case with commercial entities, should be able to determine its own succession. It is the reviewer's judgement that this would create a significant risk of self-perpetuation by a potentially elite group and a progressively reduced level of accountability for performance that would not be acceptable to NZTR members.

The panel would be empowered and resourced to engage professional assistance in both the identification and assessment of potential candidates (including existing members applying for reselection).

3. That initial board appointments be for a minimum of 2 years<sup>32</sup> but thereafter the term of board appointments be staggered so that the terms of 2 of the 6 non-NZRB members expire each year. Subject to satisfactory performance<sup>33</sup> initial board appointments should be as follows:
  - 2 for 2 years
  - 2 for 3 years
  - 2 for 4 years
4. That, with the exception of the initial appointments, the appointment of board members be limited to a maximum term of 3 years but with the right of reappointment for up to 6 years further in total subject always to reselection by the panel against the same criteria as for new members.<sup>34</sup>
5. The board would elect its own chair annually following the appointment of any new directors.

**Membership related:**

6. That the membership base of NZTR be broadened to include a second category of Members to be known as 'Industry Members' (or similar). Industry Members would be properly constituted industry associations<sup>35</sup> representing the 'investment' side of the industry, namely owners, breeders and trainers.
7. The Industry Members category to have a voting strength equal to not less than one-third of the total number of votes able to be cast at a meeting of both classes of Members.
8. To succeed, proposals for constitutional change should require a minimum of two-thirds of the total votes cast at a meeting of both classes of Members.
9. The votes of the existing 'club' Members category continue to be cast according to the distribution of current race dates.

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<sup>32</sup> This follows (albeit for a shorter term) the logic of the QRL experience where board members have been appointed for an initial period of 4 years to allow the board to consider and implement the difficult changes needed without fear of a loss of office.

<sup>33</sup> It is suggested that there be an expectation that both the board and each director will be the subject of an annual performance review.

<sup>34</sup> If the second stage proceeds as expected this provision would be somewhat 'academic'. Its inclusion here, however, is for purposes of completeness.

<sup>35</sup> That is they should be properly incorporated and meet minimum procedural and membership criteria (see, for example, the 'Eligible Voting Criteria' requirements of Victoria Racing Ltd.)

**Industry consultation:**

10. That there be established a Thoroughbred Racing Industry Forum convened by the NZTR board that would meet not less than 2 times per year:

- to review the progress of the organisation in implementing strategic plans and providing effective leadership, in general, to the industry;
- to collectively identify and discuss critical strategic issues facing the thoroughbred racing industry and to identify and consider possible strategies to address those issues; and
- to act as a general sounding board for the board and management of NZTR.

Forum meetings should be scheduled, in particular, to facilitate timely stakeholder input to the key stages of the NZTR strategic and business planning process.

Participation in the Thoroughbred Racing Industry Forum would be as follows:

- the board of NZTR;
- the board of NZRB;
- up to 15 club representatives (5 from each of the 3 NZTR Regions including at least 1 Small club and 1 non-Totalisator club representative);
- up to 10 representatives of other industry investors (3 from each of owners, breeders and trainers; and
- up to 5 representatives of other industry stakeholders including employees, and service providers (e.g. jockeys, farriers, veterinarians, news media, etc.)

It is suggested that Forum meetings be professionally facilitated and its proceedings be recorded in summary form and made publicly available.