SUBMISSION FROM
NEW ZEALAND THOROUGHBRED
RACING INC

ON

JOHN MESSARA’S REVIEW
OF THE NEW ZEALAND RACING
INDUSTRY
Introduction and Summary

This document is NZTR’s response to the recommendations in John Messara’s Review of the New Zealand Racing Industry (“the Messara Report”).

NZTR strongly supports the principles underpinning the report and the conclusion that radical and far-reaching change is required if the thoroughbred industry is to survive. The current statutory arrangements for the industry are strangling thoroughbred racing by preventing the sector from developing and thriving, which means we cannot reach our economic potential.

We acknowledge that Mr Messara has advised that his recommendations should be adopted as a package. In principle we agree with this assessment, however we are also mindful that the industry needs urgent change now if it is to survive. In our view it is therefore important that the implementation of the critical recommendations in the report are not held up by a debate about, for example, the precise arrangement of venues in New Zealand or the exact ownership of transition arrangements, when these debates can be led and implemented by NZTR as part of the new structure.

Although not mentioned in the Report, NZTR also strongly endorses the proposed establishment of a Racing Industry Transition Agency to guide the industry through this period of radical change. In NZTR’s view it is important that RITA is fearlessly independent of vested interests while remaining closely aligned to the Codes and has the power to cut through calcified structures and lead the transformation by making difficult decisions in the industry’s best interests.

NZTR sets out its detailed responses to the recommendations in the report below. While NZTR supports the principles behind each recommendation, we have taken the opportunity to set out areas which we consider could be clarified or where the recommendation could be improved to better achieve the report’s goals.

A summary of NZTR’s response to the recommendations report is set out below:

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<th>Recommendation</th>
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3. Change the composition and qualifications for directors of regulatory bodies. | STRONG SUPPORT

4. Request that a Performance and Efficiency Audit of the NZRB be initiated under section 14 of the Racing Act 2003, with particular emphasis on the operating costs of the NZRB. | SUPPORT WITH MODIFICATIONS

5. Amend the section 16 distribution formula of the Racing Act 2003 to a more equitable basis for fixed 10-year terms. | STRONG SUPPORT

6. Initiate a special review of the structure and efficacy of the RIU and allied integrity bodies, to be conducted by an independent qualified person. | STRONG SUPPORT

7. Begin negotiations for the outsourcing of the TAB’s commercial activities to an international wagering operator, to gain the significant advantages of scale. | STRONG SUPPORT

8. Seek the approval for a suite of new wagering products to increase funding for the industry. | STRONG SUPPORT

9. Confirm the assignment of IP by the clubs to the codes. | STRONG SUPPORT

10. Introduce race fields and point of consumption tax legislation expeditiously. These two measures will bring New Zealand’s racing into line with its Australian counterparts and provide much needed additional revenue. | STRONG SUPPORT

11. Repeal the existing betting levy of approximately $13 million per annum paid by the NZRB, given that the thoroughbred Code is a loss maker overall, with net owners’ losses outweighing the NZRB’s net profit. | STRONG SUPPORT

12. Clarify legislation to vest Race Club property and assets to the Code regulatory bodies for the benefit of the industry as a whole. | REQUIRES FURTHER WORK
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Next Steps

Time is of the essence in implementing the Government’s decisions on the Messara Report. The status quo cannot be allowed to continue as it is actively harming thoroughbred racing.

NZTR’s view is that the first steps should be radical governance changes at the NZRB and the establishment of a suitably resourced and empowered RITA to guide the industry through the transition period. RITA, the Codes, and a repurposed NZRB can then work together to support the development of legislation to implement the Government’s decision. RITA needs to be closely aligned with the Codes and their interests to support the implementation of the new model by the Codes.

NZTR is available at any time to discuss the submissions below.

Recommendations One and Three

Change the governance structure, so that the NZRB becomes Wagering NZ with racing responsibilities devolving to the individual Codes. This will sharpen the commercial focus of TAB operations and improve the decision-making and accountability of the Codes.

Change the composition and qualifications for directors of regulatory bodies.

Changes to NZRB role

NZTR strongly supports the proposed refocussing of the NZRB/WNZ on its wagering operations and the removal of its racing functions. The NZRB’s current non-wagering activities add little value to the industry and can be better discharged by the Codes.

In NZTR’s view the proposed model can be further improved by clarifying:

- WNZ’s Statement of Intent must be approved by the racing Codes each year; and
- WNZ must act in what the racing Codes determine to be the best interests of the racing Codes, and must treat the sporting Codes fairly;

Any new legislation should also clarify that the relationship between WNZ and the Codes should be governed by agreements between WNZ and the Codes and/or Racing New Zealand, and those agreements should place significant limits on WNZ’s freedom of action. It should not, for example, be possible for WNZ to make major contractual decisions or capital investments without the support of the Codes.

In NZTR’s view, each Code should take responsibility for setting its racing calendar in consultation with other Codes and WNZ. Having reached agreement, WNZ should be responsible for issuing betting licences to meetings at which it has been agreed betting will take place.

Changes to Code role

NZTR strongly supports regaining a high level of autonomy in relation to thoroughbred racing, including in particular ownership and control of all thoroughbred racing wagering, media and other intellectual property rights. The last fifteen years have demonstrated that bundling Code rights together diminishes their value.
The new legislation should be clear about how these rights are transmitted from thoroughbred racing clubs to NZTR. NZTR’s ideal model would be, in preference to the current ‘funding policy’ model, a series of funding agreements with individual racing clubs in which those clubs transferred their rights to NZTR and made other commitments in return for NZTR funding. Accountability for performance would be preserved through the role the clubs play in Code governance.

NZTR supports at a high level the recommendations in relation to governance at Code Boards, but makes the following observations:

- The NZTR directors are appointed by the Members Council, which is taken to represent the interests of the thoroughbred sector as a whole. Individual directors are not appointed to represent specific sectoral interests and any new legislation should recognise this; and
- It should still be the case that a director can be removed for office for (at least) inability to perform the duties of office, bankruptcy, neglect of duty, or misconduct, no matter who appointed them.

The legislation should clarify whether it is intended that each Code should be required to appoint two additional independent directors (as is the case in Australia) or merely that at least two of the existing directors should meet the test set out above. NZTR’s view is that the latter is preferable to ensure that the Board size remains workable.

Changes to race club roles

NZTR strongly supports the proposed enhancements to the governance and operation of thoroughbred racing clubs.

Recommendation Two

Establish Racing NZ as a consultative forum for the three Codes to agree on issues such as entering into commercial agreements with Wagering NZ, approving betting rules, and budgets for the integrity bodies, equine health & research, etc.

NZTR agrees that there should be a cross-Code forum which formalises tri-Code decision-making on matters where the interests of the three Codes align, such as the funding of certain integrity bodies or other matters. In NZTR’s view, decision making at Racing NZ should be on the basis that absolute unanimity was required – Codes should not be able to enforce their will on each other through Racing NZ decisions.

It may be convenient for legislative purposes if Racing NZ receives statutory recognition. However, it should not necessarily require staff or a budget per se. If so, these should be subject to tri-Code approval.
**Recommendation Four**

Request that a Performance and Efficiency Audit of the NZRB be initiated under section 14 of the Racing Act 2003, with particular emphasis on the operating costs of the NZRB.

NZTR agrees that as part of the NZRB’s transition into WNZ, a frank and impartial assessment of the current state of the NZRB’s business is required. In NZTR’s view, this assessment needs to be in two stages:

- An immediate short-term cost review to identify what activities and costs can be immediately removed from the NZRB business as part of the transition into WNZ; and
- A review of the whole NZRB business, including a stress-test of the organisation’s current trajectory, to provide a realistic baseline for outsourcing negotiations.

These reviews need to be commissioned externally and have their terms of reference set by RITA in consultation with the Codes, independently of the current NZRB Board and management team. It is important that these assessments are ‘warts-and-all’ so that realistic plans can be made.

These assessments are urgent and need to start as soon as possible. For the reasons set out above, NZTR doubts that these reviews can be formally characterised as performance and efficiency audits, but they are nevertheless essential.

**Recommendation Five**

Amend the section 16 distribution formula of the Racing Act 2003 to a more equitable basis for fixed 10-year terms.

NZTR strongly supports the revised distribution formula because it is more equitable and appropriately thoroughbred racing’s economic contribution to New Zealand. We note that if this formula is prescribed in statute then it significantly limits the scope of any commercial negotiations between the Codes/WNZ unless the Codes negotiate additional above-the-line product fees with WNZ, which are essential to move the industry forward.

The arrangements for the funding of integrity services require clarification. In particular it is not clear whether it is proposed that WNZ or Racing New Zealand ultimately determines what the budget for integrity services will be. In NZTR’s view, the Codes should be responsible for determining budgets for integrity services.

**Recommendation Six**

Initiate a special review of the structure and efficacy of the RIU and allied integrity bodies, to be conducted by an independent qualified person.

NZTR supports a robust review of the sector’s integrity structures. In NZTR’s view this review needs to take place immediately so that any changes to racing’s integrity system that require legislative amendment can be incorporated as part of any broader amendment to the structure of the racing sector and given the most recent integrity challenges in the harness racing sector.
In NZTR’s view, it will be important that the review is conducted jointly by persons with experience of the operation of integrity services in New Zealand and with alternative, non-tri-Code models in Australia, at least one of whom should be legally qualified.

**Recommendation Seven, Eight and Nine**

- Begin negotiations for the outsourcing of the TAB’s commercial activities to an international wagering operator, to gain the significant advantages of scale.
- Seek the approval for a suite of new wagering products to increase funding for the industry.
- Confirm the assignment of IP by the clubs to the codes.

NZTR strongly supports the outsourcing of WNZ’s operational activities on the basis that this will deliver a significantly enhanced financial return to the status quo.

The outsourcing negotiations must be supervised by a group representing the three Codes and their interests and the final agreements must have the endorsement of each Code to the extent that they affect that Code’s rights and interests. The product supply and distribution agreements must be consistent with the other arrangements outlined above.

NZTR strongly supports the assignment of racing intellectual property and rights from the clubs to NZTR, but seeks further clarity on how this would be accomplished (i.e. by statutory mandate, or by way of funding agreements between NZTR and clubs), as this is essential for the success of the thoroughbred sector.

NZTR supports the proposed loosening of restrictions on WNZ’s wagering activities, on the basis that the scale of WNZ’s investment into these areas would be subject to Code approval as part of the relationship between WNZ and the Codes.

**Recommendation Ten**

- Introduce race fields and point of consumption tax legislation expeditiously. These two measures will bring New Zealand’s racing into line with its Australian counterparts and provide much needed additional revenue.

NZTR strongly supports the introduction of efficient and effective race fields and point of consumption tax legislation. In this context, NZTR emphasises that there is clearly scope for the model proposed in the Racing Amendment Bill to be streamlined and made more practical. Whatever fees are charged in New Zealand must be competitive with what is being charged in the major Australian wagering jurisdictions.

NZTR strongly supports each Code taking responsibility for setting and collecting race fields fees pursuant to contractual agreements with overseas operators. NZTR considers that Codes must have discretion about how those fees are set to recognise betting exchanges and other alternative business models to traditional bookmaking (i.e. the formula should not be exclusively turnover-based), and the competitive marketplace in Australia and internationally.
NZTR considers that existing agreements between NZRB and offshore operators should be terminated and renegotiated in line with all other agreements.

NZTR’s preferred model is that the consumption charge scheme be operated by each Code in the same way as the race fields scheme.

However, NZTR considers that, if the DIA is to administer the consumption charge scheme, the Codes should nevertheless be able to set the rate to be charged to ensure that it is commercially viable. The DIA should have a duty to maximise the financial return to each Code through the consumption charge scheme.

**Recommendation Eleven**

Repeal the existing betting levy of approximately $13 million per annum paid by the NZRB, given that the thoroughbred Code is a loss maker overall, with net owners’ losses outweighing the NZRB’s net profit.

NZTR strongly supports the repeal of totalisator duty but considers that the proposed distribution model could be improved to reduce administration costs. The model proposed in the report for the redistribution of totalisator duty appears unduly complex given the other mechanisms for passing funds to the industry.

**Recommendation Twelve**

Clarify legislation to vest Race Club property and assets to the Code regulatory bodies for the benefit of the industry as a whole.

NZTR considers that this recommendation requires further work before it could be supported. On its face, the transfer of all club land and assets to NZTR is disproportionate and unjustified when measured against what the sector requires to succeed. NZTR’s view is that in general clubs are the appropriate stewards of their land while racing continues at that venue.

NZTR agrees that the current structures relating to asset allocation in the thoroughbred sector are not fit for purpose, do not recognise the historical investment that thoroughbred racing as a whole has made in individual venues, and have acted on a handbrake on a national venue strategy.

In NZTR’s view, any new relationship between NZTR, clubs and venues needs to satisfy the following criteria:

- NZTR needs to be able to have input into club business plans and supervise club racing activities;
- NZTR needs to be able to determine, after consulting and following an appropriate process, when continuing to race at a particular venue is no longer in the best interests of the industry, and terminate its use;
- NZTR needs to be able to ensure that, when use of a venue ceases, any proceeds from any sale of that venue may be applied in the wider interests of thoroughbred racing, following consultation with affected parties including community groups.
NZTR agrees that the proposals to vest club land and assets in NZTR would satisfy these criteria. However, NZTR is concerned that the proposals go further than what is required to meet those goals, and that universal land transfer is a blunt instrument which does not recognise that some venues are important community assets.

NZTR is open to further discussions with the Minister or Department on how that mechanism could be designed.

**Recommendation Thirteen**

Reduce the number of thoroughbred race tracks from 48 to 28 tracks under a scheduled program. This does not require the closure of any Club.

NZTR agrees in principle with the recommendation that the number of thoroughbred racing venues needs to be reduced.

Consistent with the principles of Code autonomy articulated in the report, NZTR considers that the final decision about the number of venues each Code requires should sit with the relevant Code, following consultation with the industry.

NZTR recognises that the process of venue consolidation will need to be a gradual and staged process which will take some years to complete. Final decisions about venues should not hold up the implementation of the other, urgent, aspects of the report.

**Recommendation Fourteen**

Upgrade the facilities and tracks of the remaining racecourses with funds generated from the sale of surplus property resulting from track closures to provide a streamlined, modern and competitive thoroughbred racing sector capable of marketing itself globally.

NZTR agrees that significantly more investment in thoroughbred racing venues is urgently required. The current operating model for the wagering business, and the statutory arrangements around the administration of the racing sector are not and indeed will never deliver sufficient financial returns to enable investment on the scale that is necessary or to send the appropriate signals about asset allocation.

NZTR considers that, once the position in relation to venues and the proceeds from their potential closure is clarified, it will be in a position to consult with clubs on the work programme put forward by Mr Messara, with a view to finalising a programme of works and potentially establishing a Future Fund or trust to support ongoing investment and maintenance.
**Recommendation Fifteen**

Construct three synthetic all-weather tracks at Cambridge, Awapuni & Riccarton with assistance from the New Zealand Government’s Provincial Growth Fund. Support the development of the Waikato Greenfields Project.

NZTR supports the proposed programme of works for synthetic tracks, and NZTR is already working to ensure that sufficient funding is available either through asset realisation, the Provincial Growth Fund, or club balance sheets.

**Recommendation Sixteen**

Introduce robust processes to establish traceability from birth and the re-homing of the entire thoroughbred herd, as the foundation stone of the industry’s ongoing animal welfare program.

NZTR agrees that robust traceability systems need to be implemented, and is well-advanced on the appropriate Rules amendments to do this. It is expected that the relevant Rules will be in force within six months.

NZTR supports the introduction of robust rehoming processes. It is important that these are Code-specific and that each Code meets the actual costs of rehoming their retired animals.

**Recommendation Seventeen**

Increase thoroughbred prizemoney gradually to over $100 million per annum through a simplified three-tier racing model, with payments extended to tenth place in all races.

NZTR strongly supports the intended increase in prize money and fixed minimums, together with a simplification of the stakes matrix which aligns with the best interests of thoroughbred racing and recognises New Zealand’s particular circumstances. Consistent with the principles of Code autonomy articulated in the report, the ultimate decision on the stakes matrix should sit with NZTR.

**Other Recommendations**

Reinforce the importance of good corporate governance procedures by Race Club controlling boards or committees, improve the race club management skills of CEOs and senior staff, and lift the minimum acceptable standards for racecourses in terms of the presentation of racing tracks, training tracks, facilities infrastructure. Increased attention should be given to ensuring the adequate training of all race club staff and in particular track maintenance personnel.

NZTR strongly supports the recommended improvements in club governance and operations.