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FROM: New Zealand Animal Law Association
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BY EMAIL TO: martin.burns@nztr.co.nz and
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Dear Martin and Colin,

SUBMISSION ON WHIP RULE CHANGES

Introduction

1. This is the submission of the New Zealand Animal Law Association (**NZALA**) on the potential changes to the whip rule (**Rule**) in *Circular No. 19* of New Zealand Thoroughbred Racing (**NZTR**), dated 20 November 2020.
2. NZALA is a coalition of lawyers, law students and law graduates working to improve the welfare and lives of animals through the legal system. There are over 500 members signed up throughout the country and working in various practice areas.

General Submission

3. NZALA supports the proposition that whip use should be further restricted from 2021 and again restricted in three to five years so that whips are carried only for the purposes of "*safety and control*".
4. These changes will go some way to addressing adverse impacts on animal welfare arising from the use of whips. We make our submission on the basis that:
 - 4.1 ensuring upmost standards of animal welfare should be a primary consideration for NZTR; and
 - 4.2 it is dubious whether whip use has positive impacts.

Equine Welfare

5. The recent finding that the sensitivity of horse skin is comparable to that of humans supports the need to restrict whip use.¹ There has been some debate in the past as to the level of pain felt by horses being whipped but this new research confirms that is comparable to what humans would feel.

1 Lydia Tong and others "A Comparative Neuro-Histological Assessment of Gluteal Skin Thickness and Cutaneous Nociceptor Distribution in Horses and Humans" (2020) 10 Animals 2094.

6. Differentiating between forehand or backhand whip use is not a sufficient level of restriction as the focus on comparative force has not been effectively demonstrated. When using their dominant hand jockeys strike with more force using their backhand, but when using their non-dominant hand jockeys strike with the same level of force regardless of whether they use their forehand or backhand.² Therefore, restricting forearm whip use is not a reliable safeguard for horse welfare.
7. More serious injuries can result from whip use than just topical inflammation and bruising from the whip itself. Research from the United Kingdom has found a relationship between the number of times a horse is whipped and its risk of falling.³ Horses that were whipped as they moved ahead in the race were found to be seven times more likely to fall than those that were not whipped.⁴
8. It is necessary to consider both physical and psychological welfare, and positive punishment through whip use can create unnecessary fear, anxiety and distress.⁵
9. As prey animals, horses have a flight response to pain and other aversive stimuli. Repeated use of a whip is likely to cause distress and suffering in horses who cannot exhibit this natural behaviour. There is evidence this can lead to learned helplessness; where horses establish that they cannot escape the stressor, resulting in ingrained hopelessness.⁶
10. We note that, under section 10 of the Animal Welfare Act 1999:

The owner of an animal, and every person in charge of an animal, must ensure that the physical, health, and behavioural needs of the animal are met in a manner that is in accordance with both—

 - (a) good practice; and
 - (b) scientific knowledge.
11. More scientific research is needed in this area, however there is already evidence that whip use causes psychological harm, therefore limiting the ability of horses to display normal patterns of behaviour.
12. Investigations in to the effect of whipping on speed have not provided definitive answers, but some results indicate increased whip use does not increase speed.⁷ In the absence of definitive evidence on this, the clear evidence of adverse welfare impacts means that whip use should be restricted.

2 Paul D. McGreevy and others "A note on the force of whip impacts delivered by jockeys using forehand and backhand strikes" (2013) 8 J Vet Behav 395 at 399.

3 G.L. Pinchbeck and others "Whip use and race progress are associated with horse falls in hurdle and steeplechase racing in the UK" (2004) 36 Equine vet. J. 384 at 384.

4 At 388.

5 Robin Foster "Understanding and Implementing Principles of Learning in the Equine Veterinary Practice" (2017) 63 AAEP Proceedings 255 at 256.

6 Carol Hall and others "Is There Evidence of Learned Helplessness in Horses?" (2008) 11 J Appl Anim Welf Sci 249 at 251.

7 David Evans and Paul McGreevy "An Investigation of Racing Performance and Whip Use by Jockeys in Thoroughbred Races" (2011) 6 PLoS ONE 1 at 5.

Safety and Control

13. NZALA recognises that whips are used for the purpose of protecting jockeys' safety. Whip use for the purpose of "steering" to prevent collisions that may result in serious injuries to both horse and rider is considered essential.
14. However, sufficient evidence has not been found to show that whip use increases safety. On the other hand, there has been no negative impact on jockey and horse safety in Norway following the removal of whips from flat races in 2009.⁸ Norway's Racing Rules provide an exception for two-year old races and hurdle races, and only in situations when the jockey, their mount, or their competitors are in danger.⁹
15. The serious injuries that can occur as a result of horses turning or slowing down unexpectedly *may* justify whip use as a means of control. If this is the case, whip use should only be utilised when there is a real risk to horse or rider safety.
16. NZTR should considering adopting an approach similar to that in Norway, which recognises that whip use is not justified for flat races, but does recognise an increased risk to jockey and horse safety in juvenile, steeplechase and hurdle races.
17. We strongly suggest that a full review of research in to the effectiveness of whips for safety and control be undertaken. A complete ban of whip use should be instated, if it is supported by the evidence.
18. To the extent that available research indicates that whip use is effective for ensuring safety and control, we accept that whip use should be allowed, only to the extent that it fulfils this purpose.

Penalties

19. We submit that the whip rule be amended so that whips may only be carried, and used, for the purposes of safety and control. Whip use for the purpose of increasing the speed of a horse should be considered a breach of Rule 638(3) of the New Zealand Rules of Racing.
20. Penalties under Rule 106 of the New Zealand Rules of Racing for misuse of the whip should be increased as they are currently not sufficient. A suspension should be considered after the first whip offence to more effectively discourage excessive and improper whip use.

Conclusion

21. The current whip rule does not appear to reflect the NZTR's commitment to thoroughbred racehorse welfare. The proposed restrictions are an important step toward improving welfare standards and, as evidenced by current research, would not have any significant impact on race outcomes or jockey safety.

8 Bidida Jones and others "A Critical Analysis of the British Horseracing Authority's Review of the Use of the Whip in Horseracing" (2015) 5 *Animals* 138 at 141.

9 Ovrevoll Galoppbane "Rules for Use of the Whip at Ovrevoll Racecourse" 2019 <www.ovrevoll.no>.

- 22.** NZALA supports changes to the whip rule that would result in further restrictions from 2021 and a complete ban in three to five years, except as required for "*safety and control*".
- 23.** There is a high level of public support for improving welfare in horse racing which should be considered, as well as the potential for NZTR to be a global leader in terms of safety and animal welfare in thoroughbred racing.

Yours faithfully,
The New Zealand Animal Law Association