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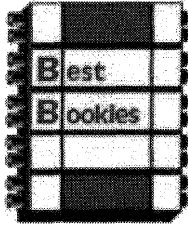
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Ms Dickinson

Please find attached a submission from Best Bookies for the consideration of the Committee on the Review of the Racing and Wagering Western Australia Acts.

Regards
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**Submission for the Review of Racing and
Wagering Western Australia**

Zr" November 2009

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Introduction

Best Bookies Price Pty Ltd (Best Bookies) is a Western Australian based company that provides the infrastructure for on-course bookmakers to provide their services to our members. Through the Best Bookies system, punters can place bets with any participating on-course bookmakers or the three major totalisator pools.

The members of the board have over 100 years combined experience in the racing industry particularly in the fields of bookmaking and wagering. As such we would like to provide you with our views in relation to the effectiveness of Racing and Wagering Western Australia (RWWA).

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Performance of RWWA in funding the racing industry

A comparison of the distribution by RWWA to the industry from the 1999-2000 report issued by the Totalisator Agency Board (TAB) with that detailed in RWWA's 2008-2009 report appears favourable. In 1999-2000 the amount distributed was \$50.26M representing 6.15% of wagering turnover. In 2008-2009, the distribution was \$112.76M representing 7.10% of wagering turnover.

However, I would like to draw your attention to the fact that the 2008-2009 distribution figure is artificially inflated and misleading. The amount distributed included \$14.52M that is listed as "Other receipts". Also, the tax regime under which RWWA operates is far more favourable than that under which the TAB operated in 1999-2000. In that year, the levy paid to the government was 4.99% of turnover. This has now been reduced to 11.91% of gross revenue, which equates to 1.92% of wagering turnover. If RWWA had operated under the same taxation regime that existed in 1999-2000, the distribution for 2008-2009 would only have been \$52.67M or 3.32% of wagering turnover. Even if you were to ignore the "Other receipts", the distribution would have amounted to \$63.91M or 4.02% of wagering turnover.

These figures show that the performance by RWWA in funding the racing industry has suffered significantly during the incumbency of RWWA. The Western Australian taxpayer is now subsidizing the racing industry to the tune of \$48.78M (in 2008-2009) through tax cuts. This is a considerable devaluation of an asset owned by the Western Australian taxpayers.

It is important to note that the figures quoted above are exclusive of GST in order to maintain consistency for both pre-GST and post-GST periods. Although it could be claimed that RWWA now pays GST, this has no significant impact on the comparison made above. As the majority of the betting pools are combined with the SuperTAB, the commission on those pools has been increased to allow for the collection of GST - i.e. this cost is passed directly on to the consumer. RWWA lists the collection and payment of GST as separate items in their financial reports.

Shortcomings of the Racing and Wagering Western Australia Act 2003 (the Act)

There are a number of issues that we have found which cause significant conflicts of interest between RWWA's duties as the governing body for the racing industry in Western Australia and their duties as a wagering operator.

Under the current legislation, RWWA has considerable influence in the establishment of the "Rules of Wagering", even though these rules are applicable to other wagering operators (i.e. their competitors). There is no other business that has the luxury of dictating the operating conditions for their competitors. The current Rules of Wagering have rules that are applicable specifically to bookmakers. In other words, there are different rules governing RWWA's activities and those of bookmakers with regards to wagering.

Section 20B of the Betting Control Act 1954 bestows the powers of an authorized officer on all stewards appointed under the RWWA Act. As such, stewards have the power to demand commercially sensitive information from RWWA's competitors. There is no legislative protection to prevent RWWA using such information for its own commercial benefit. In fact, the Act encourages the use of this information for RWWA's commercial benefit - see section 29 of the Act below.

In a recent action against bookmakers, the Gaming and Wagering Commission (the Commission) threatened disciplinary action against bookmakers for failing to provide information regarding Best Bookies' clients. Even though Best Bookies has no legal obligation to divulge any client details to the bookmaker or the Commission, the threat of action against the bookmakers (our suppliers) was sufficient to force Best Bookies to divulge sensitive information. The Commission refused to compromise by entering into an agreement to protect our information from commercially benefiting any other party.

RWWA stewards have the same power.

The sections of legislation that deal with conflicts of interest are too vague. Sections 28 and 29 of the Act state:

28. Duty to observe policy instruments

RWWA is to perform its functions in accordance with its

strategic development plan and its statement of corporate intent as existing from time to time.

29. Duty to act on commercial principles

(1) RWWA in performing its functions must-

(a) act in accordance with prudent commercial principles; and

(b) endeavour to make a profit.

(2) If there is any conflict or inconsistency between the duty

imposed under subsection (1) and the duty imposed by

section 28, the duty imposed by section 28 prevails.

An example to illustrate the conflict of interest - Best Bookies sought to advertise our services on Racing Radio. Our request was rejected when we were advised that RWWA was no longer permitting their "competitors" (RWWA's description of bookmakers) to advertise on Racing Radio. No evidence was offered to show that RWWA passed up the opportunity to generate some revenue in order to comply with section 28 of the Act (the only legitimate reason for refusing revenue). Even though bookmakers compete with RWWA in the wagering market, they contribute to the racing industry.

In fact, bookmakers contribute as much, if not more, than RWWA in respect of returns to the industry per dollar retained from the consumer. At the end of the day, the profit on wagering can only be the amount punters can afford to lose. In this respect, bookmakers pay 2% on turnover which equates to 33-40% of retained monies while the RWWA only distributes 41% if you include the "other receipts" and the substantial tax cut - otherwise they would only return 20.58% of retained monies. Quite clearly, there is no significant benefit in suppressing advertising from bookmakers or attempting to suppress any redirection of turnover to bookmakers.

Section 50(1)(b)(v) of the Act states:

50. Functions of RWWA in relation to gambling

(1) Without limiting the functions and powers of RWWA under

Parts 3 and 4, the functions of RWWA in relation to gambling

include the following -

(b) to carry on-

(v) any other business considered by the board to be conducive to the success of or incidental to the business of gambling carried on by RWWA, but so that such other business is not conducted to

*the detriment of the business of gambling carried
on by RWWA or in a manner which confers an
unfair commercial advantage;*

(This section of the Act attempts to provide some protection for other racing industry participants against any action by RWWA abusing its position. Clearly, RWWA is not permitted to obtain an unfair commercial advantage from any other business it operates. The prohibition of advertising by other wagering operators on Racing Radio and the other publications listed above confers a commercial advantage to RWWA. Complaints to the Commission regarding such behaviour were dismissed without any evidence to support their conclusion that RWWA did not obtain an unfair commercial advantage. It is inappropriate for the Commission to rule on a complaint without providing evidence - especially when dealing with legislation designed to protect the rights of others. This complaint was passed on to the Australian Competition and Consumer Commission (ACCC) who advised that they were incapable of investigating as the issue was regulated by Western Australian state law.

(Therefore, RWWA is not subject to the Trade Practices Act 1974 when it comes to the rights of competitors. The only authority to decide what constitutes an unfair commercial advantage is the Gaming and Wagering Commission, and they do not provide any evidence to support their conclusions when dealing with these matters.

Missed Opportunities

RWWA policy has seen them miss the opportunity to develop new and varied sources of revenue. From Best Bookies' experience alone, RWWA has rejected revenues in excess of \$1.5M.

RWWA precludes advertising by "competitors" on Racing Radio, TABForm and the AFL lift-out in the West Australian newspaper - which they subsidized. As stated above, RWWA has not provided any justification as to how this policy benefits the racing industry especially as it can be shown that there is no significant difference in the returns to the racing industry if turnover is redirected to these "competitors". Not only is there no evidence that this policy benefits the racing industry, but it could be said that RWWA has failed to act in accordance with prudent commercial principles as required by law. Furthermore, even comments from Mr Bennett, CEO of RWWA, to the parliamentary estimates committee on 22 May 2007 were incorrect. It was not illegal for Best Bookies to advertise our services (an issue that was resolved with the Commission in May 2005) and regardless of our status, RWWA policy was applied equally to licensed bookmakers who were clearly permitted to advertise their services.

Best Bookies has provided a new source of wagering turnover for Western Australian bookmakers since 2002. We have attempted to redress the cross border betting issues that have arisen with the introduction of corporate bookmakers in the Northern Territory and the ACT and more recently the introduction of Betfair in Tasmania. We succeeded in our own small way as over 80% of the turnover generated by Best Bookies is derived from non-WA clients. When Best Bookies introduced totalisator services to our clients, we attempted to maximize turnover for the legitimate contributors to the racing industry, the TABs. Unfortunately, RWWA rejected all proposals to put SuperTAB turnover from our clients through the WA TAB.

Firstly, we suggested that Best Bookies could provide turnover directly to on-course totalisators in order to maximize the return to the race clubs. This proposal was rejected on the basis of advice received from the Commission - advice that did not state that the proposal would breach the legislation, only that there could be some issues. RWWA was not prepared to proceed with this proposal. Nevertheless, within 12 months, Mr Frank Regan was operating a "Punters Club" from Cannington Raceway in the same manner that we originally proposed.

Best Bookies then proposed that RWWA appoint us as an online agent. This proposal was rejected on the basis that each of our clients would be required to hold an individual account

with RWWA. RWWA is now running its own "Punters Club" competition whereby individual agencies can recruit an unlimited number of members at \$20 a share. The money raised is deposited into a "designated TAB account" from which bets are placed on behalf of the members.

Finally, Best Bookies suggested opening an account through which we could bet. This proposal, which was free of any cost to RWWA, was rejected on the basis that RWWA policy was not to permit corporate accounts.

As a consequence of the policy decisions made by RWWA, Best bookies now offers a service on SuperTAB that does not contribute to WA racing - in fact, it now redirects bets from WA clients interstate.

Conclusions

From Best Bookies' perspective, the introduction of RWWA has not achieved any significant improvement in the prospects for the racing industry in Western Australia. RWWA has failed to show any productivity gains - in fact the opposite is true.

RWWA has barely kept up the same level of distributions per dollar in wagering turnover that was achieved prior to their establishment - and this was only possible due to what is effectively a 61.5% reduction in the turnover tax rate. It now costs more for RWWA to turnover \$1.00 than it generates in distributions from that \$1.00. This shows a decided decline in productivity.

RWWA's modus operandi appears to reject all revenue generating proposals if they perceived them to come from a competitor, regardless of the merits of the proposal. This was highlighted when RWWA rejected proposals from Best Bookies and then implemented the same proposal with some other party.

It would appear that RWWA's interpretation of their legislated duty to "act in accordance with prudent commercial principles" is to protect the monopolistic position of their wagering operations regardless of cost. This is a position they can afford to take for as long as the government is prepared to use taxpayer money to cover up the true cost of their actions. The continual reduction in levies and other grants from the government of the past nine years has removed any incentive for RWWA to find and develop new and diverse sources of revenue for the racing industry. It has removed the incentive for RWWA to adapt and compete effectively in a constantly changing market where protectionism no longer applies as that market now extends far beyond WA's borders.

The racing industry in Western Australia would be better served if the legislation were amended from "endeavour to make a profit" to read "maximize the funding for the industry". Currently there is no legislative imperative to maximize the performance of RWWA. If there were, RWWA would be required to give proper consideration to all proposals that may generate revenue, slash unnecessary costs and better manage issues that create conflicts of interest.

Legislation needs to be amended in order to meet the standards required by other Government agencies in relation to the resolution of conflicts of interest. The legislation should

provide a clear mechanism for conflict resolution and RWWA should be publicly accountable for following any such procedure.

The simplest method to achieve the best results for the racing industry as a whole would be to remove RWWA's wagering operation and establish it as a separate entity. RWWA would then be free to look after the interests of the industry without any other concerns or conflicts of interest. At the very least the legislation should be amended to provide some level of protection for information obtained from other wagering operators. The legislation should include severe penalties for the misuse of commercially sensitive information obtained during the course of exercising their duties as the governing authority of the racing industry. Furthermore, the legislation should also make provision for compensation to any party that is commercially disadvantaged by any action taken by RWWA.

I thank you for the opportunity to provide comments for your consideration.



Dino Oi Cianno
Director
Best Bookies Price Pty Ltd

