

## EXECUTIVE SUMMARY

The *Racing and Wagering Western Australia Act 2003* established Racing and Wagering Western Australia (RWWA) as a statutory authority with roles of governance for the thoroughbred, harness and greyhound racing codes and ownership of the principal off-course wagering operator in Western Australia. Until RWWA was established, each racing code was governed by its respective principal club with wagering the responsibility of the Totalisator Agency Board (TAB). Competition for limited funds between codes and the TAB was undermining the viability of the industry thereby prompting the state government in 2000 to initiate a review, eventually leading to the establishment of RWWA in 2003. At the time, the creation of a single controlling body for the three codes was seen to be crucial for overcoming vested interests within the industry. Absorbing the functions of the TAB into RWWA was also viewed as an essential mechanism for achieving greater overall cohesion and a means of enabling the industry to be more self-regulating and capable of achieving long-term viability.

Seven years on from the establishment of RWWA, the Western Australian racing industry's totalisator wagering arm turns over approximately \$1.6 billion and continues to support an extensive network of participants directly engaged in the industry (including owners, breeders, trainers, jockeys and bookmakers among others) and in various support services (including veterinary services, farriers, stock feed providers). Each year RWWA has distributed wagering profits to the racing industry in the form of stake money, capital grants, subsidies and participant payments. While annual distributions increased in the years following RWWA's establishment, this has not been the case in the last two years. RWWA, and by extension the industry, is facing a number of challenges including a net increase in wagering product fees and pooling costs, and increased competition for wagering services as a consequence of tax rate disparities between states and the entrance of corporate bookmakers and betting exchanges onto the wagering market.

As required by the *Racing and Wagering Western Australia Act 2003* (RWWA Act), the Joint Standing Committee on the Review of the Racing and Wagering Western Australia Acts ('the Committee') was established on 24 September 2009 to review the operation and effectiveness of the Act. Also included in the scope of the Inquiry was the *Racing and Wagering Western Australia Tax Act 2003* (RWWA Tax Act) which defines the rate of tax payable by RWWA on moneys received by it in respect of wagers made. Although a requirement of legislation, the statutory review is timely given the current challenges confronting the racing industry as it provides a means of ensuring that the Western Australian industry is equipped to address current pressures and is in a strong position going forward. The Committee's Inquiry process involved detailed consideration of submissions made by industry participants and stakeholders, and extensive consultation in the form of public hearings across Western Australia and briefings with racing industry stakeholders in Queensland and Victoria.

### ***Evaluating the need for the continuation of the operations of Racing and Wagering Western Australia***

The main body of this report (Chapter 2) examines the effectiveness of the operations of RWWA and the need for the continuation of the operations of RWWA. The report finds that overall the

establishment of RWWA has benefited the industry and RWWA's operations have largely achieved the intended outcomes and have therefore been 'effective'. Further, it is essential for the Western Australian racing industry that the operations of RWWA continue, however, mechanisms are identified throughout the report which are required for RWWA to achieve greater operational effectiveness. The discussion of these mechanisms is structured into a number of major themes which were repeatedly highlighted in evidence to the Inquiry:

### **Governance** (Chapter 2.2)

Governance concerns how an organisation performs its activities within the context of its management, corporate and administration structures, and the policies and strategies used to assist an organisation to achieve probity, openness and accountability. Governance constitutes a significant theme throughout the report since it underpins the success or otherwise of an organisation's activities and is therefore critical to any discussion on operational effectiveness. While there is not a universal model of governance which can be applied to RWWA, the governance functions and powers prescribed by the RWWA Act are assessed against a number of best practice principles which characterise 'good governance'.

The report shows that the majority of industry participants support the whole-of-industry governance approach embodied by RWWA, however operational and structural changes within some components of RWWA's governance structure are necessary. The existing composition of the RWWA board comprising the Chairman appointed by the Minister for Racing and Gaming, three code nominees and four non-code directors is appropriate and should remain. Although some stakeholders argued the contrary, the retention of code representation on the board is justified as it enables the board to understand and effectively respond to the complex needs of the racing industry.

A number of amendments are recommended to the RWWA Act to improve country and wagering representation. In the first instance, it is recommended that Section 8(2) of the RWWA Act is amended to more appropriately capture the requirement for the board to reflect knowledge of, and experience in, country racing. In relation to the latter, a recommendation is made to increase wagering input into the nomination and selection of board members. Additional mechanisms are explored to encourage board renewal over time and ensure that nomination and selection processes continue to capture a high calibre of candidates. Changes to the RWWA Act are recommended to enable a more open, structured and broad selection and nomination process for the board. A more regular renewal of membership on the panel responsible for selecting board members will also contribute to a more robust board nomination and selection process.

A number of mechanisms are also suggested to improve transparency, including amendments to the RWWA Act to delineate the roles of the RWWA board and executive, and require greater disclosure of written delegations by RWWA. A change to the structure of RWWA board committees is recommended to establish a separate risk committee and audit committee which might assist RWWA to become more responsive to changing market conditions. The report also briefly reviews the recommendations of the WA Government's recent Economic Audit Committee Final Report which will be relevant to the future governance of RWWA.

### **Objectives of RWWA (Chapter 2.3)**

Diverse views from industry participants demonstrate that there is ambiguity within the industry surrounding what it is RWWA should be trying to achieve. In the absence of a statement of objectives within the RWWA Act, there is a lack of agreement on RWWA's role although an overriding objective can be inferred by Section 35. An explicit statement of objectives will provide a clear framework within which RWWA can operate and make decisions. An objectives statement should be separate from the administrative day to day functions detailed in Section 35 and it is recommended that a stand alone objective be established within the RWWA Act which builds upon the wording of Section 35(1)(b).

### **Accountability (Chapter 2.4)**

As part of overall governance the examination of accountability focuses on the requirement for RWWA to prepare a Strategic Development Plan and a Statement of Corporate Intent. It is evident that industry participants perceive a lack of transparency with respect to RWWA's decision making processes, which will risk undermining its operational effectiveness unless rectified. Changes to RWWA's practices would assist in this regard, including disclosure by RWWA of its overarching decision making procedures, and facilitation of race clubs' awareness of relative financial performance. Industry participants support RWWA remaining accountable to government and in this regard, it is appropriate for the current level of Ministerial involvement in RWWA's accountability framework to continue. The Strategic Development Plan and Statement of Corporate Intent are critical accountability measures and in order to increase their effectiveness, it is recommended that the RWWA Act be amended to allow the Treasurer to have greater say in the preparation of the draft Strategic Development Plan and that content requirements of both documents be reviewed to ensure that both remain useful to industry, to RWWA, and to the government.

### **Appealing decisions by RWWA (Chapter 2.5)**

While RWWA has primary responsibility for the control, supervision and regulation of the three racing codes as well as prescribed wagering functions in WA, other bodies also play an integrity assurance role with respect to racing and gambling operations in the state and have a bearing on appeals. Greater clarification is required on the part of RWWA and the Department of Racing, Gaming and Liquor with respect to external appeal pathways available to industry participants since there seems to be a lack of awareness in this regard.

With the exception of matters that are covered by external appeal bodies, RWWA's decisions are otherwise subject to internal review. Small clubs in particular have indicated a sense of powerlessness at not being able to appeal to a body other than RWWA in relation to decisions by RWWA which significantly impact on the viability of a club. This is particularly evident in relation to RWWA's decisions to close the Geraldton Harness Racing Club and reduce meetings at the Mt Barker Turf Club. In terms of enhancing the appeals process, it would not be appropriate to introduce an avenue of appeal to the Minister as this would compromise RWWA's operational independence. More broadly, it is essential that RWWA engages in a more consultative and transparent approach regarding any decisions that will impact significantly on a racing club or code. In relation to the specific instance of RWWA's decisions to close a club or significantly

reduce meetings that will affect a club's long-term viability, it is recommended that the RWWA Act is amended to enable clubs to make representation to the RWWA board.

### **Consultation** (Chapter 2.6)

The report reproduces substantial evidence suggesting inadequacies in RWWA's consultation practices. Comments point mainly to a feeling among industry participants of a lack of meaningful input into RWWA's decision making process and that information is provided to industry consultative groups as a *fait accompli*. RWWA is already making changes to its consultation procedures including the introduction of an outreach program to regional areas and proposals for an AGM-style meeting coupled with an industry-wide conference, which are intended to facilitate greater stakeholder input. These initiatives should be developed and implemented as a priority to raise the standard of consultation, transparency and accountability within the industry. Other mechanisms identified for improving consultation include amending the RWWA Act to enable RWWA to consult more widely, and for representative industry groups to meet prior to consultative group meetings to widely canvass industry issues.

### **Distribution of Funds** (Chapter 2.7)

Sections 105 and 106 of the RWWA Act detail how RWWA is to allocate wagering profits to each of the three racing codes. Until 31 July 2005, Section 105 of the RWWA Act required RWWA to distribute wagering profits to thoroughbred, harness, and greyhound racing in proportions defined in the Act with any profits exceeding \$50 million to be distributed at the discretion of RWWA. From 1 August 2006, Section 106 took effect providing RWWA with the discretion to distribute wagering profits among the three codes.

Extensive industry comment is cited in the report highlighting various deficiencies in RWWA's funding model including: meeting fee and stake money discrepancies between metropolitan and non-metropolitan areas; RWWA's suspension of the Owners' Incentive Payment; and distributions that do not reflect contributions to turnover. In relation to RWWA's distribution of capital grants, there is extensive evidence of critical need across the industry for infrastructure funding, a specific subset of which relates to training facilities. While RWWA is in the process of refining its funding distribution model to address certain matters such as meeting fee discrepancies and funding of training facilities, other matters such as differences in basic and feature stake funding remain contentious.

Notwithstanding evidence from certain sectors of the industry suggesting a return to set percentage code distributions, the distribution of funding to the racing codes should not be determined by set percentages prescribed in the RWWA Act. Actual distributions to the codes more closely reflect wagering performance than historical formulae but even so, radical departures have not been made from historical percentages. In keeping with the original intent of the legislation it is important that the Western Australian racing industry has the means to continue to develop and this can best be achieved if RWWA retains the discretion to distribute funds as provided for under Section 106 of the RWWA Act.

RWWA is required to fund infrastructure under the RWWA Act but has largely directed revenues towards increases in race stakes in order to achieve adequate returns to industry participants.

Ageing club infrastructure and a large gap between required and actual infrastructure expenditure means that approximately \$70 million is required over the next five years to meet critical infrastructure needs across the racing industry. Government grants alone will not be sufficient to meet all the infrastructure needs and RWWA's capacity to fund infrastructure will continue to be exceeded under current returns from wagering. It is not desirable to reduce stake money levels as this will compromise the ongoing development of the industry and as such, it is essential that the industry receives a guaranteed stream of infrastructure funding. A long-term infrastructure fund to be administered by RWWA is the most suitable mechanism to achieve a sustained funding stream for infrastructure and would be in keeping with RWWA's statutory obligation to fund infrastructure.

### **Taxation** (Chapter 2.8)

Section 102 of the RWWA Act requires RWWA to pay tax on moneys it receives in respect of wagers made in accordance with the RWWA Tax Act. Sections 4 and 5 of the RWWA Tax Act establish the rate of tax for totalisator and fixed odds wagers respectively. The report incorporates evidence from RWWA and industry participants in favour of taxation relief to bring Western Australia in line with other states and to assist RWWA to be more competitive. The report establishes that: it is appropriate for wagering activities to be taxed; that a review of the rates of taxation for totalisator and fixed odds betting is warranted; and that in the long-term, a cooperative national approach to wagering taxation would help to address destructive tax competition between the states. Given that other states around Australia have already committed to reducing rates of taxation on wagering, the Western Australian racing industry cannot remain competitive without a similar reduction. It is recommended that the Minister for Racing and Gaming in conjunction with the Treasurer reviews the rates of tax for totalisator and fixed odds betting in the RWWA Tax Act with a view to enabling RWWA to compete more effectively in the wagering market. It is also recommended that the Minister for Racing and Gaming pursues a coordinated national approach to the taxation of wagering through the appropriate national forum.

The report examines a number of other tax related issues with a view to improving RWWA's operational effectiveness. While scope is identified for a more equitable rate of taxation for on-course totalisator and fixed odds wagering conducted by racing clubs, elsewhere it is appropriate to maintain the status quo, for example, in relation to arrangements for administering the Sports Wagering Account.

Continuing the discussion on a RWWA-administered infrastructure fund, the report establishes that a special purpose account for racing industry infrastructure should be put in place. The infrastructure fund should be funded through a percentage of RWWA's profit margin at a rate sufficient to address critical infrastructure needs. Based on RWWA's estimates for 2009-10, a mandated figure of between 8% and 9% of the profit margin would yield between \$13 million and \$15 million a year. For this method not to impact adversely on RWWA's distribution to the codes (and stakes in particular), the infrastructure fund could only be established following a reduction in wagering tax, the scale of which would need to be determined as part of the taxation review. The anticipated benefits to the industry of such an infrastructure fund justify this approach especially if sufficient transparency measures can be instituted at the same time. In this regard, it would be appropriate for a forward looking infrastructure plan to be backed up by a legislative

requirement to incorporate proposed infrastructure spending in RWWA's Statement of Corporate Intent.

### **Wagering Revenues (Chapter 2.9)**

The importance of RWWA's wagering operations stem from the application of profits to the industry in the form of distributions. The report notes evidence suggesting that RWWA needs to increase its revenues but accepts that programming more race meetings is not the answer from an industry profitability perspective. As well as establishing that taxation rates should be reviewed to ensure that RWWA can compete more effectively with the providers of wagering services in other jurisdictions, the report evaluates stakeholder suggestions for RWWA to broaden its product range and/or expand the wagering distribution network in order to increase revenues. Notwithstanding evidence received to the contrary, it is recommended that virtual racing and Keno should not be expanded into TABs and licensed premises. Further, RWWA would need to prepare a strong case for government to support expansion of its wagering sales network into alternative locations. This report does not investigate the merits of RWWA providing credit to clients. Given the potential risks associated with credit betting however, it is appropriate for this issue to be progressed through the Council of Australian Governments and in the interim, credit betting should not be offered by RWWA.

### **Structure of RWWA (Chapter 2.10)**

The RWWA model of a whole-of-industry governing body with ownership of the TAB is unique in Australia. While privatisation of the TAB has occurred in most other states, there is no long-term benefit for the industry if it happens in Western Australia. Although the governance and ownership of RWWA may be examined as part of a broader state government review in the future, the weight of evidence supports the existing structure and ownership of RWWA under which the one body operates both the wagering arm and racing administration and it is recommended that this continues.

### ***Other matters relevant to the operation and effectiveness of the Acts***

Chapter 3 of the report examines other matters relevant to the operation and effectiveness of the Racing and Wagering Western Australia Acts. In relation to racing matters, stakeholder views regarding ratings/handicapping systems for the horseracing codes are briefly examined (Chapter 3.2) with the general consensus being that these systems require review. It is recommended that RWWA reviews ratings/handicapping systems with a view to producing balanced and competitive race fields and to remedy the inequities between city, provincial and country racing for thoroughbred and harness codes.

Liquor licensing requirements are examined (Chapter 3.3) due to extensive evidence from industry participants that this issue is impacting on the functioning and viability of race clubs. The report establishes that past enforcement practices have impacted severely on the viability of major race days in country centres and there is still some evidence of unnecessary compliance demands being placed on race clubs in relation to security at race meetings. It is disappointing also that family events such as the New Year's Eve race meeting at Gloucester Park no longer operate. A more common-sense approach to liquor enforcement activities would be beneficial to race clubs and

country communities and it is recommended that the Minister for Racing and Gaming reviews liquor licensing and enforcement requirements for major race meetings.

The report examines a number of RWWA's powers in relation to: directing clubs; racing in extraordinary circumstances (Chapter 3.4); and disciplinary powers (Chapter 3.8(i)). It would improve RWWA's operational effectiveness if the RWWA Act is amended to enable RWWA to direct clubs and allied bodies where there is a severe threat to the welfare of racing, provided clubs may make representation to RWWA in the event of any sanctions being applied for non-compliance. Existing powers under the RWWA Act are sufficient to cover most contingencies from the perspective of ensuring race continuity. It is also important that RWWA, wherever possible, supports the management efforts of all race clubs. Thus an expansion of powers is unnecessary with respect to dissolving club committees, appointing administrators and conducting race meetings in extraordinary circumstances. With respect to disciplinary powers, there is no case for amending Section 34 of the RWWA Act to expand the definition of a person associated with racing. Scope is identified however for amending Section 44 of the RWWA Act and Regulation 72 of the RWWA Regulations in order to clarify RWWA's warning off powers.

Meeting allocation, race programming, and Sky Vision coverage are examined in the context of ensuring the long-term viability of country racing clubs (Chapter 3.5). Country and community race clubs are essential in terms of the social benefits they deliver to their communities and importance for the grass-roots of the industry. Evidence suggests that clubs currently lack sufficient input into the race programming process and receive insufficient notice of race date allocations. While improved consultation processes may address the former, it is recommended that in order to assist clubs with planning for future seasons, RWWA provides them with a more informative programming outline. While it is acknowledged that elements of securing vision coverage are beyond RWWA's control, RWWA should wherever possible assist race clubs to secure Sky Vision access and coverage.

In relation to wagering issues, the report establishes that a conflict of interest exists in RWWA's role as currently legislated since RWWA has prescribed functions which affect the activities of direct competitors in the wagering market (Chapter 3.6). In this respect it is appropriate for any regulatory functions prescribed under Sections 50 and 120 of the RWWA Act which may limit RWWA's ability to conduct a wagering business to be removed and vested with the Gaming and Wagering Commission. The Minister for Racing and Gaming will need to review the most appropriate manner in which this should occur. The report identifies other wagering related matters that RWWA needs to address in order to sustain its retail TAB network including the issue of territorial rights for full retail TAB agents (Chapter 3.8(ii)), and commission rates for full retail TAB agents and ClubTABs/PubTABs (Chapter 3.8(iii)).

The final section of Chapter 3 lists a number of challenges confronting the industry which RWWA will need to monitor and/or address over the coming years to ensure the ongoing prosperity of the industry. Further to stakeholders' concerns already mentioned above in relation to racing and wagering matters, another issue which RWWA will need to give due consideration to is Racing Radio (Chapter 3.8(iv)), which is inadequate and a cause of frustration for industry participants. Animal welfare issues (Chapter 3.8(v)) and breeding incentives (Chapter 3.8(vi)) are also briefly discussed. Committee observations are presented in Chapter 3.8(b) in the context of future

directions for the industry. The report presents a brief discussion of the importance of RWWA remaining competitive in a challenging wagering market, racing/training facilities into the future (including the issues of thoroughbred racing/training facilities, metropolitan racetracks, and synthetic tracks), and the benefits of a national totalisator pool.

Reflecting that the primary purpose of this report is to review the Racing and Wagering Western Australia Acts, Chapter 4 of the report collates all recommended amendments to the RWWA Act and the RWWA Tax Act identified in Chapters 2 and 3 as well as various miscellaneous administrative amendments.



## FINDINGS

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### **Finding 1**

Examining the governance structure of Racing and Wagering Western Australia will help to establish the effectiveness of its operations.

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### **Finding 2**

There is no single model of good corporate governance that can be applied to Racing and Wagering Western Australia.

Page 14

### **Finding 3**

The *Racing and Wagering Western Australia Act 2003* prescribes appropriate financial controls upon the operations of Racing and Wagering Western Australia.

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### **Finding 4**

The majority of industry participants support a whole-of-industry governance approach for the racing and wagering industry.

Page 19

### **Finding 5**

There is scope for operational and structural change within some components of Racing and Wagering Western Australia's governance structure.

Page 22

### **Finding 6**

Country racing is integral to the viability of the industry in Western Australia.

Page 23

**Finding 7**

There is little evidence to show that members of the Racing and Wagering Western Australia board are directly engaged with regional and country based stakeholders.

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**Finding 8**

There is insufficient country representation at Racing and Wagering Western Australia board level.

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**Finding 9**

Section 8(2) of the *Racing and Wagering Western Australia Act 2003* does not capture the requisite skills for country and community racing needs to be adequately represented to the Racing and Wagering Western Australia board.

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**Finding 10**

There is insufficient representation of wagering in the selection of the Racing and Wagering Western Australia board.

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**Finding 11**

The Committee supports retention of code representation on the Racing and Wagering Western Australia board.

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**Finding 12**

The Racing and Wagering Western Australia board should develop an appropriate governance framework to encourage board renewal.

Page 34

**Finding 13**

It is necessary for the selection and nomination process of board members to be open, structured and appropriately broad to attract a strong calibre of candidates.

Page 36

**Finding 14**

The role of the Racing and Wagering Western Australia board and executive should be clearly delineated and publicly disclosed.

Page 36

**Finding 15**

Any written delegations pursuant to Section 33(3) of the *Racing and Wagering Western Australia Act 2003* should be publicly disclosed.

Page 37

**Finding 16**

The disclosure and explanation of governance principles to stakeholders is essential for good governance to be achieved.

Page 40

**Finding 17**

There is merit in the establishment of a board Risk Committee separate from the Audit Committee and as board committees in their own right.

Page 42

**Finding 18**

Racing and Wagering Western Australia should consider the potential or real impact of recommendations in the Western Australian Government's Economic Audit Committee Final Report on its current and future governance arrangements.

Page 50

**Finding 19**

Industry participants have varied opinions as to what priorities or objectives Racing and Wagering Western Australia should be trying to achieve, which has the potential to impact on the effectiveness of its operations.

Page 50

**Finding 20**

An explicit statement of objectives for Racing and Wagering Western Australia defined in legislation would provide an effective framework within which it can make decisions to best achieve its long term goals.

Page 56

**Finding 21**

Racing and Wagering Western Australia is subject to external accountability requirements which involve considerable reporting and administrative demands.

Page 58

**Finding 22**

Industry participants perceive a lack of transparency with respect to Racing and Wagering Western Australia's decision making processes, which if not addressed as a matter of priority will risk undermining its operational effectiveness.

Page 59

**Finding 23**

Evidence suggests that in terms of forward planning it would be advantageous if race clubs are made aware of their financial performance compared with other clubs.

Page 61

**Finding 24**

Racing and Wagering Western Australia should be accountable to government and it is appropriate for the Minister for Racing and Gaming to retain the current level of involvement in the accountability framework.

Page 63

**Finding 25**

The preparation of a Strategic Development Plan and subsequent tabling of a Statement of Corporate Intent is a necessary accountability measure for Racing and Wagering Western Australia.

Page 68

**Finding 26**

There is significant industry concern regarding Racing and Wagering Western Australia's decision to close the Geraldton Harness Racing Club, particularly with regard to a perceived lack of consultation, support, and consideration of other pertinent factors.

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**Finding 27**

Racing and Wagering Western Australia's failure to negotiate for Sky Vision coverage gave the Geraldton Harness Racing Club no chance to improve its immediate viability.

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**Finding 28**

It is critical that Racing and Wagering Western Australia adopts a more consultative and transparent approach regarding any decisions that will impact significantly on a racing club or code.

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**Finding 29**

Many small clubs feel powerless at not being able to appeal to a body other than Racing and Wagering Western Australia against a decision by Racing and Wagering Western Australia to reduce a club's meetings or to close a club. This was particularly evident in the cases of the Mt Barker Turf Club and the Geraldton Harness Racing Club.

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**Finding 30**

With some exceptions including club closure and reduction in meetings, there are other appeal pathways available for industry participants through bodies including the Racing Penalties Appeals Tribunal and the Gaming and Wagering Commission.

Page 74

**Finding 31**

Introducing a mechanism of appeal to the Minister would compromise the operational independence of Racing and Wagering Western Australia.

Page 75

**Finding 32**

Race clubs should have the opportunity to make representations to the Racing and Wagering Western Australia board in instances of club closure or a significant reduction in meetings that will affect that club's long-term viability.

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**Finding 33**

Racing and Wagering Western Australia presents information to industry consultative groups as a *fait accompli*.

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**Finding 34**

Racing and Wagering Western Australia should provide stakeholders with the opportunity to have input into major decisions that may affect them.

Page 83

**Finding 35**

There is a need for representative industry groups to meet prior to consultative group meetings so that all major issues concerning the industry can be raised.

Page 93

**Finding 36**

There is extensive evidence of critical infrastructure need across the racing industry in Western Australia.

Page 98

**Finding 37**

The disparity in basic and feature stake funding by Racing and Wagering Western Australia of metropolitan, provincial and country race clubs remains contentious.

Page 99

**Finding 38**

Meeting fee discrepancies between midweek metropolitan race meetings and provincial/country areas remain an issue for Racing and Wagering Western Australia.

Page 100

**Finding 39**

The Owners' Incentive Payment is important to the sustainability of country racing and should be considered by Racing and Wagering Western Australia in its funding distribution model.

Page 105

**Finding 40**

The distribution of funding to the racing codes should not be determined by set percentages prescribed in the *Racing and Wagering Western Australia Act 2003*.

Page 105

**Finding 41**

Despite evidence from certain sectors of the industry suggesting a return to set percentage code distributions, the Committee supports continuation of Racing and Wagering Western Australia's discretionary funding model with a view to maintaining the viability of the codes.

Page 110

**Finding 42**

Government grants alone will not be sufficient to meet all the infrastructure needs of the Western Australian racing industry. A mechanism is required that will enable a more flexible and sustained approach to infrastructure funding.

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**Finding 43**

There is overwhelming support for a dedicated racing industry infrastructure fund.

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**Finding 44**

The rate of tax applicable to fixed odds betting should be reviewed.

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**Finding 45**

Any review of wagering tax should examine rates applicable to both totalisator and fixed odds betting.



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**Finding 46**

Given that other states have already committed to reducing rates of taxation on wagering, the Western Australian racing industry cannot remain competitive without a similar reduction.

Page 121

**Finding 47**

A cooperative national approach by the states and territories to wagering taxation would be beneficial.

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**Finding 48**

The basis and rates of wagering taxation cannot be imposed in regulation and must remain within the *Racing and Wagering Western Australia Tax Act 2003*.

Page 123

**Finding 49**

The principle of equitable taxation rates for on-course totalisator and fixed odds wagering conducted by racing clubs is supported.

Page 125

**Finding 50**

Administration of the Sports Wagering Account should continue to be the responsibility of the Gaming and Wagering Commission as per Section 110A of the *Gaming and Wagering Commission Act 1987*.

Page 125

**Finding 51**

It would not be appropriate for Racing and Wagering Western Australia's payments of wagering tax on sporting events and payments to the Sports Wagering Account to be combined into a single payment.

Page 130

**Finding 52**

Provided the rate of wagering tax is reduced, a special purpose account for racing industry infrastructure should be put in place.

Page 130

**Finding 53**

The infrastructure fund should be funded through a percentage of Racing and Wagering Western Australia's profit margin at a rate sufficient to address critical infrastructure needs. Based on Racing and Wagering Western Australia estimates for 2009-10, a mandated figure of between 8% and 9% of the profit margin would yield between \$13 million and \$15 million a year.

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**Finding 54**

Accountability and reporting requirements need to be put in place by Racing and Wagering Western Australia to ensure that funds from the special purpose account are used only for infrastructure.

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**Finding 55**

Notwithstanding evidence received by the Committee (including Racing and Wagering Western Australia) supporting the expansion of virtual racing and/or Keno into TABs and licensed premises, the Committee finds no case for expansion.

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**Finding 56**

Racing and Wagering Western Australia would need to prepare a strong case for government to support expansion of its wagering sales network into alternative locations such as newsagencies and popular retail areas. Any expansion would impact on existing TAB outlets.

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**Finding 57**

The principle of allowing Racing and Wagering Western Australia to offer wagering services through electronic agents is supported.

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**Finding 58**

The Committee received evidence that Racing and Wagering Western Australia should offer credit betting facilities. Credit betting is to be considered by the Council of Australian Governments.

Page 143

**Finding 59**

The use of debit and/or credit cards for wagering transactions cannot be supported.

Page 148

**Finding 60**

While privatisation of the TAB has occurred in most other states, there is no long-term benefit for the industry in Western Australia. There is extensive industry support for the existing structure and wagering ownership arrangements under Racing and Wagering Western Australia to continue.

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**Finding 61**

Overall, the operations of Racing and Wagering Western Australia have been effective but the mechanisms identified here will contribute to greater effectiveness.

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**Finding 62**

It is essential for the Western Australian racing industry that the operations of Racing and Wagering Western Australia continue.

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**Finding 63**

Another review of the *Racing and Wagering Western Australia Act 2003* may be required in the future with any such timing to be determined by the responsible Minister.

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**Finding 64**

Past practices with regard to liquor licensing enforcement have impacted severely on the viability of major race days in country centres.

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**Finding 65**

It is extremely disappointing that family events such as the New Year's Eve meeting at Gloucester Park no longer operate.

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**Finding 66**

A more common-sense approach to liquor enforcement activities would be beneficial to race clubs and country communities.

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**Finding 67**

Evidence suggested that where clubs have been able to negotiate satisfactorily with local police, more appropriate outcomes were achieved.

Page 161

**Finding 68**

Racing and Wagering Western Australia currently has limited powers in situations where a race club is unable to conduct its affairs.

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**Finding 69**

It is imperative that Racing and Wagering Western Australia supports the management efforts of race clubs to sustain their own ability to effectively exercise their functions.

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**Finding 70**

Racing and Wagering Western Australia should not conduct race meetings on its own behalf.

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**Finding 71**

It would not be appropriate for Racing and Wagering Western Australia to have powers to dissolve a club committee, appoint administrators or conduct race meetings in extraordinary circumstances.

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**Finding 72**

The long-term continuity of country racing clubs is essential for the industry, hence race programming and Sky Vision coverage are important factors for these clubs to remain viable.

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**Finding 73**

Evidence from racing industry participants suggests that clubs currently lack sufficient input into the race programming process.

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**Finding 74**

Improvements to Racing and Wagering Western Australia's overall consultation processes will assist in relation to race programming issues.

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**Finding 75**

More timely notice from Racing and Wagering Western Australia of race date allocations would assist clubs with their planning for race meetings, including the securing of sponsorship.

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**Finding 76**

It is important that Sky Vision coverage is maximised to as many country race clubs as possible.

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**Finding 77**

There is a conflict of interest in Racing and Wagering Western Australia's role in regard to wagering as it is currently prescribed in the *Racing and Wagering Western Australia Act 2003*.

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**Finding 78**

Any regulatory function prescribed under Section 50 or Section 120 of the *Racing and Wagering Western Australia Act 2003* that may limit Racing and Wagering Western Australia's ability to carry on a wagering business should be removed from the *Racing and Wagering Western Australia Act 2003*.

Page 174

**Finding 79**

It is appropriate that the Gaming and Wagering Commission, with the approval of the Minister for Racing and Gaming, assumes responsibility for performing any regulatory functions in relation to wagering that are removed from Racing and Wagering Western Australia.

Page 176

**Finding 80**

Existing Freedom of Information provisions are appropriate and additional protections for Racing and Wagering Western Australia are not warranted.

Page 177

**Finding 81**

It is important that the legal implications of repealing Racing and Wagering Western Australia's requirement for a common seal under Section 118 of the *Racing and Wagering Western Australia Act 2003* are understood before the matter is progressed.

Page 180

**Finding 82**

Maintaining the integrity of racing activities is crucial for the ongoing viability of the industry.

Page 181

**Finding 83**

Amending Section 34 of the *Racing and Wagering Western Australia Act 2003* to include individuals 'with influence on racing activities' is too broad for a determination to be made on its merit. If Racing and Wagering Western Australia wishes to pursue this matter it should present a case to the Minister in regard to the application of this proposed amendment prior to any change being considered.

Page 183

**Finding 84**

Racing and Wagering Western Australia's disciplinary powers in relation to warning-off should be clarified in legislation and should be reinforced with greater transparency measures.

Page 186

**Finding 85**

The consultation and communication between Racing and Wagering Western Australia and its (SL1) full retail TAB agents should identify potential opportunities and incentives for the continued business development of the Racing and Wagering Western Australia retail TAB network.

Page 188

**Finding 86**

Racing Radio coverage is a very important service to industry participants throughout the state and evidence suggested that current coverage is inadequate and a cause of frustration for industry participants.

Page 190

**Finding 87**

Racing and Wagering Western Australia must make every effort to broadcast local racing product on the racing radio network.

Page 194

**Finding 88**

It is important that Racing and Wagering Western Australia supports a vibrant and sustainable breeding industry across all racing codes.

Page 197

**Finding 89**

Racing and Wagering Western Australia should take a long-term approach to the provision of training facilities for the metropolitan area.

Page 198

**Finding 90**

The current level of racing within the metropolitan area warrants the continuation of two thoroughbred racetracks.

Page 198

**Finding 91**

Racing and Wagering Western Australia should work with the Western Australian Trotting Association to ensure that the harness racing industry has the best possible facility for metropolitan racing.



Page 199

**Finding 92**

The introduction of a national totalisator pool would be beneficial for Western Australia.



## RECOMMENDATIONS

Page 25

### **Recommendation 1**

That Section 8(2) of the *Racing and Wagering Western Australia Act 2003* be amended to replace 'regional development' with 'country racing' to more appropriately capture the requirement for knowledge of, and experience in, country racing.

Page 25

### **Recommendation 2**

That Racing and Wagering Western Australia implements a structure under which regional and country clubs will have formal access to the administration through existing or new regional and industry groupings.

Page 27

### **Recommendation 3**

That the Western Australian TAB Agents' Association be represented in the nomination and selection of board members with respect to Section 8(1)(e) of the *Racing and Wagering Western Australia Act 2003*.

Page 33

### **Recommendation 4**

That Section 12 of the *Racing and Wagering Western Australia Act 2003* be amended to stipulate that the process by which eligible bodies are to be determined, and the publication of eligible bodies be specified in regulation.

Page 34

### **Recommendation 5**

That pursuant to Section 9 of the *Racing and Wagering Western Australia Act 2003* the Minister for Racing and Gaming clarifies the nomination and selection procedures for directors to include:

- that any pending board vacancy be advertised widely; and
- that all clubs and industry associations be given notice through appropriate mediums of pending board vacancies to be distributed to their members; and
- that individual candidates are able to nominate themselves for consideration for the position of director under section 8(1)(b), (c) or (d) or section 8(1)(e) of the Act.

Page 34

### **Recommendation 6**

That any member of the selection panel nominated under section 11(2)(c), (d) or (e) of the *Racing and Wagering Western Australia Act 2003* should not be eligible to stand for consecutive terms under section 11(8) of the Act.

Page 36

### **Recommendation 7**

That Racing and Wagering Western Australia should delineate and publicly disclose the role of the board and executive and disclose any written delegations pursuant to Section 33(3) of the *Racing and Wagering Western Australia Act 2003*.

Page 36

### **Recommendation 8**

That the *Racing and Wagering Western Australia Act 2003* be amended to insert a clause explicitly preventing the same individual from holding the positions of Chief Executive Officer and Chair of the Racing and Wagering Western Australia board concurrently.

Page 38

**Recommendation 9**

That Racing and Wagering Western Australia clarifies and publicly discloses any governance procedures that it has in place.

Page 40

**Recommendation 10**

That Racing and Wagering Western Australia, pursuant to Section 16 of the *Racing and Wagering Western Australia Act 2003*, reviews the committee framework of the board to establish whether a board risk committee separate from the audit committee would be beneficial to its operations.

Page 51

**Recommendation 11**

That the *Racing and Wagering Western Australia Act 2003* be amended to insert the following specific statement of objective for Racing and Wagering Western Australia in relation to racing in general:

*That Racing and Wagering Western Australia is to foster the development, promote the welfare and ensure the integrity of metropolitan and country thoroughbred racing, harness racing and greyhound racing. In undertaking these objectives, Racing and Wagering Western Australia is to recognise the unique characteristics of each racing code so as to maximise the sustainability of racing in Western Australia.*

Page 59

**Recommendation 12**

That Racing and Wagering Western Australia publicly discloses its overarching decision making procedures to provide greater transparency to the industry.

Page 59

**Recommendation 13**

That Racing and Wagering Western Australia introduces transparency measures to facilitate greater awareness among race clubs of relative financial performance.

Page 64

**Recommendation 14**

That, in order to expedite the approval process of Racing and Wagering Western Australia's Strategic Development Plan, Section 74 of the *Racing and Wagering Western Australia Act 2003* be amended to allow the Treasurer to impose some direction on the draft Strategic Development Plan.

Page 65

**Recommendation 15**

That the Minister for Racing and Gaming reviews the content requirements of Racing and Wagering Western Australia's Strategic Development Plan and Statement of Corporate Intent.

Page 65

**Recommendation 16**

That content requirements of Racing and Wagering Western Australia's Strategic Development Plan and Statement of Corporate Intent be specified in regulation.

Page 65

**Recommendation 17**

That section 85 of the *Racing and Wagering Western Australia Act 2003* be amended to include a reasonable timeframe within which notice of financial difficulty must be given by Racing and Wagering Western Australia to the Minister.

Page 72

**Recommendation 18**

That Racing and Wagering Western Australia, in conjunction with the Department of Racing, Gaming and Liquor, publishes guidance material for racing industry stakeholders and participants on how to lodge complaints and/or appeals.

Page 75

**Recommendation 19**

That appeals to the Minister against Racing and Wagering Western Australia board decisions should not be established.

Page 75

**Recommendation 20**

That the *Racing and Wagering Western Australia Act 2003* be amended to include a new provision for a club to make representations to the board in instances of club closure or a significant reduction in meetings that will affect a club's long-term viability.

Page 84

**Recommendation 21**

That Section 82 of the *Racing and Wagering Western Australia Act 2003* be amended to include the statement that nothing in Section 82(2) precludes Racing and Wagering Western Australia from consulting outside of the prescribed bodies in relation to the operations of Racing and Wagering Western Australia or a subsidiary.

Page 85

**Recommendation 22**

That Racing and Wagering Western Australia makes its consultation procedures widely known throughout the industry.

Page 86

**Recommendation 23**

That as a priority, Racing and Wagering Western Australia continues to develop and implement the following changes to the way it consults with stakeholders:

1. an outreach program to regional areas;
2. the convening of an Annual General Meeting; combined with
3. the establishment of an industry wide conference.

Page 99

**Recommendation 24**

That Racing and Wagering Western Australia resolves meeting fee discrepancies within its funding distribution model as a matter of priority.

Page 106

**Recommendation 25**

That the *Racing and Wagering Western Australia Act 2003* be amended to delete Section 105 and that consequential amendments be made to remove references to Section 105.

Page 112

**Recommendation 26**

That a dedicated racing industry infrastructure fund, to be administered by Racing and Wagering Western Australia, is established.



Page 121

**Recommendation 27**

That the Minister for Racing and Gaming in conjunction with the Treasurer reviews the rates of tax for totalisator wagers and fixed odds wagers in sections 4 and 5 respectively of the *Racing and Wagering Western Australia Tax Act 2003* with a view to enabling Racing and Wagering Western Australia to compete more effectively.

Page 121

**Recommendation 28**

That the Minister for Racing and Gaming pursues a coordinated national approach to wagering taxation through the appropriate Council of Australian Governments forum.

Page 130

**Recommendation 29**

That the *Racing and Wagering Western Australia Act 2003* be amended to establish a special purpose account for the infrastructure fund.

Page 130

**Recommendation 30**

That the percentage of Racing and Wagering Western Australia's profits, fixed by regulation at a rate sufficient to address critical infrastructure needs is quarantined annually into the infrastructure fund.

Page 131

**Recommendation 31**

That Section 77(2) of the *Racing and Wagering Western Australia Act 2003* be amended to require the inclusion of proposed infrastructure spending in the Statement of Corporate Intent for Racing and Wagering Western Australia.

Page 139

**Recommendation 32**

That virtual racing and Keno should not be expanded to TABs and licensed premises.

Page 140

**Recommendation 33**

That Section 63 of the *Racing and Wagering Western Australia Act 2003* be amended to enable Racing and Wagering Western Australia to offer wagering services through electronic agents.

Page 149

**Recommendation 34**

That Racing and Wagering Western Australia continues to operate as a statutory authority with roles of governance for all three racing codes and ownership of the principal off-course TAB business in Western Australia.

Page 153

**Recommendation 35**

That Racing and Wagering Western Australia reviews, in consultation with the Thoroughbred and Harness Racing Consultative Groups, the ratings/handicapping systems for each code, with a view to producing balanced and competitive race fields; and to address the perceived handicapping inequities between city, provincial and country racing.

Page 159

**Recommendation 36**

That the Minister for Racing and Gaming urgently reviews liquor licensing and enforcement requirements for major race meetings.

Page 161

**Recommendation 37**

That the *Racing and Wagering Western Australia Act 2003* be amended to include the power for Racing and Wagering Western Australia to direct clubs and allied bodies where there is a severe threat to the welfare of racing.

Page 161

**Recommendation 38**

That the *Racing and Wagering Western Australia Act 2003* be amended to ensure Racing and Wagering Western Australia cannot impose sanctions for not complying with a direction without those clubs and allied bodies first making representation.

Page 169

**Recommendation 39**

That Racing and Wagering Western Australia prepares a more extensive forward looking plan with indicative race dates in order to assist clubs with planning and provide greater surety to clubs with respect to ongoing survival.

Page 171

**Recommendation 40**

That wherever possible Racing and Wagering Western Australia should assist race clubs to secure Sky Vision access and coverage.

Page 171

**Recommendation 41**

That the Minister for Racing and Gaming initiates communications with the Commonwealth Government to expedite the roll-out of the National Broadband Network to race clubs in country Western Australia.

Page 175

**Recommendation 42**

That the Minister for Racing and Gaming reviews the most appropriate manner in which any prescribed function of Racing and Wagering Western Australia that conflicts with its prescribed functions to carry out its wagering business under Sections 50 and 120 of the *Racing and Wagering Western Australia Act 2003* be removed and subsequently vested with the Gaming and Wagering Commission.

Page 177

**Recommendation 43**

That Section 118 of the *Racing and Wagering Western Australia Act 2003* be amended to remove the requirement for a common seal provided alternative document execution requirements can be applied.

Page 178

**Recommendation 44**

That Section 63 of the *Racing and Wagering Western Australia Act 2003* be amended to remove references to wagers and payments by letter sent through the post, and that consequential amendments in this regard are made to the *Racing and Wagering Western Australia Regulations 2003*.

Page 178

**Recommendation 45**

That Section 86 of the *Racing and Wagering Western Australia Act 2003* be amended to remove any provisions which duplicate the *State Records Act 2000*.

Page 179

**Recommendation 46**

That Section 22(3)(a) and (b) of the *Racing and Wagering Western Australia Act 2003* be amended to reflect applicable legislative requirements defining the minimum remuneration and other terms of conditions of employment of staff.

Page 179

**Recommendation 47**

That Section 3(1) of the *Racing and Wagering Western Australia Act 2003* be amended to replace:

- ‘Australian and New Zealand Greyhound Association’ with ‘Greyhounds Australasia’; and
- ‘Australian Harness Racing Council’ with ‘Harness Racing Australia’.

Page 183

**Recommendation 48**

That Section 44 of the *Racing and Wagering Western Australia Act 2003* be amended to include the explicit function to allow Racing and Wagering Western Australia to warn-off, and lift a warning-off, and that this function be carried out in accordance with Regulation 72 of the *Racing and Wagering Western Australia Regulations 2003*.

Page 183

**Recommendation 49**

That consequential amendments be made to Regulation 72 of the *Racing and Wagering Western Australia Regulations 2003* including:

- that any warning-off notice must have a prescribed time limit;
- the conditions by which Racing and Wagering Western Australia can impose additional notices; and
- the process by which the recipient can apply to Racing and Wagering Western Australia to have a warning-off notice lifted.

Page 183

**Recommendation 50**

That section 44(1)(e) of the *Racing and Wagering Western Australia Act 2003* be amended to include a maximum time limit and:

- Any requirement that this section be enacted in accordance with Regulation 72 of the *Racing and Wagering Western Australia Regulations 2003* be repealed; and
- New procedures be set out in the *Racing and Wagering Western Australia Regulations 2003* that prescribe the ‘short term’ incidences to which this section should apply.

Page 188

**Recommendation 51**

That Racing and Wagering Western Australia reviews the commission rates payable to operators of SL1 and SL2 TAB Licences to help ensure the maintenance and potential growth of the retail wagering sales network.

Page 199

**Recommendation 52**

That Racing and Wagering Western Australia continues to investigate the viability of synthetic tracks for training purposes.

Page 199

**Recommendation 53**

That the Minister for Racing and Gaming and Racing and Wagering Western Australia pursue any avenue available to achieve a national totalisator pool.