



PARLIAMENT OF WESTERN AUSTRALIA

**REPORT OF THE**  
**JOINT STANDING COMMITTEE**  
**ON**  
**DELEGATED LEGISLATION**

**IN RELATION TO**

***BY-LAWS OF THE WESTERN AUSTRALIAN TROTTING***  
***ASSOCIATION - NOTICE OF AMENDMENT***

Presented by Hon R L Wiese MLA (Chairman)  
and  
Hon T R Helm MLC (Deputy Chairman)

## JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

### Members as at the date of this report:

Hon Bob Wiese MLA (Chairman)  
Hon Tom Helm MLC (Deputy Chairman)  
Hon Simon O'Brien MLC  
Hon Ray Halligan MLC  
Hon Jim Scott MLC  
Mr Bill Thomas MLA  
Mr Iain MacLean MLA  
Mr Norm Marlborough MLA

### Staff as at the date of this report:

Nigel Pratt, Advisory/Research Officer  
Jan Paniperis, Committee Clerk

### Terms of Reference

*It is the function of the Committee to consider and report on any regulation that:*

- (a) appears not to be within power or not to be in accord with the objects of the Act pursuant to which it purports to be made;*
- (b) unduly trespasses on established rights, freedoms or liberties;*
- (c) contains matter which ought properly to be dealt with by an Act of Parliament; or*
- (d) unduly makes rights dependent upon administrative, and not judicial, decisions.*

*If the Committee is of the opinion that any other matter relating to any regulation should be brought to the notice of the House, it may report that opinion and matter to the House.*

### Address:

Parliament House, Perth WA 6000, Telephone (08) 9222 7222

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**Report of the Joint Standing Committee on  
Delegated Legislation**

**in relation to**

***By-laws of the Western Australian Trotting Association - Notice of Amendment***

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**1 EXECUTIVE SUMMARY**

- 1.1 The Committee raised a number of concerns regarding the *By-laws of the Western Australian Trotting Association - Notice of Amendment* (“Amendment By-laws”) and in relation to the *Western Australian Trotting Association Act 1946* (“Act”). The Committee’s concerns are set out in its correspondence to the Western Australian Trotting Association (“WATA”) being Annexures B and D to this report.
- 1.2 As a result of its concerns, the Committee moved a “protective” motion for disallowance of the Amendment By-laws. The motion was moved in the Legislative Council on Tuesday October 19 1999.
- 1.3 The Committee was satisfied with the written undertaking provided to it by the WATA in which the Association agreed to amend the Amendment By-laws in a manner acceptable to the Committee. The WATA also agreed to bring to the attention of Hon Max Evans MLC, Minister for Racing and Gaming, the Committee’s concerns with certain sections of the Act. The written undertaking is contained in the letter from the WATA being Annexure E to this report.
- 1.4 Due to the Committee’s concerns being adequately addressed by the WATA, the Committee resolved at its meeting on Monday November 8 1999 to seek the leave of the Legislative Council to remove its motion for disallowance of the Amendment By-laws. Leave was granted and the motion was withdrawn on Tuesday November 10 1999.



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**Report of the Joint Standing Committee on  
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**in relation to**

***By-laws of the Western Australian Trotting Association - Notice of Amendment***

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**2 INTRODUCTION**

2.1 In the exercise of its scrutiny function the Committee reviewed the *By-laws of the Western Australian Trotting Association - Notice of Amendment* (“Amendment By-laws”) created pursuant to the *Western Australia Trotting Association Act 1946* (“Act”). A copy of the Amendment By-laws are attached to this report and marked “Annexure A”.

2.2 Under the Committee’s Joint Rules, if the Committee is of the opinion that a matter relating to any regulation should be brought to the notice of the House, it may report that opinion and matter to the House. It is also the function of the Committee to consider and report on any regulation which appears not to be within the power of the enabling legislation.

2.3 Section 7 of the Act provides for the making of By-laws which are contained in a Schedule to the Act and states in part:

“7. (1)The by-laws contained in the First Schedule to this Act shall be the first by-laws of the Association.

(2) The Committee by an absolute majority in number of the Committee may from time to time amend or repeal such by-laws and make new by-laws not inconsistent with this Act which are necessary or convenient for carrying out or generally giving effect to the purposes of this Act.

(3) Any such new by-law may from time to time be repealed by any other by-law.

(4) Every such amendment or repeal of a by-law and every such new by-law shall be reduced into writing and shall be signed by the President.

(5) ...

(6) ...”

- 2.4 Sub-section (5) of section 7 provides for the disallowance by either House of Parliament of the Amendment By-laws under the power granted in section 42 of the *Interpretation Act 1984* which applies to “... any amendment or repeal of a by-law and to and in respect of any new by-law made under the powers contained in subsection (2) of this section.”
- 2.5 The Amendment By-laws were published in the *Government Gazette* on June 29 1999 and tabled in the Parliament on August 11 1999.
- 2.6 According to the explanatory memorandum provided to the Committee by the Western Australian Trotting Association (“WATA”) in support of the Amendment By-laws, the changes made to the By-laws were designed primarily to allow all participants in the harness racing industry to have a method of actively contributing to its administration and for the WATA to have an exact method of communicating with its participants.<sup>1</sup>
- 2.7 The Amendment By-laws achieve this by requiring participants in the harness racing industry to purchase a “Participation Membership”, prior to transacting any racing or breeding related business with the WATA. The fee for a Participation Membership is \$50 per season and provides the member with 12 months subscription to the *Westrot* magazine plus the right to attend and vote at the annual meeting of members, vote in the election for the Committee and free entry for the member and one guest to all race meetings of the Association.<sup>2</sup>
- 2.8 The changes to the By-laws will expand membership of the WATA from approximately 1 000 to approximately 5 000.
- 2.9 The Amendment By-laws were first considered by the Committee at its meeting on Monday September 13 1999. The Committee had concerns with several of the Amendment By-laws and resolved to write to the WATA to seek its response. A copy of the letter from the Chairman to the WATA is attached to this report and marked “Annexure B”.
- 2.10 The Chief Executive Officer of the WATA, Mr Robert Bovell, responded by facsimile dated September 23 1999, a copy of which is attached and marked “Annexure C”. The Committee considered the facsimile at its meeting on Tuesday September 28 1999 and

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<sup>1</sup> Explanatory Memorandum attached to a letter from the WATA dated June 14 1999, p. 1.

<sup>2</sup> *Ibid*, p. 1.



resolved to conduct a hearing to obtain further evidence from representatives of the WATA. The purpose of the hearing was to discuss the concerns already raised by the Committee in relation to the Amendment By-Laws and their interaction with provisions of the *Western Australian Trotting Association Act 1946*.

- 2.11 At its next meeting on Monday October 11 1999, the Committee resolved to move a “protective” motion for disallowance of the Amendment By-laws. This was to provide the Committee with sufficient time to conduct the hearing, consider the evidence and to report its findings and recommendations to the Parliament. The motion was moved on October 19 1999.
- 2.12 At the hearing on Monday October 18 1999 evidence was provided to the Committee by Mr Bovell, CEO, WATA, and solicitor, Mr John Woodhouse, a partner in the law firm of Watts and Woodhouse which advises the WATA.
- 2.13 As a result of its continuing concerns with clauses of the Amendment By-laws and sections of the Act, the Committee resolved to write to the WATA requesting amendments to the Amendment By-laws. The Committee also requested that the WATA indicate what action would be taken by it in relation to the sections of the Act which were of concern to the Committee. A copy of the Chairman’s letter to the WATA dated October 21 1999 is attached as “Annexure D”.
- 2.14 In its response dated November 1 1999, the WATA provided the Committee with its written undertaking to amend the Amendment By-laws in the manner suggested by the Committee. The WATA also agreed to refer the Committee’s concerns and suggested amendments regarding sections of the Act to the responsible Minister, Hon Max Evans MLC. A copy of the facsimile response from the WATA dated November 1 1999 and its correction to a typographical error in that correspondence by a facsimile dated November 9 1999 are attached as “Annexure E” and “Annexure F” respectively.

### **3 CONCLUSION**

- 3.1 As a result of the Committee’s concerns with the Amendment By-laws being satisfactorily addressed by the WATA, the Committee resolved at its meeting on Monday November 8 1999 to seek the leave of the Legislative Council to withdraw its motion for disallowance of the Amendment By-laws. Leave was granted and the motion withdrawn on November 10 1999.

- 3.2 The Committee's acceptance of the written undertaking and the withdrawal of its motion for disallowance was communicated to the WATA by letter dated November 11 1999.
- 3.3 The Committee expresses its thanks to the WATA for its co-operation and to its CEO, Mr Bovell, and legal advisor, Mr Woodhouse, for their assistance.

**Hon Bob Wiese MLA**  
Chairman  
December 7 1999

## **ANNEXURE A**



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## RACING, GAMING AND LIQUOR

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WESTERN AUSTRALIAN TROTTING ASSOCIATION  
By-laws of the Western Australian Trotting Association

### NOTICE OF AMENDMENT

Notice is hereby given that at a meeting of the Committee of the Western Australian Trotting Association held at Gloucester Park on the 12<sup>th</sup> day of June 1999 it was resolved by an absolute majority of the Committee of the Association that the By-laws of the Western Australian Trotting Association made under the Western Australian Trotting Association Act 1946 ("the Act") be amended as follows:

### AMENDMENT OF THE BYLAWS OF THE

WESTERN AUSTRALIAN TROTTING ASSOCIATION

1. Clause 4 is amended:
  - (a) by deleting "members" in the first line of the first paragraph and substituting:  
"full members";
  - (b) by deleting "member" in the second line of the third paragraph and substituting:  
"full member".
2. Clauses 13, 13A, 14, 15, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 are repealed.
3. A new clause 13 is added as follows:

#### "13. MEMBERSHIP

##### 13.1 Membership Categories

The members of the Association are:

- (a) participating members;
- (b) non-participating members;
- (c) full members;
- (d) junior members;
- (e) corporate members;
- (f) life members;
- (h) honorary members;

##### 13.2 Application generally

Applications for membership shall be made on the form approved by the Controlling Body and shall be accompanied by payment of the relevant annual subscription.

**13.3 Election procedure for non-participating, full and corporate members**

- (1) A member wishing to propose a new member shall complete a nomination form in a form approved by the Controlling Body and lodge the form with the Secretary.
- (2) The nomination form shall be signed by the nominator, by another member as seconder, and by the candidate for new membership.
- (3) The Secretary shall submit the nomination form to the next meeting of the Committee.
- (4) The Committee shall determine all nominations for new membership under this clause.
- (5) This clause applies to the election of any:
  - (a) non-participating member;
  - (b) full member;
  - (c) corporate member.

**13.4 Annual subscriptions**

- (1) The Committee shall determine the annual subscriptions payable by members.
- (2) Unless the Committee determines otherwise, the annual subscriptions payable are:
 

(a) participating member	\$50.00
(b) non participating member	\$100.00
(c) full members	\$210.00
(d) corporate members	\$210.00
(e) junior members	\$25.00
(f) life members	Nil
(g) honorary members	Nil
- (h) in the case of a full member who usually resides more than 80 kilometres from the GPO Perth - an amount equal to 60% of the annual subscription for a full member.
- (3) If a member fails to pay the applicable annual subscription on or before 31 August in each year then the member shall forfeit all entitlements under these by-laws until the amount is paid in full.

**13.5 Only participating members may apply and nominate under the Rules**

- (1) This clause shall come into operation on 1 September 1999.
- (2) This clause shall apply notwithstanding any provision of the Rules to the contrary.
- (3) No person may:
  - (a) make application for:
    - (i) registration as a driver, trainer, owner, stable hand, bookmaker or bookmaker's clerk;
    - (ii) registration of a horse or foal (or for a certificate of service) or of any transfer, lease or cancellation of lease of a horse;
    - (iii) registration of a syndicate;
    - (iv) registration of a harness racing stud;
    - (v) registration of colours; or
    - (vi) full time employment with the Association, or any other licence or registration under the Rules;
  - (b) lodge a nomination of a horse for any race or trial; or
  - (c) lodge a stable return,
 

and, subject to subclause (6), the Controlling Body may not accept or deal with such an application, nomination or return, unless the person is a participating member and, unless all persons referred to in the application, nomination or, return are participating members.
- (4) Subclause (3) shall not apply to a person under 18 years of age.
- (5) Where:
  - (a) a horse registered elsewhere than in West Australia is brought to West Australia to race; and

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- (b) the horse is nominated for a race which is approved by the Committee as a special feature event for the purpose of this subclause,  
then subclause (3)(b) shall not apply to:
  - (c) the first such nomination after the horse is brought to West Australia; and
  - (d) any subsequent such nomination for a race held within 2 months after the race the subject of the first nomination.
- (6) A sub-committee of the Committee, comprising the President and the 2 Vice Presidents, may permit an application, nomination or return, to be accepted or dealt with, notwithstanding that the person making or lodging it, and the persons referred to in it, are not participating members, where the sub-committee considers that extenuating circumstances justify doing so.
- (7) In this clause, "Rules" means the Rules of Harness Racing 1993 or any other rules made under these by-laws.

**13.6 Applicants for participating membership**

- (1) Subject to subclause (2), any person aged 16 years or older who is a:
- (a) bookmaker;
  - (b) bookmaker's clerk;
  - (c) breeder;
  - (d) driver;
  - (e) employee (full-time) of the Association or of a Club;
  - (f) lessee;
  - (g) lessor;
  - (h) member of a syndicate;
  - (i) owner;
  - (j) racing manager;
  - (k) stable hand; or
  - (l) trainer,
- is eligible for membership as a participating member.
- (2) An eligible person referred to in subclause (1) shall not be entitled to apply for, or renew, membership unless the person has:
- (a) made an application; or
  - (b) lodged a nomination, return or record,  
referred to in clause 13.5(2), within 3 years prior to the application for, or renewal of, membership.
- (3) Upon application and payment of the annual subscription, an eligible person becomes a participating member.

**13.7 Entitlement of participating members**

- (1) A participating member is entitled to:
- (a) attend and vote at general meetings;
  - (b) propose or second candidates for membership;
  - (c) propose or second candidates for election to the Committee;
  - (d) receive a copy of the annual report of the Association;
  - (e) a 12 months subscription to the Association's monthly magazine;  
and
  - (f) free entry passes for the member and one guest to all race meetings of the Association and any Club approved for the purpose by the Committee.
- (2) Upon payment of the fee referred to in subclause (3), a participating member shall also be entitled to free entry to, and use of, the members' facilities at Gloucester Park.
- (3) The fee is the difference between the annual subscription for full membership and the annual subscription for participating membership.

**13.8 Eligibility and election of non participating members**

- (1) Any person aged 16 years or older, other than a person who is eligible to apply for membership as a participating member, is eligible to be elected as a non participating member.
- (2) Clause 13.3 applies to the election of a non participating member.

**13.9 Entitlement of non participating members**

A non participating member is entitled to:

- (a) attend and vote at general meetings;
- (b) propose or second candidates for membership;
- (c) propose or second candidates for election to the Committee;
- (d) receive a copy of the annual report of the Association; and
- (e) a 12 months subscription to the Association's monthly magazine.

**13.10 Eligibility and election of full members**

- (1) Any person who is over the age of 18 years is eligible to be elected as a full member.
- (2) Clause 1.3 applies to the election of a full member.

**13.11 Entitlement of full member**

- (1) A full member is entitled to:
  - (a) attend and vote at general meetings;
  - (b) propose or second candidates for membership;
  - (c) propose or second candidates for election to the Committee;
  - (d) receive a copy of the annual report of the Association;
  - (e) a 12 months subscription to the Association's monthly magazine;
  - (f) free entry to, and use of, the members' facilities at Gloucester Park during race meetings by the member, one lady and one other guest;
  - (g) stand for election to the Committee provided that he or she has been a full member for not less than 12 continuous months prior to the closing date for nominations for the election; and
  - (h) parking for one vehicle in the members' reserved parking area, subject to availability.
- (2) A full member, who is eligible for participating membership, shall also be entitled to free entry for the member and one guest to all race meetings of the Association and any Club approved for the purpose by the Committee.

**13.12 Eligibility and election of corporate members**

- (1) Any company or body corporate is eligible to be elected as a corporate member.
- (2) Clause 13.3 applies to the election of a corporate member.

**13.13 Entitlement of corporate members**

- (1) A corporate member is entitled to:
  - (a) receive a copy of the annual report of the Association;
  - (b) a 12 months subscription to the Association's monthly magazine; and
  - (c) the free entry to, and use of, by any one of its officers or employees, the members' facilities at Gloucester Park.
- (2) A corporate member is not entitled to:
  - (a) attend and vote at general meetings;
  - (b) propose or second candidates for membership; or
  - (c) propose or second candidates for election to the Committee;

**13.14 Eligibility and election of junior members**

- (1) A person who is:
  - (a) the child or grandchild of a full member; and
  - (b) aged 16 or 17 years of age,is eligible to be elected as a junior member.
- (2) Clause 13.3 applies to the election of a junior member.

**13.15 Entitlement of junior members**

- (1) A junior member is entitled to sit in the members' areas of Gloucester Park as if he were a full member.
- (2) A junior member has no entitlement other than that referred to in subclause (1).

**13.16 Eligibility of life members**

Any full member of the Association is eligible to be elected as a life member.



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**13.17 Election of life members**

- (1) At any general meeting, the members entitled to vote may elect a person, who is considered to have rendered special services to the Association, to be a life member, provided that:
  - (a) not less than 14 days notice of the motion is given to the Secretary; and
  - (b) the resolution is passed by not less than 75% of the persons present at the meeting and entitled to vote.
- (2) Persons elected as life members prior to 1 September 1999 continue as life members after that date.

**13.18 Entitlement of life members**

A life member is entitled to the same privileges as a full member but is not required to pay an annual subscription.

**13.19 Election of honorary members**

The Committee may, at any time without notice, elect an honorary member and cancel the membership of an honorary member.

**13.20 Entitlement of honorary member**

- (1) An honorary member is entitled to free entry to, and use of, the members' facilities at Gloucester Park.
- (2) An honorary member is not entitled to:
  - (a) attend and vote at general meetings;
  - (b) propose or second candidates for membership;
  - (c) propose or second candidates for election to the Committee;
  - (d) receive a copy of the annual report of the Association; or
  - (e) a 12 months subscription to the Association's monthly magazine.

**13.21 Cessation of membership**

- (1) A member shall cease to be a member upon the member's:
  - (a) written resignation;
  - (b) death;
  - (c) disqualification under the Rules; or
  - (d) failure to pay the applicable annual subscription on or before 31 August.
- (2) If a former member who has ceased to be a member under paragraph (d) of subclause (1) makes payment of all arrears during the then current financial year, then the Committee may reinstate the person as a member.
- (3) If a member:
  - (a) becomes bankrupt or makes any assignment for the benefit of his creditors;
  - (b) fails to comply with any of the by-laws or Rules or any other order or direction of the Committee or of the members passed at a general meeting;
  - (c) is convicted of any offence punishable summarily or of any crime or misdemeanour; or
  - (d) in the opinion of the Committee, is guilty of any act, practice, conduct, matter or thing calculated to bring discredit on the Association or its members or on the sport of trotting, or to impair or affect the enjoyment of the Association by the other members,then that member shall be liable to be suspended or expelled from membership by resolution of the Committee.
- (4) Before the Committee suspends or expels any member, the Committee shall follow the following procedure:
  - (a) the Secretary, on behalf of the Committee, shall give to the member notice in writing of the matter of complaint;
  - (b) the Committee shall cause notice of the complaint to be sent to the member by registered letter and directing the member and the accuser, if any, to appear before the Committee at a hearing to give evidence;
  - (c) the Committee shall give the member at least 7 days notice in writing before the date of the hearing;
  - (d) the Committee shall give at least 3 days notice in writing of the hearing to any other member required by the Committee to appear before it and give evidence;

(e) the Committee may take evidence and decide the case notwithstanding the failure by any party to attend.

- (5) Any person ceasing to be a member for any reason shall remain liable for the payment of all subscriptions and other money due and payable by the person.

**13.22 Appeals from expulsion or suspension**

- (1) Any member expelled or suspended under clause 13.22(2) who feels aggrieved by the expulsion or suspension by the Committee may appeal to a special meeting of the members.
- (2) An appeal under subclause (1) shall be lodged by written notice lodged with the Secretary within 14 days of the expulsion or suspension.
- (3) A notice of appeal shall set out the grounds of appeal and be accompanied by an appeal fee determined by the Controlling Body.
- (4) Until the hearing of any appeal the decision of the Committee shall have full effect but the expelled or suspended member shall have the right to attend the special meeting.
- (5) If the majority of the members present and entitled to vote at the special meeting resolve to uphold the appeal then the appeal fee shall be returned to the member and the member's rights and privileges shall be restored.

**13.23 Absentee members**

- (1) If a member:
- (a) intends to leave the State for a period not less than 6 months; and
- (b) the member has paid all subscriptions and other monies due by the member to the Association,
- then the member may, on application in writing to the Secretary, be placed on the list of absentee members.
- (2) During an absentee's period of absence, the member shall be liable for a subscription at the rate of half of the applicable annual subscription commencing as from 31 August next until the person's return.

**13.24 No recourse to law and limitation of liability**

- (1) A member agrees not to commence proceedings in a court of law against the Association or against any member of the Committee or any official arising out of the performance by that person of the person's duties or functions except for a claim for goods or services supplied in the ordinary course of business of that member.
- (2) The Association, the members of the Committee and the Association's employees, agents and members shall not be liable to any member or any person claiming by or through a member for any injury, death, loss or damage to person or property whether caused directly or indirectly by any act or omission of the Association, a member of the Committee, the Association's employees, agents or members arising out of the performance by that person of the person's duties or functions except for claims for goods or services supplied in the ordinary course of the business of a member".
4. Clause 36 is amended by deleting "fifteen per centum (15%)" and substituting:  
"seven point five per centum (7.5%)".

Dated: 14 June 1999.

G. PAPADOPOULOS, President.

## **ANNEXURE B**





JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Our Ref: 3533/33  
Your Ref: L3825

16 September 1999

Mr Robert Bovell  
Chief Executive  
Western Australian Trotting Association  
PO Box 6025  
East Perth WA 6892

By Facsimile: 9221 2437

Dear Mr Bovell

*By-laws of the Western Australian Trotting Association - Notice of Amendment*

I refer to your letter to the Joint Standing Committee on Delegated Legislation ("Committee") dated 14 June 1999 which enclosed ten copies of the *By-laws of the Western Australian Trotting Association - Notice of Amendment* ("Amendment By-laws") together with the explanatory memorandum.

The Committee considered the Amendment By-laws at its meeting on 13 September 1999 and resolved to write to you regarding its concerns with several clauses of the Amendment By-laws and to seek your response.

**Clauses 13.5 and 13.6**

Clauses 13.5(3)(i) and 13.6(1)(a) appear to be *ultra vires* the *Western Australian Trotting Association Act 1946* ("Act"). Section 5 of the Act appears to prevent bookmakers from remaining as members of the WATA when it changed from being an incorporated association under the *Associations Incorporation Act 1987* to being an association created specifically by statute. Section 5 of the Act provides:

"5. The persons who were immediately before the commencement of this Act members of the Western Australian Trotting Association (Incorporated) shall become and may remain members of the Association upon the commencement of

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E-MAIL(GENERAL OFFICE): council@parliament.wa.gov.au

this Act, provided such person is not a bookmaker.”

Clause 16 of the By-laws of the existing By-laws provides:

“16. A person who is by the Act prohibited from being or remaining or becoming a member of the Association shall not be eligible for membership of the Association. Any person who at any time shall be or become a person who is prohibited by the Act from being or becoming or remaining a member of the Association shall thereupon immediately forfeit his right to be and shall cease to be a member of the Association.”

Clause 13.5(3)(i) requires a person to be a participating member before he can make an application for registration as a bookmaker and 13.6(1)(a) purports to allow a bookmaker to apply for participating membership of the WATA. It would appear from Section 5 of the Act and clause 16 of the Principal By-laws, that these persons are not permitted to be members of the WATA in any capacity.

Clause 13.5 also prevents a person applying for full time employment with the WATA unless that person is a participating member. The Committee’s preliminary view is that the Act does not empower the Association to make such a by-law for it appears neither necessary nor convenient for carrying out the purposes of the Act pursuant to the by-law making power contained in section 7 of the Act. The Committee is concerned that such a by-law is similar to the compulsory unionism - “no ticket, no start” policies on building sites.

#### Clause 13.24

Clause 13.24 of the Amendment By-laws purports to prevent a member from commencing proceedings against the Association or a member of the Association or any official arising out of the performance of that person’s duties or functions except for a claim for goods or services supplied in the ordinary course of business of that member. Sub-clause (2) also purports to prevent an action for damages of a member against a member or a member against the Association arising from negligence.

The Committee considers that this clause unduly trespasses on established rights, freedoms and liberties. The Committee is also of the view that Clause 13.25 is *ultra vires* the Act as not being necessary or convenient for carrying out or generally giving effect to the Act. It would be expected that if the Legislature intended to give the power to remove these fundamental rights from members of the Association, it would have spelt this out clearly in the enabling legislation.

As a result of the Committee’s concerns it has resolved to move a “protective” notice of motion for disallowance of the Amendment By-laws so as to provide it with further time to fully consider the Amendment By-laws and to consider your response. The notice of motion will be given in the Legislative Council on 12 October 1999.

Joint Standing Committee on Delegated Legislation

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I would appreciate receiving your response to the concerns raised by the Committee by no later than **Friday, 8 October 1999**. If you have any questions in respect to the above, please do not hesitate to contact the Committee's Advisory/Research Officer, Nigel Pratt on **9222 7406**.

Yours sincerely



**Hon. Bob Wiese MLA**  
Chairman  
Joint Standing Committee on Delegated Legislation

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## **ANNEXURE C**





WESTERN AUSTRALIAN TROTTLING ASSOCIATION

Your Ref: 3533/33

23 September 1999

Hon Bob Wiese MLA  
Chairman  
Joint Standing Committee on Delegated Legislation  
Legislative Council Committee Office  
Parliament House  
PERTH WA 6000

**BY FACSIMILE**  
**9222 7805**

Dear Sir

**By-laws of the Western Australian Trotting Association - Notice of Amendment**

I acknowledge receipt of your facsimile on 17 September 1999 concerning the Joint Standing Committee on Delegated Legislation (the "Committee's") concerns about several clauses of the Amendment By-laws and wish to respond as follows.

**Clauses 13.5 and 13.6**

**Bookmakers and Membership**

Prior to 1990 the WATA By-laws precluded employees, trainers and bookmakers from becoming members of the WATA.

In August 1990 the By-laws were amended to allow any person to become a member.

It is our view that Section 5 of the Act does not state that bookmakers can never be members of the Association. Section 5 refers only to the transitional period when the Act became law.

.../2

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GLOUCESTER PARK NELSON CRESCENT EAST PERTH 6892 WESTERN AUSTRALIA  
PO BOX 6025 EAST PERTH WA 6892  
TELEPHONE (08) 9323 3555 FACSIMILE (RACING) (08) 9221 1909 FACSIMILE (ADMINISTRATION) (08) 9221 2437  
INTERNET: <http://www.watrotting.asn.au> EMAIL: [info@watrotting.asn.au](mailto:info@watrotting.asn.au)

Hon Bob Wiese MLA, Chairman  
Joint Standing Committee on Delegated Legislation

23 September 1999

***Employees (full-time)***

Current employees are not obliged to become members of the WATA, however, many of them have chosen to exercise their rights under the By-laws for the reduced fee of \$51 and have become members. They, like all owners, trainers, drivers and breeders, should have a democratic right to choose the administrators of the industry via Committee election. When considering employees in regards to this issue it was believed that it was reasonable for employees to become members given the requirement of amateur trainers, drivers, stablehands, owners and breeders, whilst taking into account the fact that the WATA should not alter employment conditions for current employees.

***Limitation of Liability (clause 13.24)***

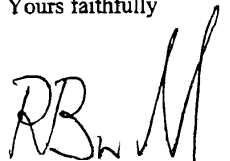
The WATA has requested its Solicitors to redraft By-law 24 to limit the liability of Committee and others in the same way that most Acts do.

In respect of the possibility of the Committee resolving to move a "protective" notice of motion for disallowance of the Amendment By-law this would place the WATA in an impossible position. Membership fees have been collected on the basis of the new By-laws and shortly an election for Committee positions will take place based upon the membership structure and By-laws.

It is our understanding that the amended By-laws became law on 29.6.99 and we have acted in good faith to carry out procedures in accordance with the amendments.

We would like to sort out these issues as soon as possible without the necessity to move the "protective" motion. Could we meet as a matter of urgency to resolve the problem?

Yours faithfully

  
**ROBERT BOVELL**  
**CHIEF EXECUTIVE**

L3420

## **ANNEXURE D**





JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Our Ref: 3533/33  
Your Ref: L3825

21 October 1999

Mr Robert Bovell  
Chief Executive  
Western Australian Trotting Association  
PO Box 6025  
East Perth WA 6892

By Facsimile: 9221 2437

Dear Mr Bovell

*By-laws of the Western Australian Trotting Association - Notice of Amendment*

I refer to your letter dated 23 September 1999 and your attendance before the Joint Standing Committee on Delegated Legislation ("Committee") at its hearing on Monday 18 October 1999 in relation to the *By-laws of the Western Australian Trotting Association - Notice of Amendment* ("Amendment By-laws").

In your evidence before the Committee, you indicated that the Western Australian Trotting Association ("WATA") would agree to modify or repeal the clauses of the Amendment By-laws which were of continuing concern to the Committee.

Your evidence and that of the solicitor for the WATA Mr John Woodhouse was of great assistance to the Committee. However, the Committee still has some concerns with certain clauses of the Amendment By-laws. It also has concerns with several of the clauses of the *By-laws of the Western Australian Trotting Association* ("Principal By-laws") and with sections of the *Western Australian Trotting Association Act 1946* ("Act") which are not formally before the Committee. The Committee intends to bring these concerns to the attention of the responsible Minister, Hon. Max Evans MLC when it reports to Parliament.

In relation to the Amendment By-laws the following concerns remain:

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PARLIAMENT HOUSE PERTH WA 6000 TELEPHONE +61 8 9222 7222 FACSIMILE +61 8 9222 7809  
E-MAIL(GENERAL OFFICE): council@parliament.wa.gov.au

**Clauses 13.5 and 13.6**

The Committee acknowledges your facsimile to it dated 20 October 1999 which sets out the relevant advice of Mr Woodhouse in relation to his interpretation of section 5 of the Act. In your evidence you advised the Committee that two of the three licensed bookmakers for harness racing are currently members of the WATA and that bookmakers have been entitled to membership since amendments were made to the Principal By-laws in 1990.

Notwithstanding the apparent transitional purpose of the section, the Committee is still concerned that section 5 of the Act gives a reasonably clear indication that bookmakers are not permitted to be members of the WATA. The policy behind such a prohibition would appear to be to remove the potential for bookmakers to exert influence over the industry if they were permitted to become members of the committee which is the controlling body for the harness racing industry.

Given that there is some legal doubt in relation to the interpretation of section 5 of the Act and that the likelihood of undue influence being exerted by bookmakers at present is remote, the Committee has resolved not to disallow clauses 13.5(3)(i) and 13.6(1)(a) of the Amendment By-laws. However, the Committee suggests that it may be prudent to amend the Act to put it beyond doubt that bookmakers are permitted to be members of the WATA. The Committee also suggests that this amendment should ensure that whilst bookmakers can be members, they cannot hold office on the controlling body.

In the Committee's opinion, clause 13.5(3)(a)(iv) which prevents a person applying for full time employment with the WATA unless that person is a participating member is unlawful and should be deleted. Such a by-law is similar to the outlawed compulsory unionism - "no ticket, no start" policies on building sites.

**Clause 13.10**

The Committee requests that the typographical error in clause 13.10(2) of the Amendment By-laws be corrected so that it reads "clause 13.3 applies to the election of a full member".

**Clause 13.24**

In his evidence to the Committee, Mr Woodhouse stated that the intent of clause 13.24 of the Amendment By-laws was to provide protection for the members of the committee for their bona fide acts in the discharge of their obligations under the Act. Mr Woodhouse accepted that the wording of this clause was couched more widely than required to effect the purpose of the clause of protecting members of the Committee from personal liability.

The Committee requests that this clause be amended so that individuals, including members of the WATA can take legal proceedings against the WATA whilst still protecting committee members from personal liability.



The Committee may consider seeking the leave of the Legislative Council to withdraw its motion for disallowance of the Amendment By-laws if a suitable written undertaking is provided to the Committee by the WATA confirming that it will amend the By-laws in a manner acceptable to the Committee as soon as possible. Such an undertaking should include an agreement that the By-laws of concern to the Committee will not be relied upon in the interim.

In relation to clauses of the Principal By-laws and sections of the Act, the Committee has the following concerns:

#### Clause 55

This clause empowers the Committee to suspend or dismiss a steward “for any reason they think fit”. The clause then gives the suspended or dismissed steward the right of appeal. However, that appeal can only be to the very Committee which suspended or dismissed the steward in the first place. The Committee is firmly of the view that such an appeal gives the clear impression of being seen as a “Claytons” appeal and suggests that a more acceptable alternative would be to provide for an appeal to an independent body or tribunal.

#### Clause 59

The Committee is of the view that the penultimate paragraph of this clause which purports to make *ultra vires* actions by the committee within power is clearly *ultra vires* the Act. Neither principal nor subordinate legislation can make an action which is at law beyond power, within power.

#### Clause 78

This clause permits the WATA committee to revoke a bookmaker’s licence “... in their absolute discretion and without making any charge against a bookmaker and without assigning any reason...”. The failure to provide reasons in circumstances where the revoking of a licence has serious consequences for the livelihood of an individual is of considerable concern to the Committee and would appear to be a very clear breach of long established and accepted rights.

#### Section 7

It is very clear from even a most cursory reading of section 42 of the *Interpretation Act 1984* that publication of an amendment or repeal of a by-law in the Government Gazette cannot possibly be taken as prima facie evidence that the by-law has not been disallowed by the Parliament. The process of Parliamentary scrutiny of a by-law does not even commence until after the by-law has been tabled in the Parliament and that can be up to six sitting days after publication in the Gazette. Under the scrutiny process laid out in the *Interpretation Act 1984* a notice of motion for disallowance could take place up to 14 sitting days after tabling. Under the Standing Orders of the Legislative Council, a further 10 sitting days can expire before the motion is debated and put to a vote in the House. Up to 24 sitting days can expire from the date of publication in the Gazette before a by-law is disallowed. Clearly section 7 of the Act is grossly incorrect and in need of urgent amendment.

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### Section 9

Sub-section (3) of this section gives the power to "Any member of the Committee, officer or servant of the Association and any person called by him to his assistance [to] seize and detain any person who shall have committed *any* offence against the provisions of this Act..." [Emphasis added]. The Committee is concerned at the extremely broad nature of this power and that it will include offences against the By-laws which are included as a schedule to the Act. The Committee strongly suggests that this section of the Act be amended to be more in keeping with processes and procedures which are more generally acceptable in today's legal environment.

### Section 12

This section provides that "The Minister may from time to time appoint an auditor...". The By-laws also provide for the appointment of an auditor in clauses 64-67. The Committee acknowledges that the word "may" in section 12 does not amount to a requirement that the Minister appoint the auditor in all cases and therefore by implication permits the appointment of an auditor by the committee. However, the Committee suggests that it may be prudent to amend the Act to clarify whether the Association or the Minister makes the appointment. If the Minister's entitlement to appoint an auditor is retained, the circumstances in which this is to occur should be spelt out in the Act.

### Section 13

It would appear to the Committee that a by-law which purports to amend the dates for the financial year from the thirty first day of July to the thirty first day of August is contrary to the clearly spelt out requirement of the Act and may well be *ultra vires* the Act and hence unlawful. Again the Committee suggests that it would be very advisable to have the Act amended as quickly as possible to reflect the wish and practice of the Association.

The Committee also notes in passing that the penalties currently contained in the Act are clearly not reflective of the seriousness of the offences to which they apply, especially bearing in mind that the penalty in the Act is the maximum which a court may impose and that there is no compulsion on the court to impose anywhere near the maximum penalty contained in the Act. The Committee recommends that this matter be addressed when a review and amendment of the Act is carried out.

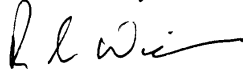
The Committee requests that you provide a suitable written undertaking in relation to the changes sought by the Committee to the Amendment By-laws. The Committee also requests that you indicate what action the WATA intends to take regarding the Committee's concerns with the clauses of the Principal By-laws and sections of the Act referred to above.

As the Committee has only a limited time to consider the Amendment By-laws and report to Parliament, I request that you provide your response by no later than **4:00pm on Friday 28 October 1999**. If you have any questions regarding the above, please contact Nigel Pratt, the Committee's Advisory/Research Officer, on **9222 7406**.

Joint Standing Committee on Delegated Legislation

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Yours sincerely



**Hon. Bob Wiese MLA**  
Chairman

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## **ANNEXURE E**



01/11/99 14:10 WA TROTTING ASSC + 61 8 9

NO. 024 002



WESTERN AUSTRALIAN TROTTING ASSOCIATION

1 November 1999

The Hon Bob Wiese MLA  
Chairman  
Joint Standing Committee on Delegated Legislation  
Legislative Council Committee Office  
Parliament House  
PERTH WA 6000

Dear Mr Wiese

**By-Laws of the Western Australian Trotting Association**

Thank you for your letter of 21 October 1999.

I am pleased to advise that I am instructed by the WATA Committee to give an undertaking that the WATA Committee will proceed to amend the by-laws in the manner recommended by the Joint Standing Committee and as set out below. This undertaking includes an agreement by the WATA Committee that it will not rely on the by-laws referred to in the interim.

**AMENDMENT BY-LAWS**

**Clauses 13.5 and 13.6**

The Committee would support an amendment to the Act to put it beyond doubt that bookmakers are permitted to be members of the WATA but cannot hold office on the Committee.

Clause 13.5(3)(a)(iv) will be repealed.

**Clause 13.10**

The typographical error in clause 13.10(2) will be corrected so that it reads "clause 13.3 applies to the election of a full member".

.../2

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The Hon Bob Wiese MLA  
Chairman  
Joint Standing Committee on Delegated Legislation

1 November 1999

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#### Clause 13.24

Clause 13.24 will be repealed and will be replaced with a provision similar to that which appears in many statutes as follows:

*"13.24 Protection of Committee Members and Employees*

A member of the Committee or any employee of the Association is not personally liable for any act done or omitted to be done in good faith by the Association in the performance, or purported performance, of any function under these by-laws".

#### PRINCIPAL BY-LAWS AND SECTIONS OF THE ACT

The concerns of the Joint Standing Committee concerning the clauses of the Principal By-laws and sections of the Act referred to in your letter are, as indicated in my evidence to the Joint Standing Committee, shared by the WATA Committee.

As I indicated in my evidence, the WATA Committee has already commenced the process of a general review of the Principal By-laws and this comprehensive review and detailed amendments are expected to be completed in the next 6 to 12 months.

#### Clause 55

It is considered that any suspension or dismissal of a Steward should be for good cause and not *"for any reason they think fit"* and that due process and natural justice should be afforded to the Steward in question. It is also agreed that, if there is to be an appeal, then it should not be a "Claytons" appeal but should be to an appropriate and independent body.

#### Clause 59

It is agreed that this clause, which refers to *ultra vires* actions by the Committee, which clause was in the first by-laws adopted by Parliament in 1946, is quite inappropriate and should be repealed.

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**The Hon Bob Wiese MLA**  
**Chairman**  
**Joint Standing Committee on Delegated Legislation**

**1 November 1999**

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**Clause 78**

It is agreed that any revocation of a bookmaker's licence should be for good cause and follow due process and natural justice.

**Section 7**

The Committee does not disagree with your comments concerning section 7 and the Committee would support an appropriate amendment of the Act.

**Section 9**

Again, the Committee would support an amendment to the powers to seize and detain which are in line with today's standards.

**Section 12**

The Committee supports an amendment of section 12 to clarify the procedure for appointment of the auditor.

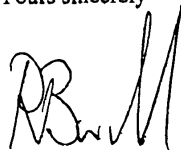
**Section 13**

The Committee also supports an amendment to the dates for the close of the financial year and to up date the penalties.

In conclusion, I confirm that the WATA is arranging the review and rewrite of the by-laws and will address the Joint Standing Committee's concerns about the Principal By-laws as indicated above and will refer the suggested amendments to the Act to the responsible Minister Mr Evans MLC and will support those amendments.

I trust that I have sufficiently responded to the Committee's concerns.

Yours sincerely



**ROBERT BOVELL**  
**CHIEF EXECUTIVE**



## **ANNEXURE F**



09/11/99

14:49

WA TROTTING ASSOC + 61 8 9

NO. 160 001



WESTERN AUSTRALIAN TROTTING ASSOCIATION

Your Ref: 3533/33

9 November 1999

Mr Nigel Pratt  
Advisory/Research Officer  
Legislative Council Committee Office  
Parliament House  
PERTH WA 6000

**BY FACSIMILE**  
**9222 7805**

Dear Nigel

**By-Laws of the Western Australian Trotting Association - Notice of Amendment**

Further to our telephone conversation this morning I wish to confirm that there was an error on page one of our communication to The Hon Bob Wiese MLA of 1 November 1999.

Under the heading Amendment By-Laws, Clauses 13.5 and 13.6, and beneath the following paragraph there was a statement that "Clause 13.5(3)(a)(iv) will be repealed."

This is an error, that statement should have read "Clause 13.5(3)(a)(vi) will be repealed." as it deals with full-time employees of the Association.

Yours sincerely

**ROBERT BOVELL**  
**CHIEF EXECUTIVE**

L4516

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