

Government response to the Legislative Assembly Economics and Industry Standing Committee Report No. 13 August 2012 – Inquiry into the 2011 Kimberley Ultramarathon

Recommendation One

The Department of Sport and Recreation facilitate the development of an Adventure Activity Standard for ultramarathons in order to determine a minimum safety standard for the sport.

Government response: Partly supported

The factors that have been outlined in the Standing Committee's Report could impact on a number of current adventure events. Given the growth in adventure sport as well as new emerging activities, the Department of Sport and Recreation is of the view that Government and key stakeholders would be better served by providing guidance to all adventure sport activities, which take place in remote locations.

Given the low number of ultramarathons in Western Australia and that there is already a structure available, which has governed the sport specific aspects of ultramarathons since 1987 it is proposed that the establishment of an Adventure/Wilderness Event Framework would be an effective approach to achieving this.

The proposed Framework would provide general guidelines to assist adventure/wilderness Event Holders with a template to support the development of event specific plans responsive to localised context. This is particularly important in the context of new events and would provide a process for effective stakeholder engagement that would include:

- Guidelines for Event Holders (including risk management and process for establishing new events);
- Documenting the roles of government agencies, including emergency services in each region to assist event managers understand the different roles and responsibilities;
- Advice on appropriate emergency response procedures for different regions – taking into account available resources and communication procedures; and
- An awareness program targeted at Event Holders, key agencies, stakeholders and participants in better understanding the associated risks with outdoor adventure sport activities.

The development of the proposed Adventure/Wilderness Event Framework would ensure the key issues outlined in the inquiry into the Kimberley Ultramarathon are dealt with and also provide the foundation to ensure that all current and emerging adventure sport activities are managed appropriately and consistently.

Recommendation Two

As part of the current revision of its contract template for sponsorship agreements, Tourism Western Australia should ensure that:

- **Risk management plans are submitted for approval with all the relevant agencies and local and state authorities no later than two months prior to a sponsored event being staged.**
- **Milestone payments should be linked to the strict adherence of this deadline.**
- **Evidence of approval of the risk management plans by all the relevant local and state authorities is provided to Tourism Western Australia by the event organiser.**

Government response: Partly supported

Risk Management is the responsibility of Event Holders, and they are accountable for their own plans. Tourism Western Australia seeks to ensure that the Event Holder puts in place a Risk Management Plan that ensures the safe and efficient conduct of the event.

Tourism Western Australia has included a new Risk Management Clause in its Sponsorship Agreements. The Risk Management Clause is an essential term, and Tourism Western Australia has the right to terminate the Sponsorship Agreement if an Event Holder breaches this Clause. The Clause requires Event Holders to:

- Prepare a Risk Management Plan following the Australian/New Zealand Standard on Risk Management, AS/NZS ISO 31000:2009, and provide the plan to Tourism Western Australia;
- Provide written confirmation to Tourism Western Australia from an independent Risk Management specialist that the plan complies with the Standard; and
- Provide written confirmation to Tourism Western Australia that the plan has been provided to Western Australia Police, relevant local government(s), Fire and Emergency Services Authority of Western Australia and all other relevant authorities.

Other than in the case of statutorily required approval, it is not the role of the State and local authorities to approve Risk Management Plans. However, these agencies should provide input or feedback relating to the content or implementation of the Plans where relevant.

The Risk Management Standard, AS/NZS ISO 31000:2009, does not identify specific timeframes for the provision of Risk Management Plans to relevant stakeholders. Tourism Western Australia has linked a milestone payment to adherence with the Risk Management Clause. A timeframe for delivery of the required documentation is specified in the contract, and the timeframe varies from event to event.

Tourism Western Australia recognises the standardised approach to Risk Management Plans outlined above may not be appropriate for all events and is currently seeking guidance from RiskCover and the State Solicitor's Office that may see a customised approach to the Risk Management Clause, based on the nature and type of event sponsored.

Recommendation Three

Eventscorp should ensure those organisers of events its sponsors are directed to all appropriate authorities and stakeholders to ensure the responsible, safe and efficient planning and conduct of the event.

Government response: Supported

Tourism Western Australia is developing a Guide for Event Holders that will identify relevant authorities within Western Australia and their roles. The Guide will also identify a range of stakeholders, stakeholder groups and professional organisations that Event Holders are encouraged to contact to assist in safe and efficient event planning and conduct.

This Guide will be available on Tourism Western Australia's website and will be provided to Event Holders who contact Tourism Western Australia enquiring about event sponsorship. It will be available from 31 October 2012.

Tourism Western Australia's new Sponsorship Agreement Template requires an Event Holder to seek and secure all relevant permissions and approvals from any third parties required to manage, conduct and/or promote the event on the Event Holder's behalf.

Recommendation Four

As part of its review of its contract management processes, Tourism Western Australia (with the Board of Tourism Western Australia taking a lead role) should amend its contract template for event sponsorship to ensure that:

- Tourism Western Australia is provided with all the relevant insurance policies and schedules prior to a sponsorship agreement being signed.
- All relevant insurance policies and schedules are lodged with Tourism Western Australia by the time a sponsorship agreement is signed.
- Tourism Western Australia retains the right to provide any information regarding the insurance policies and schedules to any parties involved in the event.
- Organisers provide independent verification of policies being Australian-based and approved by the Australian Prudential Regulation Authority.
- Tourism Western Australia retains the right to verify the status of the policies with the organiser's insurer at any time throughout the contract period.
- Organisers submit to a clause allowing any claims against them by injured parties to be undertaken and enforceable in the state of Western Australia, and Tourism Western Australia withdraws any offer of sponsorship if an organiser is not prepared to comply with this condition.

Government response: Partly supported

Tourism Western Australia has undertaken a comprehensive review of its Sponsorship Agreement Template. This has been completed in conjunction with RiskCover, State Solicitor's Office and a private legal firm with direct experience in developing contracts for the events industry.

The Template contains clauses requiring the Event Holder to provide Tourism Western Australia with evidence of required insurances prior to an event being held. Additionally, Tourism Western Australia has the right to verify the status of policies with an Event Holder at any time.

Tourism Western Australia requires the Event Holders to obtain insurance through Australian Prudential Regulation Authority (APRA) approved insurers (APRA approves insurance providers rather than the policies and publishes a list of all approved providers).

The Insurance Clause is an essential term of the Sponsorship Agreement, and Tourism Western Australia has the right to terminate if an Event Holder breaches this term.

It is not appropriate for Tourism Western Australia (and by extension, any government agency involved in sponsorship arrangements) to involve itself in the detail of the contractual arrangements entered into between Event Holders and participants. Nor is it appropriate for Tourism Western Australia to take on a role of providing information regarding Event Holders' insurances to third parties.

It is to be noted that sponsorship-related documents are subject to the access procedures in the *Freedom of Information Act 1992*.

In relation to the recommendation that Event Holders be required contractually to allow claims against them by injured parties to be enforceable in Western Australia, the legal position is that in circumstances where an Event Holder is not based in this State and does not have real or personal property in this State, no mechanism exists by which a judgment or award against the Event Holder could, under Western Australia's existing statutory enforcement regime, be enforced in this State. Enforcement would necessarily involve the engagement of a foreign jurisdiction. It follows that an Event Holder could not be required to consent to being amenable to execution in Western Australia.

Recommendation Five

As part of the review of its due diligence processes, Tourism Western Australia should ensure that:

- **A minimum standard of due diligence is established that addresses the deficiencies noted in this Report.**
- **Sponsorship agreements include a provision requiring event organisers to complete disclosure questionnaires. If an organiser is found at any time not to have complied, or to have withheld material information, the penalty regime should extend to the nulling of the contract.**
- **Consideration is given on a case-by-case basis to stipulating the engagement of local event management companies to assist organisers in regards to event planning and risk management.**

Government response: Supported

Tourism Western Australia has developed and implemented an Event Sponsorship Framework, which provides a Due Diligence guide that includes minimum standards for all events and identifies additional standards for events deemed to be of higher complexity or risk.

A Disclosure Questionnaire has also been developed and is included in the Event Sponsorship Framework. Additionally, the Sponsorship Agreement contains a clause requiring that all information provided to Tourism Western Australia be correct and not misleading. Breach of that obligation by an Event Holder would entitle Tourism Western Australia to terminate the Sponsorship Agreement.

As part of its event assessment process, Tourism Western Australia will evaluate the capability of an Event Holder in relation to the event it is proposing. Where Tourism Western Australia identifies a capability gap, Tourism Western Australia's sponsorship may be predicated on the Event Holder engaging a local management company or other professional assistance. This will be stipulated in the Sponsorship Agreement.

Recommendation Six

The Board of Tourism Western Australia should take action to ensure that it reviews the quality of Board papers that are submitted to it by the executive of Tourism Western Australia.

Government response: Supported

The Tourism Western Australia Board is committed to high standards of governance including rigorous review of all proposals put to it. The Tourism Western Australia Board aims to foster a culture of continuous improvement and regularly considers ways to review and improve the quality of Board papers and presentations. The Tourism Western Australia Board has provided specific feedback to the agency's Executive Management Team in respect to its expectations regarding the content and quality of Board papers.

Recommendation Seven

The Department of the Attorney General consider conducting a review of the *Civil Liability Act 2002 (WA)* in light of the 2011 Kimberley Ultramarathon. Such a review should consider issues such as the effectiveness given to competitor waivers under the Act and the potential difficulties of establishing proceedings and enforcing a judgement against foreign-based providers of recreational activities.

Government response: Not supported

Following careful consideration of the operation and ambit of the *Civil Liability Act 2002*, it is not intended to conduct a formal review of the operation of Division 4 of part 1A of the Act. That position will be reviewed if and when any anomalies in, or unintended consequences in the operation of, the Act are identified by judicial decisions in the State or in other Australian jurisdictions.

Recommendation Eight

Fire and Emergency Services Authority of Western Australia, Western Australia Police and St John Ambulance establish a uniform protocol for handling multiple agency emergency responses that does not involve callers having to make multiple calls to 000.

Government response: Supported

The Department of Fire and Emergency Services (DFES), formerly The Fire and Emergency Services Authority of Western Australia, has held discussions with Western Australia Police and St John Ambulance Western Australia to establish the respective protocols within each agency for the handling and transferring of triple zero calls to each agency.

DFES advises that due to technical limitations within the current DFES Communication Centre, it is unable to transfer a call directly to either Western Australia Police or St John Ambulance.

The existing protocol in the DFES Communication Centre is for DFES Communication Systems Operators to undertake the following actions:

- take the contact details of the caller;
- advise the caller to contact triple zero; and
- contact the appropriate Emergency Service Organisation and pass on the details of the caller and the nature of the situation.

It should be noted that following the relocation to the new Cockburn Emergency Services Complex in October 2012, DFES will be capable of directly transferring triple zero calls to other Emergency Services Organisations.

The following actions are scheduled to ensure DFES Communication Centre staff are aware of the protocols to be followed when handling triple zero calls intended for other agencies:

1. In September 2012, DFES conducted training and awareness sessions for Communications System Operators' on the protocols for the transfer of triple zero calls to other Emergency Service Organisations.
2. Following DFES's transition to the Cockburn Emergency Services Complex in October 2012, the triple zero transfer functionality will be introduced. Exercises will be conducted to simulate the transfer of triple zero calls to and between Western Australia Police and St John Ambulance.

Recommendation Nine

The Department of Regional Development and Lands should ensure that event organisers and government agencies responsible for sponsoring and approving events have a greater level of awareness about the requirements of section 91 licences under the *Land Administration Act 1997 (WA)*.

Government response: Supported

The Department of Regional Development and Lands (RDL) has delegation from the Minister for Lands to issue licences under a number of sections (including section 91) of the *Land Administration Act 1997 (WA)*. Section 91 licences are issued in order to enable access on Crown land for any purpose. Those licences that are issued are most commonly used on unallocated Crown land, unmanaged reserves and Pastoral leases (when the proposed use is not associated with commercial grazing of stock). It should be noted that licences cannot be issued over land where Native Title is determined to exist without a future act process being undertaken.

RDL has undertaken a number of actions to improve awareness of the requirements for section 91 licences both inside and outside the agency, in response to the Inquiry. Actions under way include:

1. RDL's website has been updated to include advice that RDL should be contacted by anyone proposing to conduct an event or function on Crown land. This website information will be further developed to assist event holders in applying for land access approval.
2. The Memoranda of Understanding between Tourism Western Australia and RDL for the Royalties for Regions Regional Events Program have been updated to include a special condition requiring Tourism Western Australia to undertake a review of Regional Event documentation ensuring that Event Holders are advised that where an event involves Crown land, they must obtain the appropriate approvals to access that land prior to the event taking place.
3. RDL has provided advice to Tourism Western Australia to assist with the development of an 'Access to Land' clause in Tourism Western Australia's sponsorship agreements with Event Holders and advice for its contract managers regarding what such a clause means in relation to Crown land. The clause is designed to ensure that whatever land an event is held on, the Event Holder is aware they must have the appropriate permission or approval to hold the event on the land.
4. RDL has drafted letters to local governments, pastoralists and other relevant management bodies and State government agencies to bring their attention to the requirements of the *Land Administration Act 1997* in relation to the conduct of events on Crown land.
5. RDL has also included an Agenda Item in its Bi-monthly 'Regional Get-Together' meetings to ensure staff are aware of Royalties for Regions funded events which are taking place on Crown land.

Proposed actions:

1. RDL will work with Tourism Western Australia to identify the best way to notify Event Holders that receive event sponsorship from Tourism Western Australia and advise them that if their event occurs on Crown land or passes through Crown land, they must obtain approval from RDL or other appropriate authorities before the event takes place.
2. RDL information brochure to be developed to assist Event Holders who wish to apply for land access approval to conduct an event on Crown land.
3. RDL policy and procedures regarding public events held on Crown land will be reviewed and a Staff Notice will be issued.

Recommendation Ten

Local Emergency Management Committee (LEMC) processes should be reviewed to ensure that:

- **Local government authorities, emergency service organisations, other government agencies and event organisers are made aware of the requirements of a LEMC, and that**
- **Consideration is given to extending LEMC abilities to review and advise on proposals for higher risk and adventure sporting events.**

Government response: Not supported

This recommendation would require legislative amendment. Local Emergency Management Committees (LEMCs) do not have the legal mandate to develop requirements for Event Holders and other government agencies when holding higher risk and adventure sporting events.

LEMCs are established under the *Emergency Management Act 2005*, chaired by a person appointed by the relevant local government, and include representatives of emergency service organisations and community representatives. Their functions are:

- a) To advise and assist the local government in ensuring that local emergency management arrangements are established for its district;
- b) To liaise with public authorities and other persons in the development, review and testing of local emergency management arrangements; and
- c) To carry out other emergency management activities as directed by the State Emergency Management Committee or as prescribed by the regulations.

Extension of the scope of these committees to advise on proposals submitted by Event Holders or other relevant bodies is not supported. The rationale is that:

- Legal implications and subsequent liability issues for committee members involved in the approval process will mean that community members are unlikely to agree to be on a LEMC if they had this responsibility;
- Membership and level of experience of LEMCs varies between localities. Risk expertise may not be available on every committee; and
- LEMCs are not an operational committee. They are currently often involved after an event via updates from the local government.

Event Holders should liaise with local government(s) to ensure all event risk management plans include all local risks and ensure adequate consultation with emergency service organisations.

Recommendation Eleven

The review of the *Health Act 1911 (WA)* should include the following amendments:

- enabling high risk or adventure sport activities to be subject to the events approval process currently applicable to 'public buildings' and;
- that a requirement is introduced for organisers of eligible events to provide medical and risk management plans to relevant authorities for assessment – prior to any event approval being completed.

Government response: Partly supported

The Department of Health undertook a comprehensive review of the *Health Act 1911* in 2005. This review has informed the development of the Public Health Bill, which will repeal much of the existing content of the *Health Act 1911*, including Part VI.

The Public Health Bill provides a generic and flexible framework that may be utilised to regulate various risks to public health, such as public events that involve the potential for significant health risks. This regulation would occur by way of subsidiary legislation under the Bill, and could require the provision of specified information, including for eligible events risk management plans which would incorporate a medical plan where there was a potential for casualties.

The Department of Health already works with major event promoters and Event Holders to obtain risk management and medical plans, and will continue to work with these agencies to reduce health risks to the public.

Recommendation Twelve

Department of Regional Development and Lands and Department of Environment and Conservation should consider how their respective land use approval processes can incorporate the input of Local Emergency Management Committees (LEMCs) as part of risk assessments for high risk events and adventure sport activities.

Government response: Partly supported

While local governments are required to establish a Local Emergency Management Committee (LEMC) to advise them and to liaise regarding local emergency management arrangements, it is seen as inappropriate to seek input on risk issues direct from a LEMC (which is essentially an advisory committee incorporating community members) rather than from local government (refer to response to Recommendation 10).

The Department of Regional Development and Lands (RDL) is responsible for the administration of the Crown estate on behalf of the Minister for Lands and has delegated powers to issue leases and licences for events and other activities.

RDL has drafted letters to local governments, pastoralists and other relevant management bodies and State government agencies to bring their attention to the requirements of the *Land Administration Act 1997* (LAA) in relation to the conduct of events on Crown land. The letters to local governments include a request to notify their LEMC when the local government is notified of a particular proposed event under the licence referral process.

A section 91 licence is an instrument issued under the LAA that manages inconsistent land use including possible inconsistent land use with other existing tenure and interest holders. A licence provides a proponent with non-exclusive access rights to conduct a nominated activity.

RDL has a statutory responsibility to consult with interest-holders, but does not have a statutory responsibility, mandate, technical capability or funding capacity to conduct assessments of risk or risk management plans in relation to the proposed event or activity. A licence may not be granted if a referral agency with suitable capability recommends against the proposal.

In response to Chapter 7.33 of the Standing Committee's Report, RDL agrees Crown land comprises 93 per cent of the State of Western Australia, but notes that 38 per cent of the State is unmanaged reserves and unallocated Crown land under the direct control of RDL, with a further 36 per cent under pastoral lease. It is unlikely that section 91 licences would be required for events occurring on the remaining area (19 per cent) as it comprises land controlled by other agencies and private parties, being managed reserves and leasehold. These would be licensed by the management body of the relevant reserve, or may be run as a private event by the lessee.

The Department of Environment and Conservation (DEC) has an established process for the assessment and approval of events on the lands that it manages, and applies conditions appropriate to the level of risk and scale of the event.

The response to Recommendation 10 outlines the limitations of LEMCs to undertake risk management analysis and provide input on events.

Where considered necessary in respect of the level of risk, scale and/or location of the event, and in particular where events also traverse non-DEC managed land, DEC will require Event Holders to liaise with local government/s to ensure event management plans consider all local risks and include adequate consultation with emergency service organisations.

These requirements have been included in relevant DEC policies and guidelines.

Following the recommendation of the Special Inquiry into the Margaret River Bushfire of November 2011, DEC is developing a consistent approach to risk management across all departmental operations to align with the international standard AS/NZS ISO 31000:2009 Risk Management – principles and guidelines.

Recommendation Thirteen

Tourism Western Australia must give specific regard as to whether land use approvals need to be sought, particularly from Department of Regional Development and Lands, when conducting due diligence for event sponsorship proposals that require sign off by both departments.

Government response: Supported

Tourism Western Australia has undertaken a comprehensive review of its Sponsorship Agreement Template that is used for the majority of its major events. This has been completed in conjunction with State Solicitor's Office and a private legal firm skilled in developing contracts for the events industry.

Tourism Western Australia's new Sponsorship Agreement Template requires an Event Holder to seek and secure all relevant permissions and approvals from any third parties required to manage, conduct and/or promote the event on the Event Holder's behalf. Additionally, an 'access to land' clause has been included in the Sponsorship Agreement template, specifically requiring the Event Holder to obtain relevant Crown and/or freehold land approvals.

Tourism Western Australia will develop a Guide for Event Holders that will identify relevant authorities within Western Australia and their roles. This Guide will include the Department of Regional Development and Lands, and will be available on Tourism Western Australia's website from 31 October 2012.

Recommendation Fourteen

The Attorney General gives urgent consideration to determining an ex gratia payment for:

- **Miss Turia Pitt and Miss Kate Sanderson; and**
- **Mr Michael Hull and Mr Martin Van Der Merwe**

Government response: Partly supported

The Government will make an act of grace payment of \$450,000 to each of the two most seriously injured competitors, Miss Turia Pitt and Miss Kate Sanderson, in recognition of the extreme injuries they suffered. It is hoped that the act of grace payment will assist in alleviating their financial stress while they explore other options.

Recommendation Fifteen

The *Coroner's Act 1996* (WA) should be amended to give the Coroner jurisdiction to investigate fires that do not cause death, and that the Coroner should be suitably resourced to undertake investigations of the kind the subject of this Report.

Government response: Not supported

The Government does not propose to amend the *Coroners Act 1996* to give the Coroner jurisdiction to investigate fires.

Under the *Coroners Act 1996*, the Coroner is vested with jurisdiction to investigate reportable deaths. Prior to the current Act, the Coroner had been vested with jurisdiction to inquire into the cause and origin of a fire, irrespective of whether a death ensued.

That jurisdiction was removed as a deliberate decision of policy, as the investigation of the cause and origin of fires is more effectively and appropriately conducted by specialist police and DFES fire investigators.

It should be noted that before the 1996 Act, the Coroner's inquiry would have still been limited to ascertaining the cause and origin of the fire, not all the circumstances of an event in which fire was an element, or as to whether all reasonable steps had been taken to ensure injuries would not result from it.