



***JOINT STANDING COMMITTEE ON
THE REVIEW OF THE RACING AND
WAGERING WESTERN AUSTRALIA
ACTS***

**INQUIRY INTO THE RACING AND
WAGERING WESTERN AUSTRALIA
ACTS**

**Report No. 2
in the 38th Parliament**

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Report No. 2

Presented by:

Mr J.E. McGrath, MLA and Hon A.K. Hayden, MLC

Laid on the Table of the Legislative Assembly and Legislative Council
on 14 October 2010

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COMMITTEE'S FUNCTIONS AND POWERS

Section 122 of the *Racing and Wagering Western Australia Act 2003* requires a review of the operation and effectiveness of the Act by a Joint Standing Committee of both Houses of Parliament as soon as practicable after 5 years from the Act's commencement. A Joint Standing Committee was established on 24 September 2009 pursuant to Section 122, but also taking into consideration the *Racing and Wagering Western Australia Tax Act 2003*. The Committee's functions and powers were agreed to between the Houses and are reflected in the Terms of Reference that follow.

INQUIRY TERMS OF REFERENCE

- (1) Pursuant to section 122 of the Racing and Wagering Western Australia Act 2003, and also taking into consideration the Racing and Wagering Western Australia Tax Act 2003 (“the Acts”), a joint standing committee be appointed by the Legislative Assembly and the Legislative Council.
- (2) The joint standing committee will review the operation and effectiveness of the Acts and is to consider and have regard to -
 - (a) the effectiveness of the operations of Racing and Wagering Western Australia (RWWA);
 - (b) the need for the continuation of the operations of RWWA; and
 - (c) any other matters that appear to the joint standing committee to be relevant to the operation and effectiveness of these Acts.
- (3) The joint standing committee will consist of three members appointed by the Legislative Assembly and three members appointed by the Legislative Council.
- (4) The standing orders of the Legislative Assembly relating to standing and select committees will be followed as far as they can be applied.
- (5) The committee shall report by 30 June 2010.¹

¹ On 20 May 2010 the Legislative Assembly and Legislative Council agreed to extend the Committee’s reporting date to 15 October 2010.

CHAIRMAN'S FOREWORD

The Racing Industry, in one form or another, has been a part of Western Australia's diverse culture for more than 150 years. From the glitz and glamour of Perth Cup Day, a night at the trots at Gloucester Park, a visit to the greyhounds at Cannington, a day out at a country cup meeting or simply having a bet at the TAB, the excitement of a close finish has always been an attraction to those who participate.

This experience would not be possible without the backing of an industry that contributes significant economic and social benefits to the State. It is an extremely complex industry that requires a huge workforce and input from a diverse range of stakeholders.

Without the effort of trainers, jockeys, drivers, handlers, stewards, tote staff, float drivers, barrier attendants, ambulance officers, veterinarians and a host of other workers, the race-day experience would not be available. The links in the chain extend ever further back, to breeders, primary producers and suppliers of stockfeed, and to those involved in the manufacture of all kinds of racing and wagering equipment.

The racing industry has huge potential, with largely untapped benefits to Western Australian tourism through the promotion of major Perth racing carnivals and country cup meetings that are held across the length and breadth of the State.

For this to happen the industry requires sound administration, the highest integrity and a proper funding model. It also requires a funding source that will enable it to carry out an array of necessary infrastructure projects at racetracks across the State. The recommendations of this report are geared to help the industry achieve these outcomes.

The significance of this Parliamentary Inquiry, of which I am privileged to be chair, is discussed at length in the main body of the report. However, it is fair to say that it has come at a time when the industry is facing challenges that were not foreshadowed when the *Racing and Wagering Western Australia Act 2003* and *Racing and Wagering Western Australia Tax Act 2003* passed through Parliament.

Since the inception of the Totalisator Agency Board (operated by Racing and Wagering Western Australia since 2003), most of the racing industry's funding has been derived from on and off-course wagering. While in RWWA's early years wagering revenue in this State soared on the back of the mining boom, those increases were soon eroded by the impact of the Global Financial Crisis and an unexpected outbreak of Equine Influenza in the Eastern States of Australia that drastically reduced the number of race meetings.

Other factors to impact on RWWA's revenue stream have been the increased cost of participating in a pool-sharing arrangement with Tabcorp and the introduction of product fees, under which wagering operators are required to pay a fee to race clubs. While this has helped ensure that the integrity of WA's wagering industry remains intact, it is still cost negative to RWWA given that WA is a net importer of "product" from the more populated racing states.

Meanwhile, corporate bookmakers, having negotiated licenses with the Northern Territory Government at a lower rate of taxation than all other states, continue to substantially increase their share of the wagering/sports betting market. Other forms of internet gambling have also become more popular.

These challenges for RWWA, and others facing the racing industry in general, are all discussed at length in the main body of the report.

The Committee has made a number of recommendations based on evidence and feedback provided by industry stakeholders at hearings and briefings held around the State. The Committee also held briefings in Victoria and Queensland, where information was sought from industry stakeholders and administrators from those states.

On behalf of the Committee I would like to thank all stakeholders for their input to the Inquiry especially members of race clubs across the State, many of whom are volunteers so their time was particularly appreciated.

The board of RWWA and the executive are to be commended for the frank and open way in which they responded to questioning from the Committee and the timely manner in which written information was provided. This enabled the Committee to have a more thorough understanding of the operations of RWWA.

I would like to thank the members of the Committee for the time and effort that they put into the Inquiry. Finally, I would like to thank Ms Dawn Dickinson, Principal Research Officer, and Ms Renée Gould, Research Officer, for their professionalism and commitment to producing this report.

Of course, this report will be judged by the effectiveness with which the State Government responds to the recommendations.



MR J.E. McGRATH, MLA
CHAIRMAN

ABBREVIATIONS AND ACRONYMS

“ACCC”	Australian Competition and Consumer Commission
“AGM”	Annual General Meeting
“AHA”	Australian Hotels Association
“ANAO”	Australian National Audit Office
“ASX”	Australian Securities Exchange
“AVGRA”	Avon Valley Greyhound Racing Association
“BOTRA”	Breeders Owners Trainers and Reinspersons Association of WA Inc
“CEO”	Chief Executive Officer
“COAG”	Council of Australian Governments
“CRA”	Country Racing Association
“DPMC”	Department of the Prime Minister and Cabinet
“DRGL”	Department of Racing, Gaming and Liquor
“DSR”	Department of Sport and Recreation
“DTF”	Department of Treasury and Finance
“EAC”	Economic Audit Committee
“EI”	Equine Influenza
“FOI”	Freedom of Information
“FOI Act”	<i>Freedom of Information Act 1992</i>
“FTE”	Full Time Employee
“GRCG”	Greyhound Racing Consultative group
“GTE”	Government Trading Enterprise
“HRCG”	Harness Racing Consultative Group
“HROAWA”	Harness Racing Owners Association of WA Inc
“IAC”	Integrity Assurance Committee
“OIP”	Owners Incentive Payment
“RAWG”	RWWA Animal Welfare Group

“RBH”	Ratings Based Handicapping
“RPAT”	Racing Penalties Appeal Tribunal
“RDT”	Racecourse Development Trust
“RWWA Act”	<i>Racing and Wagering Western Australia Act 2003</i>
“RWWA Tax Act”	<i>Racing and Wagering Western Australia Tax Act 2003</i>
“RWWA”	Racing and Wagering Western Australia
“SCI”	Statement of Corporate Intent
“SDP”	Strategic Development Plan
“SWA”	Sports Wagering Account
“TAB”	Totalisator Agency Board
“the Act”	<i>Racing and Wagering Western Australia Act 2003</i>
“the Acts”	<i>Racing and Wagering Western Australia Act 2003 and the Racing and Wagering Western Australia Tax Act 2003</i>
“the Committee”	Joint Standing Committee on the Review of the Racing and Wagering Western Australia Acts
“the Commission”	The Gaming and Wagering Commission
“TRCG”	Thoroughbred Racing Consultative Group
“WABBA”	West Australian Bloodhorse Breeders Association
“WACHRA”	Western Australian Country Harness Racing Association
“WAEIIG”	The Western Australian Equine Influenza Industry Group
“WAGBOTA”	Western Australian Greyhound Breeders, Owners and Trainers Association
“WAGRA”	Western Australian Greyhound Racing Association
“WAPTRA”	Western Australian Provincial Thoroughbred Racing Association
“WAROA”	Western Australian Racehorse Owners Association
“WARTA”	Western Australian Racing Trainers Association
“WASBA”	Western Australian Standard Breeders Association
“WATA”	Western Australian Trotting Association
“WATC”	Western Australian Turf Club

GLOSSARY

“betting exchange”	means by which parties stake money on opposing outcomes of a future event like a horse race. They differ from traditional forms of wagering in Australia (with bookmakers or totalisators) because customers are able to bet that a particular outcome will or will not occur. That is, a customer can back something to lose.
“board”	the board of directors of RWWA.
“bookmaker”	a person licensed by RWWA to conduct betting on-course; that is, being present at a race meeting.
“CEO”	means the person holding the office of chief executive officer of RWWA created under section 20 of the RWWA Act 2003.
“committee”	in relation to a racing club, includes the governing body of the club or a body constituted by the club to make determinations on behalf of the club.
“Director”	means a director appointed, nominated or selected under section 8 of the RWWA Act 2003.
“eligible person”	means a person who is eligible to be appointed, nominated or selected as a director of RWWA.
“field”	the horses or greyhounds in a race.
“fixed odds wager”	means a wager where a fixed amount that will be won if the wager is successful is determined before the wager is accepted.
“gambling”	means wagering or gaming [definitions below].
“gambling operations”	the business of RWWA referred to in section 50(1)(b) of the RWWA Act 2003.
“gaming”	the playing of a game of chance for winnings, whether any person playing the game is at risk of losing any money or not.
“greyhound racing”	the racing, in competitive pursuit of an artificial lure, of greyhounds registered with the Australian Stud Book maintained by Greyhounds Australasia or with a registration authority approved by RWWA.
“Government Trading Enterprise”	distinguished from other parts of the public sector by the fact that GTEs charge for the goods and services they provide and are in most cases self-financing.
“Handicapping”	where varying amounts of weight are added to an animal prior to a race in an attempt to even out the competition for that race.
“harness racing”	the racing of horses registered with Harness Racing Australia, or otherwise eligible to race, under the Australian Rules of Harness Racing, and includes pacing and trotting.

“industry participants”	includes RWWA board members, executive and general employees, breeders, trainers, jockeys, reinspersons, on-course bookmakers, TAB franchisees, PubTAB and ClubTAB licensees, racing clubs and any wagering customer (see punter).
“off-course wager”	a wager made on a horse or greyhound race; and included in an off-course totalisator, that is made through or with RWWA under the RWWA Act 2003.
“on-course wager”	wagering through totalisators on racecourses and bookmakers licensed under the <i>Betting Control Act 1954</i> .
“pari-mutuel”	see totalisator(tote) wagering.
“principal club”	Or Principal Racing Authority, is a body, statutory or otherwise, that has the control and general supervision of racing for a code within a State or Territory of Australia.
‘punter’	someone who places a bet.
“race”	a thoroughbred race, a harness race or a greyhound race.
“racecourse”	a venue used for races.
“race meeting”	a meeting at which races are held.
“racing club”	means a body of persons that promotes or holds, or is formed to promote or hold, a race meeting.
“racing industry”	the thoroughbred racing industry, the harness racing industry and the greyhound racing industry, associated industries, or any of those industries.
“racing codes”	Refers to thoroughbred, harness and greyhound racing.
“rules of racing”	rules made under section 45 of the RWWA Act 2003.
“rules of wagering”	rules made under section 120 of the RWWA Act 2003.
"stewards"	the persons appointed as such by RWWA who ensure that the Rules of Racing (under section 45 of the RWWA Act 2003) are adhered to. Stewards are responsible for the conduct of race meetings throughout the State in addition to the conduct of all persons registered in varying capacities in the various racing codes.
“the Turner Report”	In late 2000, the state government initiated a review into the racing industry in Western Australia. The review was conducted by an independent committee chaired by Mr Ray Turner AM and tabled a final report in October 2001. The establishment of RWWA as the governing body for each racing code and the TAB reflected the recommendations of this report.
“the Uhrig Report”	the <i>Review of the Corporate Governance of Statutory Authorities and Office Holder</i> , authored by Mr John Uhrig, AC, was released by the Federal Government on 12 August 2004, and has led to an

	intensive review process of the governance of approximately 170 statutory authorities and agencies.
“thoroughbred racing”	means the racing of horses registered with the Registrar of Racehorses, or otherwise eligible to race, under the Australian Rules of Racing.
“totalisator (tote) wagering”	comprises any totalisator pool scheme conducted by RWWA. Bets placed on the Tote form the "pool" so the odds fluctuate as bets are placed (the more a horse is bet on, the lower the dividend). All the money that is wagered is divided up among those who have winning tickets, after taxes and other deductions are made by RWWA.
"Warned off" "Warning off"	A person warned off a racecourse is one who is not permitted to enter a racecourse under the control of RWWA.
“wagering activities”	Comprises off-course (TAB) wagering in Western Australia; on-course totalisator wagering and fixed odds wagers in relation to races and certain sporting and other events. ²

² For consistency, wherever possible these definitions are based either on Section 3 of the Racing and Wagering Western Australia Act 2003 (WA), Section 3 of the Gaming and Wagering Commission Act 1987, or from information contained on the RWWA website.

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

Page 9

Finding 1

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

Page 10

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.

Page 19

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.

Page 25

Finding 8

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

Page 25

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.

Page 27

Finding 10

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

Page 30

Finding 11

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

Page 32

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.

Page 68

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.

Page 70

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.

Page 70

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.

Page 72

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.

Page 81

Finding 33

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

Page 81

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.

Page 112

Finding 43

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

Page 120

Finding 44

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

Page 120

Finding 45

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

Page 120

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.

Page 122

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.

Page 130

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.

Page 139

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.

Page 139

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.

Page 140

Finding 57

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

Page 142

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.

Page 150

Finding 61

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

Page 150

Finding 62

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

Page 150

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.

Page 157

Finding 64

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

Page 157

Finding 65

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

Page 157

Finding 66

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

Page 157

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.

Page 162

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.

Page 163

Finding 70

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

Page 164

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.

Page 166

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.

Page 168

Finding 73

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

Page 168

Finding 74

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

Page 169

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.

Page 171

Finding 76

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

Page 173

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*.

Page 174

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.

MINISTERIAL RESPONSE

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Joint Standing Committee on the Review of the Racing and Wagering Western Australia Acts directs that the Minister for Racing and Gaming and the Treasurer reports to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.

CHAPTER 1 INTRODUCTION

1.1 Background

In late 2000, the state government initiated a review into the racing industry in Western Australia. The review was conducted by an independent committee chaired by Mr Ray Turner AM and tabled a final report in October 2001. Included in the recommendations were calls for a whole-of-industry governing body to be established by statute, and for the Totalisator Agency Board (TAB) of Western Australia to be abolished and its functions absorbed by the new governing body.³ The rationale given for this recommended restructure was as follows:

*The framework of governance recommended by the Review Committee is designed to provide the racing industry in Western Australia with greater cohesion and the capability to develop strategic directions. It is also designed to make the industry less directly reliant on Government and more self-regulating. It is hoped that with such a re-orientation it will be better positioned to address issues relating to its long-term viability.*⁴

In May 2002, the state government committed to restructuring the governance arrangements of the racing industry. Reflecting the recommendations of the Turner Report, the restructure involved establishing a new body with control of the three racing codes⁵ in Western Australia and incorporating the functions of the Western Australian TAB.⁶ The *Racing and Wagering Western Australia Act 2003* ('RWWA Act') commenced operation in the following year. The RWWA Act establishes Racing and Wagering Western Australia (RWWA)⁷ and defines its functions with respect to racing and gambling.

RWWA's specialised functions in relation to racing are largely defined within Part 4 of the RWWA Act. In summary, these racing related functions can be described as follows:

- *Control, supervise and regulate the conduct of thoroughbred, harness and greyhound racing in Western Australia, including the responsibility for steward and drug testing activities;*
- *In conjunction with national rule making authorities, make rules for the conduct of racing in WA and, in all respects, perform the role of principal club;*
- *Register racing clubs and racing animals and license race meetings, race venues and participants;*

³ Western Australian Racing Industry Review Committee, *Future Governance of the Western Australian Racing Industry. A Report to the Minister for Racing and Gaming*, Western Australia, October 2001, ppi, 1. Available at: www.rgl.wa.gov.au/ResourceFiles/Publications/Reports/2001/warir-october-2001.pdf Accessed on 25 June 2010.

⁴ Ibid., pi.

⁵ This refers to thoroughbred, harness, and greyhound racing codes.

⁶ Hon. Nick Griffiths, MLC, Minister for Racing and Gaming, *State Government announces reform of WA's racing industry*, Media statement, Government of Western Australia, Perth, 21 May 2002.

⁷ Section 4 *Racing and Wagering Western Australia Act 2003* (WA).

- *Foster the development, promote the welfare and ensure the integrity of metropolitan and country thoroughbred, harness and greyhound racing in the interests of the long term viability of the racing industry in WA;*
- *Undertake and manage industry strategic planning, promotion, marketing, sponsorship and administration. (Racing clubs will undertake these roles where it is club specific.);*
- *Supervise racing clubs and their affairs;*
- *Make loans or grants to racing clubs and allied bodies (for racecourse development purposes);*
- *Set race dates and determine the race meetings on which RWWA will conduct off-course wagering;*
- *Undertake handicapping;*
- *Establish policies for, and manage the provision of, programs for apprenticeship jockey, trainee driver and other industry training requirements (such as stake money levels and race conditions and programs);*
- *Endeavour to ensure that racing industry issues such as insurance, broadcasting of race meetings and the establishment and maintenance of training facilities are carried out in an appropriate and adequate manner; and*
- *Liaise with government and other authorities, whether in or out of Western Australia, with respect to, and represent the interests of, the racing industry in WA.*⁸

Specialised functions in relation to gambling are defined by Part 5 of the RWWA Act. In summary, these functions include:

- conducting off-course (TAB) wagering in Western Australia;
- conducting on-course totalisator wagering on behalf of racing clubs where engaged to do so;
- ensuring compliance of on-course wagering by bookmakers and racing club totalisators with the *Betting Control Act 1954* and rules of wagering;
- setting, accepting and making fixed odds wagers in relation to races and certain sporting and other events;
- making rules relating to on-course totalisator wagering, off-course wagering and fixed odds wagering (with the approval of the Gaming and Wagering Commission); and
- developing and implementing a scheme for the distribution of net profits and negotiating funding arrangements with individual racing clubs.⁹

⁸ Racing and Wagering Western Australia, 'Responsibilities', 2007. Available at: www.rwwa.com.au/home/responsibilities.html Accessed on 25 June 2010.

⁹ Section 50 and Section 120 *Racing and Wagering Western Australia Act 2003* (WA) and Racing and Wagering Western Australia, 'Legislation and Rules', 2007. Available at: www.rwwa.com.au/home/legislation-and-rules.html Accessed on 25 June 2010.

Section 122 of the RWWA Act requires ‘a review of the operation and effectiveness of [the] Act ... by a Joint Standing Committee of both Houses of Parliament appointed for the purposes of this section as soon as is practicable after the expiration of 5 years from its commencement...’¹⁰ Pursuant to Section 122 of the RWWA Act, the Joint Standing Committee on the Review of the Racing and Wagering Western Australia Acts (‘the Committee’) was duly established on 24 September 2009. It should be noted that the *Racing and Wagering Western Australia Tax Act 2003* (‘RWWA Tax Act’) is included in the scope of the Inquiry. This Act defines the rate of tax payable by RWWA on moneys received by it in respect of wagers made.

Although the Committee was required under its terms of reference to report to Parliament by 30 June 2010, the Legislative Assembly and Legislative Council agreed to extend the reporting deadline until mid-October 2010. The extension was granted in May 2010 to allow the Committee extra time to undertake travel for the purpose of consulting with regional stakeholders.

1.2 How the Inquiry was conducted

Advertisements inviting submissions to the Inquiry were placed in *The West Australian* and *The Countryman* newspapers on Saturday 24 October 2009 and Thursday 29 October 2009 respectively. Submissions were also invited from RWWA, metropolitan and non-metropolitan thoroughbred, harness, and greyhound racing clubs, racing and wagering industry associations, and other relevant stakeholders.

In total, the Committee received 48 submissions. These are listed in Appendix One. A total of 48 public hearings were conducted in Perth and around the state between 19 February 2010 and 20 August 2010 taking evidence from 111 witnesses. Witnesses who gave evidence at public hearings are detailed in Appendix Two. In addition to public hearings the Committee received 14 briefings. A list of briefings is provided at Appendix Three.

The Committee undertook investigative travel to Queensland and Victoria in April 2010 in order to observe the models of racing administration in these states. Victoria was selected due to its reputation as the leading racing industry in the country. Queensland was nominated due to parallels with the Western Australian industry in terms of geographical spread of clubs and also because governance arrangements for the three racing codes in that state were in the process of reform.¹¹ Meetings were held with racing industry stakeholders including relevant state government departments and control bodies for the three racing codes. The trip was beneficial as it afforded the Committee an insight into alternative governance models, highlighted valuable initiatives in other states to foster the racing industry, and also restated a number of universal challenges confronting the industry going forward.

The Committee also conducted extensive regional travel around Western Australia between 12 March 2010 and 16 May 2010 for the purpose of conducting public hearings with country and

¹⁰ Section 122(1) *Racing and Wagering Western Australia Act 2003* (WA).

¹¹ It should be noted that the three code control bodies in Queensland amalgamated into a single entity, Racing Queensland Limited on 1 July 2010.

provincial race clubs and industry associations. Hearings were held in: Mt Barker; Albany; Kalgoorlie; York; Northam; Geraldton; Bunbury; Pinjarra; Wagin; Narrogin; and Carnarvon.

It should be noted that the Committee received a number of individual grievances during the course of the Inquiry however these matters have not been pursued except where these have been indicative of a more general issue affecting the industry.

1.3 Significance of the Inquiry

The Inquiry is important not only because it fulfils a requirement of the legislation for a statutory review, but because it presents an opportunity to take stock of the vigour of the racing industry in Western Australia. The recommendations in this Report aim to strengthen the RWWA Act and ensure it is sufficiently well equipped to sustain the industry into the future.

The Western Australian racing industry involves not only direct participants such as owners, breeders, trainers, jockeys, reinspersons, bookmakers and operators of TAB agencies (among others) but an extensive network including: farriers and stock feed providers in the agricultural sector; professional services like land rental and agistment providers in the business sector; track and facilities maintenance providers from within construction and building sectors; equine dental and veterinary services within the community sector and medical doctors and ambulance staff within local health service sectors. The extensive reach of the industry was acknowledged during debate on the Racing and Wagering Western Australia Bill 2003:

*It is probably worth reflecting on the number of people and commercial interests involved in the racing industry. I refer to those who breed and maintain gallopers, trotters and dogs, the owners of studs that provide them, and the people who work on studs fencing them and building dog cages. The staff associated with all three codes [are also users of] veterinary services, stockfeed suppliers, freight and transport. The industry employs trainers, strappers, grooms, dog handlers, builders of horse floats, stewards, jockeys, drivers, attendants, ticket sellers and so on.*¹²

It was also recognised that ‘the racing industry is worth in excess of \$1 billion to the Australian economy’.¹³ From a Western Australian perspective, a study completed in 2004¹⁴ estimated that the net income generated by the racing industry in WA was \$124 million for the 2002-2003 financial year. This figure increased to approximately \$175 million if indirect taxes were included in the estimation, representing 0.21 per cent of Gross State Product.¹⁵ The most recent estimates

¹² Mr J.P.D. Edwards, MLA (Member for Greenough), Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 8 April 2003, p6361.

¹³ *Ibid.*

¹⁴ The Allen Consulting Group and IER Pty. Ltd, *Size and Scope of the Western Australian Racing Industry*, Perth, July 2004.

¹⁵ The Allen Consulting Group and IER Pty. Ltd, *Size and Scope of the Western Australian Racing Industry*, Perth, July 2004, p4.

from RWWA indicate that total annual totalisator wagering turnover in Western Australia is approximately \$1.6 billion for the 2009/10 financial year.¹⁶

RWWA has identified a number of significant issues and trends that are placing pressure on the Western Australian industry including a net increase in wagering product fees and pooling costs and increased market pressure as a result of greater interstate competition and the entrance of corporate bookmakers and betting exchanges onto the market.¹⁷ Although the latter are common across Australian jurisdictions, it again reinforces the importance of the Inquiry in terms of ensuring the Western Australian industry has the means to meet current and future challenges.

¹⁶ Mr J. Hilton-Barber, General Manager Finance and Business, Racing and Wagering Western Australia, Email, 1 October 2010.

¹⁷ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, pp61-62.

CHAPTER 2 EVALUATING THE NEED FOR THE CONTINUATION OF THE OPERATIONS OF RACING AND WAGERING WESTERN AUSTRALIA

2.1 Introduction

Evidence received by the Committee in the form of submissions and hearings often linked discussion of the effectiveness of the operations of RWWA and the need for the continuation of the operations of RWWA. Reflecting this interrelationship, this Chapter similarly groups both terms of reference together. In examining the effectiveness of the operations of RWWA, the Committee has adopted the common usage definition of ‘effectiveness’ that is, to ‘produce a desired or intended result’.¹⁸ As such, this Chapter firstly examines whether RWWA’s operations are achieving the intended outcomes. Secondly, the continuing operations of RWWA are evaluated and where it has been identified that operations are suboptimal, mechanisms are suggested to improve effectiveness. This Chapter is structured around a number of major themes which were repeatedly highlighted in evidence to the Inquiry.

2.2 Governance

(a) About governance

(i) Definition

The concept of governance is very broad. There is no universally accepted definition for governance, nor do universal rules and procedures that apply to governance exist. Governance entails what an organisation is trying to achieve and how it attempts to achieve it. It can be seen in how an organisation is managed, its corporate and administration structures, its policies and strategies and the way it deals with its various stakeholders.

The Australian National Audit Office (ANAO) defines governance as ‘the set of responsibilities and practices, policies and procedures, exercised by [an organisation] to provide strategic direction, ensure objectives are achieved, manage risks and use resources responsibly and with accountability’.¹⁹

¹⁸ Oxford Pocket Dictionary of Current English, 1999.

¹⁹ Australian National Audit Office, Implementation of Programme and Policy Initiatives, Better Practice Guide, October 2006, p13. Available at: www.anao.gov.au/uploads/documents/Implementation_of_Programme_and_Policy_Initiatives.pdf. Accessed on 30 August 2010.

The Department of the Prime Minister and Cabinet (DPMC) defines governance as ‘...the process by which agencies are directed and controlled. It is generally understood to encompass authority, accountability, stewardship, leadership, direction and control’.²⁰

Governance also includes concepts of performance—on outcome delivery; and conformance—on meeting legislative and published requirements and community expectations of probity, accountability and openness.²¹

(ii) Why is it important?

*The reason governance is important is that good governance helps an organisation achieve its objectives. On the other hand, poor governance can bring about the decline or even demise of an organisation.*²²

Clearly, achieving ‘good governance’ is crucial to an organisation striving to be successful. In turn, good governance is achieved when an organisation’s governance arrangements ensure the success of its activities. To achieve good governance, an organisation must ‘clearly understand what it is required to achieve, will be organised to achieve it through the success of its executive management and will focus on ensuring it achieves its goals’.²³

The benefits of achieving good governance have received increased focus in the last decade from both private and public organisations seeking better management practices. Governance—and the attainment of good governance, has been at the heart of public sector reform at federal and state levels and is widely recognised as being a key challenge for public sector organisations seeking improvements in the efficiency and capability of their organisation and in affecting public confidence about the integrity of their organisation’s operation.²⁴

At the centre of this review is the Committee’s focus on the operational effectiveness of RWWA as the body responsible for the governance of racing and wagering activities in Western Australia. For the Committee to examine if the operational aspects of RWWA are effective, it must consider what it is that RWWA is trying to achieve and how well it is achieving it. This will be established in the following sections by examining the needs and expectations of the industry alongside the governance functions and powers prescribed to RWWA under the RWWA Act; then assessing if the two are suitably compatible to achieve operational effectiveness—or in other words, by assessing if the governance arrangements of RWWA allow good governance to be achieved.

²⁰ Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, 23 June 2010, p18. Available at: www.dpmc.gov.au/guidelines/docs/annual_report_requirements.pdf. Accessed on 17 August 2010.

²¹ Australian National Audit Office, Volumes 1 & 2: Better Practice Guide, 2003, p6. Available at: www.anao.gov.au/uploads/documents/Public_Sector_Governance. Accessed on 27 August 2010.

²² Australian Public Service Commission, *Building Better Governance*, 2007, p2. Available at: www.apsc.gov.au/publications07/bettergovernance.pdf. Accessed on 4 September 2010.

²³ Department of Communications, Information Technology and the Arts, *Review of Corporate Governance of Statutory Authorities and Office Holders*, Commonwealth of Australia, Canberra, June 2003, p17.

²⁴ Australian Public Service Commission, *Building Better Governance*, 2007. Available at: www.apsc.gov.au/publications07/bettergovernance.pdf. Accessed on 4 September 2010.

Finding 1

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

(iii) Principles of governance

The Australian Securities Exchange (ASX) convened the ASX Corporate Governance Council in August 2002 and regularly releases updates within their Corporate Governance Principles and Recommendations publication.²⁵ It is this publication that the ANAO, the DPMC and the WA Public Sector Commission have all used as a key starting point for the developments of their own public sector governance frameworks.

The ASX Principles advocate that there is no one size fits all approach to governance procedures, stating that ‘governance is a dynamic force that keeps evolving’.²⁶ This is because of the inherent relationship between the specific activities of an organisation and that organisation’s governance procedures. Clearly then, it can be seen that as the activities of an organisation change so then should the governance arrangements that facilitate them. It then also stands that any governance arrangements of an organisation need to be reviewed within a timeframe that adequately reflects the changing environment within which an organisation is operating in. The OECD Principles of Corporate Governance emphasise the evolutionary nature of governance principles and highlight that any principles should ‘be reviewed in light of significant changes in circumstances’.²⁷ Likewise, in Western Australia, the Public Sector Commission states that, ‘there is an ongoing obligation on [organisations] to monitor and review their systems, practices, and governance framework to ensure that those systems and practices remain relevant and current to the organisation’s situation’.²⁸

As such, whilst this review is examining the governance arrangements of RWWA the Committee notes that there is no one best practice model of governance that can be recommended to RWWA. Many of the governance arrangements of RWWA are legislated and therefore fall outside the

²⁵ The ASX framework comprises 8 core principles of governance—each of equal importance. The ASX clearly articulate that these are ‘best practice’ recommendations only and are not mandatory—encouraging companies to adopt an ‘if not why not’ approach to adopting these principles into existing governance strategies. As these principles relate on the whole to ASX listed companies they will not be discussed in detail here other than as they apply to public sector bodies or as recommendations for further review. For the list and full detail about these 8 Principles please see the ASX Corporate Governance Council website at www.asx.com.au/about/pdf/cg_principles_recommendations_with_2010_amendments.pdf

²⁶ ASX, ‘Corporate Governance Principles and Recommendations with 2010 Amendments, 2nd Edition’, 2007. Available at: www.asx.com.au/about/pdf/cg_principles_recommendations_with_2010_amendments.pdf. Accessed on 31 August 2010.

²⁷ OECD, ‘Principles of Corporate Governance’, 2004. Available at: www.oecd.org/dataoecd/32/18/31557724.pdf Accessed on 2 September 2010.

²⁸ Public Sector Commission, *Principles of Good Corporate Governance for Western Australian Public Sector Boards and Committees*, 26 May 2010. Available at: www.publicsector.wa.gov.au/boardsandcommittees/StartHere/Pages/PublicSectorBoardsandGovernance.aspx Accessed on 22 June 2010.

sphere of activity that RWWA can reasonably control on a daily operational basis. Nonetheless, the obligation to review the governance arrangements of RWWA in those areas it can reasonably effect—such as how it is managed, much of its corporate and administration structures, its internal policies and strategies and the way it deals with its various stakeholders—is an ongoing obligation for RWWA in striving to achieve good governance.

Finding 2

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

Whilst specific governance frameworks vary depending on what an organisation is trying to achieve, a few key principles can be found in many ‘good governance’ strategies and utilised to establish a sound governance framework. The following principles are those that the Committee considered during this review based on principles developed by the ANAO²⁹ and the Public Sector Commission of WA.³⁰

- **Leadership of the board** and executive in achieving an organisation-wide commitment to good governance.
 - This is in part dependent on the control framework prescribed within the legislative framework of RWWA—which for this review entails the RWWA Act 2003 and any other relevant legislation as indicated throughout the report; and
 - the decision making procedures of the board and the financial controls and performance reporting in place.
- **Accountability** whereby RWWA is responsible for their decisions and actions and submit themselves to the legislated and appropriate ministerial, departmental and public scrutinies.
- **Consultation and Transparency** with industry participants to ensure:
 - there is confidence in the decision-making processes and actions of RWWA; and
 - that communication is comprehensive, accurate and contains clear information, and
 - any consultation leads to effective and timely action based on transparent procedures.

²⁹ Australian National Audit Office, Volumes 1 & 2: Better Practice Guide, 2003, p8. Available at: www.apsc.gov.au/publications07/bettergovernance.pdf. Accessed on 4 September 2010.

³⁰ Public Sector Commission, *Principles of Good Corporate Governance for Western Australian Public Sector Boards and Committees*, 26 May 2010. Available at: www.publicsector.wa.gov.au/boardsandcommittees/Pages/Default.aspx. Accessed on 22 June 2010.

The accountability and consultation practices of RWWA as an organisation will be examined in detail in subsequent sections of this report.³¹ The leadership of the RWWA board is discussed here. In the first instance, the circumstances that led to the formation of RWWA as a single governing body for the racing and wagering industry will be discussed, followed by an examination of RWWA's current governance arrangements—particularly as these are legislated under the RWWA Act. Feedback received by the Committee from industry participants is then examined in relation to the establishment of RWWA as a whole of industry governing body and the operational role of the RWWA board. Mechanisms to improve the governance of RWWA are discussed throughout. It should be noted that the Final Report of the Economic Audit Committee contains a number of recommendations that will capture the overarching governance arrangements of RWWA. These are also briefly examined below.

(b) Pre-RWWA: A brief history of racing and wagering governance

The inception of RWWA in 2003 was a defining point in the governance of the racing and wagering industry in this state. Prior to the establishment of RWWA, racing and wagering did not operate as a coordinated entity. Instead, four separate controlling bodies comprising the three individual racing codes and the TAB each competed for the limited wagering dollar and related funding distributions against the other. The governance of each code resided with the principal club of each racing code³² and that of wagering activities with the Totalisator Agency Board.

As mentioned briefly above, in 2001 a major review of the industry was conducted by Mr Ray Turner³³ who was recently asked by the Committee to recall his observations of the industry at the time of his review. He noted that:

*The principal problem with the industry in Western Australia at the time was the fragmentation of it. It appeared that thoroughbred racing, harness racing and greyhound racing did not get on with each other terribly well. That included the TAB, which [was] seen to be operating in competition with the racing clubs at the time.*³⁴

The Turner Report determined that the governance arrangements of racing and wagering activities in the state were not effective. According to Mr Turner, 'there was a general feeling that there was disharmony and that no particular authority was supervising [code and TAB] activities'.³⁵ The review proceeded to recommend that the principal club and controlling authority responsibilities of the three codes and the TAB be formed into one coordinated body—later to become RWWA. Mr Turner informed the Committee that a vital component of this

³¹ Reference should be made to Chapter 2.4 on Accountability and Chapter 2.6 on Consultation.

³² The Western Australian Turf Club (WATC), the Western Australian Trotting Association (WATA) and the Western Australian Greyhound Racing Authority (WAGRA) were the three principal clubs for the Thoroughbred, Harness and Greyhound codes respectively.

³³ *Future Governance of the Western Australian Racing Industry*, report prepared for the Minister of Racing and Gaming by R Turner, A Di Francesco, M Nadebaum, Western Australian Racing Industry Review Committee, WA, October 2001. This report later became referred to as the Turner Report.

³⁴ Mr Raymond Turner AM, *Transcript of Evidence*, 19 February 2010, p2.

³⁵ Ibid.

recommendation was to establish the wagering activities of the TAB as part of a single organisation with the racing codes:

*It was crucial. The role of the TAB was probably dysfunctional in terms of the interests of industry at the time.*³⁶

The impetus from this recommendation became the basis of what was to become the *Racing and Wagering Western Australia Act 2003*—the corner stone of which was the governance arrangements of racing and wagering activities in the state:

*The intention of establishing Racing and Wagering Western Australia is to move away from vested interests' representation so that RWWA can work at developing a single racing industry on a cooperative rather than a competitive basis with a common goal of developing the racing industry as one.*³⁷

(c) RWWA governance

As previously noted, governance concerns how an organisation performs activities; the management, corporate and administration structures—and the policies and strategies utilised to assist an organisation to achieve probity, openness and accountability. To be effective, governance must be able to evolve and respond to challenges and must also contribute to stakeholder confidence in an organisation. Consequently, many governance functions cannot be legislated or prescribed. This discussion will therefore largely frame the associated feedback the Committee received from industry stakeholders about the governance arrangements of RWWA. Even so, the overarching structure that allows governance functions to operate within RWWA is examined so that together, the governance structure and the views on the current governance performance of RWWA can be evaluated.

(i) Prescribed governance functions of RWWA

The seminal Uhrig Report³⁸ into the governance of statutory authorities in Australia argues that the principles of governance concern the 'arrangements by which owners, or their representatives, delegate and limit power to enhance the entity's prospects for long-term success'.³⁹ By this definition, the governance principles surrounding RWWA define how the 'owners' of RWWA - the WA Government - delegate and limit the power that RWWA is able to utilise to achieve their objectives. This is a brief examination of the power RWWA is prescribed under the RWWA Act and any other legislation.⁴⁰

³⁶ Ibid., p6.

³⁷ Hon. John Kobelke, MLA, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 6 May 2003, p7074.

³⁸ Refer to the Glossary for information on this report.

³⁹ Department of Communications, Information Technology and the Arts, *Review of Corporate Governance of Statutory Authorities and Office Holders*, Commonwealth of Australia, Canberra, June 2003, p21.

⁴⁰ A discussion on the objectives of RWWA—which are vital to the good governance of RWWA, are discussed in Chapter 2.3.

(ii) Establishment of RWWA

*Statutory authorities are established to undertake functions of government or provide services to the community on behalf of government. Statutory authorities are often established when a degree of operating independence is seen to provide either objectivity or to promote efficiency depending on the nature of the task.*⁴¹

The above quote underpins the rationale behind RWWA being established as a statutory authority. The WA Government has a monopoly on the state's off-course wagering activities, an arrangement that is largely historical—reflecting the policy need to fund the racing industry across Western Australia. At the time of RWWA's establishment, the market conditions allowed for the industry to be maintained if the TAB funding model continued to sustain the industry development policy of the government.⁴² In order to achieve this, it was considered that RWWA would need a certain degree of commercial flexibility and independence whilst remaining within the auspices of government.⁴³

As such, Part 2, Division 1 of the RWWA Act 2003 establishes RWWA as a:

- body corporate with perpetual succession.⁴⁴

Sections 5 and Section 6 of this Part prescribe that RWWA is not a:

- crown agency; nor a
- public sector body under the *Public Sector Management Act 1994*.⁴⁵

The reason RWWA was not established as an agent of the crown was to allow for as much competitive neutrality as possible. This is because agents of the crown can be afforded certain exemptions (from land tax for example) that may give a commercial advantage over privately owned bodies. As wagering bodies in other states are privately owned, the legislation was aimed at ensuring that RWWA did not have such a commercial advantage and would operate on a more commercial basis with greater commercial flexibility.⁴⁶ It does not however diminish or alter in any way the public nature of RWWA's funds.⁴⁷

⁴¹ Department of Communications, Information Technology and the Arts, *Review of Corporate Governance of Statutory Authorities and Office Holders*, Commonwealth of Australia, Canberra, June 2003, p30.

⁴² Economic Audit Committee, Final Report October 2009, Government of Western Australia, Perth, 2009, p121.

⁴³ Hon. John Kobelke, MLA, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 6 May 2003, p7075.

⁴⁴ Section 4 *Racing and Wagering Western Australia Act 2003*.

⁴⁵ Section 5 and Section 6 *Racing and Wagering Western Australia Act 2003*.

⁴⁶ Hon. John Kobelke, MLA, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 6 May 2003, p7075.

⁴⁷ Mr Timothy Marney, Under Treasurer, Department of Treasury and Finance, letter, 26 August 2010. Refer to Chapter 2.8 (Taxation) for a further discussion on the public nature of funds raised by RWWA.

As such, Section 108 of the RWWA Act prescribes financial controls⁴⁸ on RWWA's public funds by determining that RWWA is subject to the provisions of the:

- Financial Management Act 2006; and
- Auditor General Act 2006.

One other determination that places some financial control onto the governance arrangements of RWWA is RWWA's classification as a Government Trading Enterprise (GTE).⁴⁹ A GTE is distinguished from other parts of the public sector by the fact that GTEs charge for the goods and services they provide and are in most cases self-financing.⁵⁰ RWWA's classification as a GTE has a broad impact on the overall governance arrangements of RWWA and is discussed later in this section.

Finding 3

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

(iii) Board of Directors

Part 2 Division 2 of the RWWA Act divests primary responsibility for the governance functions of RWWA with the board. At the time RWWA was established, the make up and composition of the board was heavily debated. The resulting structure was considered to be the best structure to enable the board to move away from the separate code and wagering interests that existed prior to establishment.

The board of directors comprises eight members as follows:

- the chairperson of the board who is appointed by the Minister for Racing and Gaming;
- four persons selected for their expertise in management, finance, business, commerce or information technology and at least one of whom must have knowledge of, and experience in, regional development;⁵¹ and
- three persons, one nominated by each of the three racing codes (thoroughbred racing, harness racing, and greyhound racing).⁵²

⁴⁸ Financial controls impact on good governance and is one of the governance principles under *Leadership* considered by the Committee and was noted earlier in part (a)(iii) of this Chapter.

⁴⁹ Mr Timothy Marney, Under Treasurer, Department of Treasury and Finance, letter, 26 August 2010.

⁵⁰ Economic Audit Committee, Final Report October 2009, Government of Western Australia, Perth, 2009, p110.

⁵¹ Section 11 of the Act provides for a selection panel, which is responsible for selecting these four board members.

⁵² Section 8 *Racing and Wagering Western Australia Act 2003*.

RWWA board members hold office for up to three years after which they are eligible for reappointment, renomination or reselection.⁵³ Since RWWA's establishment, there has been only one change of board membership.⁵⁴

Section 16 of the RWWA Act empowers the board to appoint Committees which may comprise directors of the board or other persons. RWWA has three committees which have 'delegated authority to perform certain functions and exercise powers of the Board',⁵⁵ namely the:

- Integrity Assurance Committee (IAC);
- Racing Operations Committee; and
- Executive Committee.

The IAC oversees stewards, drug testing and control, licensing and registration, handicapping, and racing appeals,⁵⁶ and also has responsibility for audit and compliance matters including legislative compliance.⁵⁷ The Racing Operations Committee oversees the racing functions of RWWA including 'consulting with industry bodies, programming and racing dates, loans, grants and distributions'.⁵⁸ The Executive Committee assists with day to day management of RWWA including the implementation of annual Strategic Development Plans.⁵⁹

(iv) Staff

In relation to staff:

- A Chief Executive Officer, appointed by the board, is responsible for the day to day operations of RWWA.⁶⁰
- The board also has responsibility for the engagement and management of staff; including the power to remove, suspend, discipline and terminate the employment of staff.⁶¹

⁵³ Schedule 1 *Racing and Wagering Western Australia Act 2003*.

⁵⁴ This is discussed in part (d)(iii) of this Chapter (Transparency of board procedures on governance).

⁵⁵ Racing and Wagering Western Australia, *Annual Report 2009*, 12 October 2009, p13. Available at: www.rwwa.com.au/home/rwwa-annual-report-2009.pdf Accessed on 25 June 2010.

⁵⁶ Section 49 *Racing and Wagering Western Australia Act 2003*.

⁵⁷ Racing and Wagering Western Australia, *Annual Report 2009*, 12 October 2009, p13. Available at: www.rwwa.com.au/home/rwwa-annual-report-2009.pdf Accessed on 25 June 2010.

⁵⁸ Ibid.

⁵⁹ Racing and Wagering Western Australia, 'RWWA's Corporate Governance Disclosure', 2007. Available at: www.rwwa.com.au/home/governance-disclosure.html Accessed on 25 June 2010.

⁶⁰ Section 20 and Section 21 *Racing and Wagering Western Australia Act 2003*.

⁶¹ Section 22 *Racing and Wagering Western Australia Act 2003*. The ramifications of this section is discussed in part (d)(iii) of this Chapter (Transparency of board procedures on governance).

(d) Stakeholder views on the current governance of RWWA**(i) Establishment of RWWA as a whole of industry governance body**

A number of stakeholders within the racing and wagering industry expressed the opinion that overall the establishment of RWWA as a single governance body was a positive step for the industry.⁶² This comment, submitted to the Committee by the Community and Public Sector Union is indicative of some of these stakeholder views:

*Having a single governing body enables a coordinated and cohesive approach to the future direction of the racing industry in WA, and facilitates efficiencies that aren't possible by spreading responsibilities across multiple bodies.*⁶³

WAGRA supported this view, commenting in a hearing that RWWA is a good form of governance, particularly given that the 'task of RWWA is a huge one' because it had to superimpose itself on a structure that ultimately took power from the principal clubs.⁶⁴ WAGRA further submitted that it considers RWWA the 'best equipped to administer the future requirements of the racing and wagering industries'.⁶⁵

Mr Colin Bellchambers of the Pinjarra Race Club agreed that RWWA has a difficult task given that interests within the racing industry can often be split. He asserted that the establishment of RWWA as the governing body is probably the equal of, if not superior to many in the nation:

*...there is no doubt in my mind that RWWA is as good a controlling body as one could hope for in an industry such as the racing industry, which is divided in many ways. Certainly the structure of RWWA and the way it operates in general, I would say, is superior to controlling bodies that I have dealt with in Tasmania, Victoria or Queensland, for example.*⁶⁶

In a joint submission, HROAWA, WASBA and BOTRA noted that although it took some time to transition from the principal club governance model, RWWA is now running the industry effectively.⁶⁷

⁶² Submission No. 32 from Bunbury Turf Club, 18 December 2009, p1; Submission No. 24 from Western Australian Provincial Thoroughbred Racing Association, 24 December 2009, p1; Submission No. 13 from Mt Barker Turf Club, 30 November 2009, p2; Submission No. 18 from WA Bloodhorse Breeders Association Inc, 8 December 2009, p2.

⁶³ Submission No. 10 from Community and Public Sector Union/ Civil Service Association of WA, 30 November 2009, p2.

⁶⁴ Mr David Simonette, Chief Executive Officer, Western Australian Greyhound Racing Association, *Transcript of Evidence*, 30 April 2010, p10.

⁶⁵ Submission No. 14 from Western Australian Greyhound Racing Association, 30 November 2009, p4.

⁶⁶ Mr Colin Bellchambers, General Manager, Pinjarra Race Club, *Transcript of Evidence*, 6 April 2010, p5.

⁶⁷ Submission No. 29 from Harness Racing Owners Association of WA Inc (HROAWA), the Breeders Owners Trainers and Reinspersons Association of WA Inc (BOTRA), Western Australian Standardbred Breeders Association (WASBA), 15 January 2010, p2.

Mr Steven McGuire of the Kojonup Race Club noted that the independence of RWWA from that of the former principal club model is beneficial for both the integrity and broad operation of the industry.⁶⁸ This view was substantiated by the WA Bookmakers' Association, which stated of RWWA that 'their independence from the principal club is and has been of paramount importance to the industry'.⁶⁹ The WA Racing Trainers Association agreed that it is the independence of RWWA that has increased veracity of negotiations between clubs and improved the overall standard of racing in the state.⁷⁰

RWWA commented that the whole of industry governance approach established by the RWWA Act has realised four significant improvements in the governance of racing and wagering in Western Australia through the operations of RWWA:

*Firstly, the placement of racing industry governance functions with RWWA has resolved the conflicts of interest that arose when the principal racing clubs (WATA, WATC) has responsibility for governance functions... Secondly, The larger scale and resources of RWWA has allowed strategic planning and research to be undertaken at an industry level unattainable by any individual code... Thirdly, the operation of RWWA as the single principal racing authority in Western Australia has enabled a coordinated response to whole-of-industry issues... Fourthly, the critical mass obtained through the combination of the codes has given RWWA increased negotiating power with Sky Channel Pty Ltd (Sky) and increased purchasing power.*⁷¹

A number of stakeholders agreed that the establishment of RWWA as the overarching governing body had been good for the industry with tangible benefits being realised from its formation—but cautioned that with the passing of time a need now exists for some structural or operational changes. Mr John Burt, WATA said, 'the concept and practice [of RWWA] is a perfect model; we just need the edges taken off'.⁷²

The Western Australian Country Harness Association (WACHRA) stated that overall, there had been significant improvement in the industry since the formation of RWWA, notably seen through the increases in economic prosperity of clubs, stake money and participants and improved standards of integrity, marketing and promotion. Nonetheless, WACHRA strongly believe RWWA could now deliver better results for all clubs, participants and communities.⁷³ This view was supported by the Broome Turf Club which suggested that RWWA has now lost direction,⁷⁴

⁶⁸ Mr Steven McGuire, Tote Manager, Kojonup Race club, *Transcript of Evidence*, 3 May 2010, p4.

⁶⁹ Submission No. 37 from WA Bookmakers Association, 8 March 2010, p1.

⁷⁰ Submission No. 22 from WA Racing Trainers Association, 17 December 2009, pp1-2.

⁷¹ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p34.

⁷² Mr John Burt, President, Western Australian Trotting Association, *Transcript of Evidence*, 26 February 2010, p7.

⁷³ Submission No. 32 from Western Australian Country Harness Association, 19 January 2010, p4.

⁷⁴ Submission No. 21 from Broome Turf Club, 14 December 2009, p2.

and Mr John Biggs, North Eastern Goldfields Racing Clubs, who contended that whilst the current structure is essentially good—there exists a need for operational change.⁷⁵

Mr David Prance of the Kalgoorlie-Boulder Racing Club posed that the establishment of RWWA as a single governing body was ‘the biggest single improvement in thoroughbred racing and wagering overall’; noting that if the thoroughbred industry had remained under the governance of the WATC the industry would ‘probably be on its knees’. Nonetheless, he noted that despite RWWA being the best possible structure at the time of its formation, a number of years have now passed and it is time for those structures to be reviewed:

*I think the overall structure of RWWA, the governing board and the make-up of the board was probably the best starting point at the point of inception. But having moved five to six years on now, that probably is in need of review.*⁷⁶

Not all stakeholders agreed that the establishment of RWWA as a whole of industry governance body had been beneficial for the racing and wagering industry—either now or in the past. Narrogin Racing submitted that many governance practices of RWWA have fallen short in achieving a whole of industry approach to governance with regard to addressing the needs and contributions of provincial and country racing to the industry overall:

*The industry is in need of a strong, proactive and most importantly unbiased governing body. In its present form, RWWA lacks these qualities...Any governing body must be there for the entire industry (and) RWWA has fallen short in many areas.*⁷⁷

The York Racing Club stated that in regard to thoroughbred racing, RWWA have simply imported the procedures of the principal racing club they were meant to replace and have continued to allow that principal club to have considerable influence.⁷⁸ The Geraldton Turf Club submitted that, despite being optimistic about the advent of RWWA and actively supporting its establishment at the time, in some cases the industry is worse off in the key areas of governance—accountability, consultation and transparency, than under the WATC.⁷⁹

On balance, most participants in the industry felt the formation of RWWA as a whole-of industry governing body had been beneficial for the industry overall. Nonetheless, evidence has been received by the Committee suggesting that despite the benefits realised by the industry as a direct result of the formation of RWWA, there is scope for operational and structural change within some components of RWWA’s governance structure.

⁷⁵ Mr John Biggs, Representative, North East Goldfields Racing Clubs, *Transcript of Evidence*, 19 March 2010, p5.

⁷⁶ Mr David Prance, Immediate Past President, Kalgoorlie-Boulder Racing Club, *Transcript of Evidence*, 19 March 2010, p2.

⁷⁷ Submission No. 12 from Narrogin Racing, 30 November 2009, pp8-9.

⁷⁸ Submission No. 5 from York Racing (Inc), 26 November 2009, p4.

⁷⁹ Submission No. 25 from Geraldton Turf Club, 24 December 2009, p2.

Finding 4

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

Finding 5

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

The main issues raised with the Committee include: the leadership of the board; industry consultation and transparency of RWWA's operating procedures; and the accountability requirements of RWWA—and are examined in greater detail below.

(ii) Board of Directors

As indicated under the prescribed governance functions of RWWA, the board of directors has the final responsibility for the governance functions of RWWA on behalf of the racing and wagering industry—subsequently the role of the board in relation to governance received significant attention during debate on the Racing and Wagering Western Australia Bill 2003.⁸⁰ Likewise, the Committee received feedback on these issues during the course of its review as summarised below.

Board Representation

Of the areas raised by stakeholders expressing concern about the governance of the RWWA board, the issue of representation of the board received the most attention—revolving around the following three issues:

- country representation;
- wagering representation; and
- code representation.

Country representation

The importance of country racing has been a key point raised with the Committee during this Inquiry. The Country Racing Association (CRA) states that 'the grassroots of racing starts in the bush';⁸¹ a view highlighted by Mr John Cowcher, Williams Harness Racing Club, who stated that

⁸⁰ This primarily concerned the number of code representatives, country representation and the specific skills required for non-code directors and the selection and nomination of directors on the board.

⁸¹ Mr Maxwell (Dixie) Solly, President, Country Racing Association, *Transcript of Evidence*, 7 May 2010, p2.

country racing is essential and without it ‘...the industry is shot. If you keep chipping away at that bottom level, the top level is going to fall down’.⁸² The Committee heard evidence that country racing is essential to allow young trainers to enter the industry,⁸³ and to attract new people into the industry who may later become industry participants in one form or the other:

*When you have racing or trotting within a local community, the community gets behind these horses because they are putting money into the TAB and I think this is what a lot of people do not recognise; not all the good horses—trotters or gallopers—come from the metropolitan area; many of the best horses in this state have come from country areas. When a good horse comes from a country area, the whole of the country is on that horse; it just gives that lift and keeps people involved.*⁸⁴

The Committee received evidence to suggest that country racing is not only important to the racing industry but has key social and economic benefits for local communities. The Golden Mile Trotting Club did an independent study and established that the club has a substantial dollar impact on the local community.⁸⁵ Ms Lynn Heppell, Mt Barker Turf Club agreed and highlighted the flow-on effect that their race days have on local businesses.⁸⁶ Ms Heppell also illustrated the impact race days have on the local charity groups who gain valuable access to fundraising opportunities that they would not otherwise have:

*...we also involve other community groups as well such as Sacred Heart Church, which is a Catholic Church. They run the kiosk. It is their fundraising opportunity for the whole year. What they make is their profit. They put that back into the community to help underprivileged people and what other tasks they do. We have Lions operating a train that raises funds for their organisation. Rotary sells ice-creams and drinks. There are other service groups that benefit from the operation of the races as well.*⁸⁷

The Pingrup Race Club asserted that their single race day is something they want to retain as it ‘...provides a lot of funds for the community’.⁸⁸ The importance of country racing to local communities was summarised well by WACHRA to the effect that RWWA needs to recognise that country clubs operate with minimal financial drawings on the industry; have the capacity and willingness to return sponsorship and surplus funds to participants; consist mostly of volunteers; and that family groups attend country meets as much for the social aspect as for the racing.⁸⁹

⁸² Mr John Cowcher, Committee Member, Williams Harness Racing Club, *Transcript of Evidence*, 3 May 2010, p6.

⁸³ Ibid.

⁸⁴ Mrs Rosanne Pimm, Secretary, Collie Race Club, *Transcript of Evidence*, 6 April 2010, p6.

⁸⁵ Mr Evan Spencer, President, Golden Mile Trotting Club, *Transcript of Evidence*, 19 March 2010, p5.

⁸⁶ Ms Lynn Heppell, Vice President, Mt Barker Turf Club, *Transcript of Evidence*, 12 March 2010, p10.

⁸⁷ Ibid.

⁸⁸ Mr Alan Smith, Secretary/Treasurer, Pingrup Racing Club, *Transcript of Evidence*, 3 May 2010, p2.

⁸⁹ Submission No. 32 from Western Australian Country Harness Association, 19 January 2010, p2.

Mr Matthew Spurr, Wagin Trotting Club said simply, ‘without the trots left in this town, this town will have nothing left; absolutely nothing’.⁹⁰

Representation of country racing is currently encapsulated under Section 8(2) of the RWWA Act which requires that at least one of the non-code directors needs to ‘have knowledge of, and expertise in, regional development’.⁹¹ The ambiguity surrounding the phraseology of ‘regional development’—and if this has adequately captured the level of expertise required for the concerns and needs of country stakeholders to be represented at board level, has been examined by the Committee.

In the first instance, the Committee enquired of Mr Barry Sargeant, Director General of the Department of Racing, Gaming and Liquor⁹² what—if anything—he would change in the RWWA Act. Mr Sargeant highlighted the wording around experience and knowledge in regional development because it was not effective at achieving its purpose.⁹³ The evidence supports this conclusion as many stakeholders in the country feel they do not have adequate representation at the board level.

Mr David Wrensted of the Western Australian Provincial Thoroughbred Racing Association (WAPTRA) asserted that he felt there was no identifiable country representation on the RWWA board:

*...there should be a directly elected country representative. I do think that country clubs and regional clubs need an ear, and I do not think that we have got one at the moment. I think there needs to be a distinctly identifiable regional or country member on the board.*⁹⁴

Mr John Biggs, North East Goldfields Racing Clubs had equally strong views about the lack of country representation on the RWWA board. He suggested that this lack of country representation disadvantages country stakeholders:

*We are not getting the results that we should be getting and that we deserve, no. I think it comes down to board level where there needs to be more country representation on the board to ensure that country racing gets a proper and decent hearing.*⁹⁵

Mr David Prance, Kalgoorlie-Boulder Racing Club suggested that there has been an imbalance in country representation from the initial establishment of RWWA and it is time for redress:

⁹⁰ Mr Matthew Spurr, President, Wagin Trotting Club, Transcript of Evidence, 3 May 2010, p6.

⁹¹ Section 8(2) *Racing and Wagering Act 2003*.

⁹² It should be noted that the Department had carriage for drafting the original legislation.

⁹³ Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, *Transcript of Evidence*, 19 February 2010, p2.

⁹⁴ Mr David Wrensted, Vice Chairman, Western Australian Provincial Thoroughbred Racing Association, *Transcript of Evidence*, 26 February 2010, p3.

⁹⁵ Mr John Biggs, Representative, North East Goldfields Racing Clubs, *Transcript of Evidence*, 19 March 2010, p7.

*I have got a term for it—it is called “metrocentricity”...the focus is on the two metropolitan tracks and the two or three inner provincial tracks. Interest wanes very quickly once you get across the top of the scarp and a bit further south or north to the Geraldtons and Albanys. It is like the old bomb blast and the circles as they go out—the colours just change. You get less impact as you go out.*⁹⁶

Mr Prance made the observation that because there are 10 provincial and 41 country thoroughbred tracks, compared to the two tracks run by the single metropolitan club—and given country and provincial tracks outperform either of the Perth tracks singularly in relative terms, it is a reasonable assumption to make that the provincial and country tracks ‘deserve that same level of recognition and representation’ as Perth thoroughbred racing.⁹⁷

Mrs Lesley Solly, Albany Racing concurred with this view by stating that it would help country clubs trying to communicate with RWWA if there was a country person on the board who could communicate the specific needs and requirements of country stakeholders to city based directors:

*One of the things that could help with communication would be to have someone on the board who represents provincial country racing...because it is quite different from that of the city. The person could represent the trots, the gallops, the dogs and whatever. It needs someone actually sitting on the board itself so that that person is there to have a say.*⁹⁸

It is noteworthy that the representatives of the Albany Racing Club were unaware, until informed by the Committee, that there existed a person representing country interests on the board. They contended that they had never been approached by anyone on the RWWA board suggesting that it was their role to look after the needs of country stakeholders.⁹⁹

This view is expressed by harness racing stakeholders as well, who commented that they have seen very little evidence of any RWWA board members in country areas.¹⁰⁰ Mr Mark Roberts of WACHRA noted that the presence of any RWWA board members in the country was rare—and in conversations with board members on behalf of his members it is clear they ‘do not really understand what the situation is out in the country’.¹⁰¹

Finding 6

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

⁹⁶ Mr David Prance, Immediate Past President, Kalgoorlie-Boulder Racing Club, *Transcript of Evidence*, 19 March 2010, p2.

⁹⁷ Ibid. p3.

⁹⁸ Mrs Lesley Solly, President, Albany Racing Club, *Transcript of Evidence*, 12 March 2010, p5.

⁹⁹ Ibid.

¹⁰⁰ Mrs Margaret Skinner, Secretary, Mt Barker Turf Club, *Transcript of Evidence*, 12 March 2010, p9.

¹⁰¹ Mr Mark Roberts, President, Western Australian Country Harness Racing Association, *Transcript of Evidence*, 26 February 2010, p3.

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.

Mechanisms to Improve Country Representation of the RWWA Board

Mr Brendon Gardiner, Bridgetown Harness Racing Club, noted that country harness racing clubs have less say now than they did under the principal club system where country clubs were equitably represented under three district councils of relatively equal meeting size and ‘political clout’. As such, even the smallest clubs had a voice that could potentially be presented to the then governing body, WATA. Due to the break up of the councils and transition to the new club classifications of metropolitan, provincial, country and community, small clubs had lost their voice and as such, Mr Gardiner supported a reintroduction of the district council system.¹⁰²

Mr David Prance, Kalgoorlie-Boulder Racing Club, suggested an expanded version of these district councils by proposing that a regionalisation model could be applied—across all codes—across country WA. He propounded that the state could be divided up into three regional bodies that would become part of the overall administration of RWWA whereby each regional hub manages the ‘regional’ operations of RWWA for that area—yet would report to and be managed by the overall RWWA executive. This would have the advantage of having someone in the region looking after the region.¹⁰³

A comparable view put to the Committee was the concept of establishing a ‘country liaison position’, again within the administrative auspices of RWWA, whereby the role becomes the main contact conduit for country participants, with the responsibility of ensuring the needs and requirements of country participants become known at a board level. WACHRA submitted that the creation of such a position would provide a vital link between RWWA and registered country clubs and is a model that has been adopted by Harness Racing Victoria.¹⁰⁴

Yet another variation that has been raised to combat the lack of input country clubs feel they have into the decision making process of the RWWA board is the establishment of an advisory committee that could offer advice directly to the board about matters relating to county racing. Mr David Wrensted, Geraldton Turf Club, suggested that RWWA could utilise the experience of a number of highly focused people within the industry and allow them to have input into the

¹⁰² Mr Brendon Gardiner, Secretary/Treasurer, Bridgetown Harness Racing Club, *Transcript of Evidence*, 6 April 2010, pp9-10.

¹⁰³ Mr David Prance, Immediate Past President, Kalgoorlie-Boulder Racing Club, *Transcript of Evidence*, 19 March 2010, p10.

¹⁰⁴ Submission No 32 from Western Australian Country Harness Association, 19 January 2010, p3.

decision making process at RWWA by talking to the board about ‘how they see the industry going forward’.¹⁰⁵

Mr Evan Spencer, Golden Mile Trotting Club, recommended that any model adopted to drive regional representation must have the notion of regional unity at its core. He suggested that this could either be based on a regional council model, or be provided by an advisory body to RWWA that supports a regional approach—contending that either approach will work depending on the ‘quality and contribution of those groups and their abilities to listen [to each other]’.¹⁰⁶

As a result of the evidence received, the Committee acknowledges the lack of representation of provincial and country racing on the RWWA board. It further acknowledges that Section 8(2) of the RWWA Act does not adequately reflect the skills required for the requirements of country and community racing to be represented to the RWWA board.

Whilst the Committee is of the opinion that it is important to have the requirements of country and provincial racing considered at a board level, in the absence of a detailed investigation the Committee cannot recommend amendment to Section 8(1) to include another nomination to the board in the form of a dedicated country representative.¹⁰⁷

The Committee does recommend however that Section 8(2) be amended to more appropriately capture the skills required for a board nominee to possess knowledge of, and experience in, country racing. Because many of the issues associated with country racing are inherently distinct from those of the major provincial and metropolitan clubs, and many of these issues are non-code specific, the Committee is of the opinion that it is appropriate to insert the word ‘country racing’ instead of regional development as the Act currently prescribes.

During the course of its Inquiry the Committee witnessed sizeable variation between the needs and requirements of individual country and community racing clubs.¹⁰⁸ It has also witnessed certain commonalities between country and community clubs within a particular region or group—and heard about particular governance strategies that may address these issues. The Committee acknowledges that RWWA is overcoming significant challenges in effectively administering such a diverse group of racing clubs. Nonetheless, the Committee finds that the issues surrounding the effective governance of country and community racing clubs should be reviewed to take into account the issues surrounding the regionalisation of some of RWWA’s administrative functions as they apply to country and community racing clubs.

¹⁰⁵ Mr David Wrensted, Vice Chairman, Western Australian Provincial Thoroughbred Racing Association, *Transcript of Evidence*, 26 February 2010, p10.

¹⁰⁶ Mr Evan Spencer, President, Golden Mile Trotting Club, *Transcript of Evidence*, 19 March 2010, p5.

¹⁰⁷ The Committee has not examined what effect this crucial change in governance would have on the operations of the broader industry.

¹⁰⁸ Some of the reasons for this distinction may be geographical considerations, local population, access to services, prevalence of volunteerism or degree of local community support for a racing club—to name just a few. These issues were observed or discussed during the Committee visits to Country and Community Racing Clubs around the State and were seen to vary from club to club. They are not appropriate for individual review or comment in this report. They did nonetheless inform the Committee and enable it to capture as many of the common issues as is practicable throughout the body of this review.

Finding 8

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

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.

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.

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.

Wagering representation

The Committee received feedback from a number of off-course wagering operators concerned about the current lack of wagering representation at board level. The RWWA Act does not provide for an eligible wagering body to directly nominate a member to the board;¹⁰⁹ nor is there any requirement for board members to possess knowledge or experience in off-course wagering.¹¹⁰ Further, eligible wagering bodies do not have any *prescribed* operation in regard to the direct nomination of members that will comprise the selection panel for the purposes of Section 8(1)(e).¹¹¹ There is some indirect opportunity for wagering interests to be involved in this process

¹⁰⁹ Whereas each code is able to nominate a representative directly onto the board.

¹¹⁰ This is in the context as that similarly prescribed under Section 8(2) for country representation.

¹¹¹ Each code is able to nominate a representative directly onto the selection panel.

by virtue of the WA Bookmakers' Association being named an eligible thoroughbred racing body. As such, it will contribute to the nomination of one person onto the five person selection panel.¹¹² In practice, this currently enables the WA Bookmakers' Association, as the only wagering body, to have one vote in eight—of a simple majority vote—to nominate this representative onto the selection panel.

The argument posed by the off-course wagering stakeholders rests on the following simple tenets:

- The retail wagering component contributes substantially to the operations of RWWA;
Retail off-course wagering accounts for 84% of RWWA turnover; the retail network comprises 92 dedicated full time shops, 188 PubTABs and 31 self-service outlets; wagering turnover has been steadily increasing and was up 5.7% in the 2008/09 financial year.¹¹³
- Retail wagering is structurally hampered from having influence over any decisions, strategies or future planning of RWWA and must rely on the goodwill of the board to exert any influence over the industry that they are a major contributor too.

The WA TAB Agents' Association submitted the following to the Committee, summing up the major concerns put forward by wagering stakeholders.

*The current structure in the Act gives emphasis to racing and reserves three positions for other expertise relevant to the Board's functions. Agents believe that with the current challenges from competitors in the retail component of the business, the argument for a greater dedicated recognition of wagering at Board level is strong. Experience has shown that Agents are completely reliant on the good will of RWWA management to put their case on issues to the Board...Agents argue that the turnover figures ...are a substantial component of RWWA's operations. Their representation on (and [lack of] access to) the ultimate decision making entity does not reflect their role in the business and ought to be addressed. The appropriate measure would be for representation at Board level.*¹¹⁴

When asked to elaborate on this, Mr Ken Trainer of the WA TAB Agents' Association reiterated that the wagering retail component is structurally removed from any decision making process within RWWA. The only access is through the TAB Agents advisory board—which as the name suggests is advisory 'and nothing more' and comprises four elected people. He noted that the experience of this advisory board has been that it is extremely difficult to raise issues to a senior executive or board level. Furthermore, any view put forward by the advisory board to RWWA must be a cooperative one and 'there is no independent capacity in that regard'.¹¹⁵

Mr Timothy Barnes of the Morley TAB stated that whilst he recognised that large boards are not always preferable, it would be good if the wagering interests of the industry were represented at a

¹¹² Specific eligible racing bodies are not prescribed under the RWWA Act but are determined by RWWA.

¹¹³ Racing and Wagering Western Australia, *Annual Report 2009*, RWWA, p27.

¹¹⁴ Submission No. 8 from the WA TAB Agents' Association, 30 November 2009, p11.

¹¹⁵ Mr Kenneth Trainer, WA TAB Agents' Association, *Transcript of Evidence*, 8 March 2010, pp14-15.

board level.¹¹⁶ Mr Wayne Barnes, also of Morley TAB, stated that given so much of the money for the industry flows through the TAB agencies, it would be reasonable for the agencies to have a voice on the board.¹¹⁷

Mechanisms to Improve Wagering Representation of the RWWA Board

At present, the only wagering representation involved in the selection and nomination of a RWWA director comprises the WA Bookmakers Association. As an eligible thoroughbred racing body, WABA has a vote with respect to the thoroughbred nominee on the board, and also in relation to the nomination of one person to the selection panel to choose the four ‘non code’ directors of RWWA.¹¹⁸ The Committee acknowledges that this representation is diluted and does not constitute representation of off-course wagering interests. The Committee finds that the significant contribution that retail wagering outlets make to the racing and wagering industry is under represented at the RWWA board level. The Committee also acknowledges that strategic knowledge of the wagering landscape may be beneficial as RWWA attempts to maintain and increase its current wagering market share. Whilst the Committee is of this opinion, there is insufficient evidence to prompt a change to the constitution of the board to include one person nominated by eligible wagering bodies.¹¹⁹ It is the Committee’s opinion however that there should be off-course wagering representation insofar as the nomination and selection of board members is concerned.

Finding 10

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

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*.

¹¹⁶ Mr Timothy Barnes, Morley TAB, *Transcript of Evidence*, 12 March 2010, p9

¹¹⁷ Mr Wayne Barnes, Morley TAB, *Transcript of Evidence*, 12 March 2010, p14.

¹¹⁸ Section 8(1)(e) *Racing and Wagering Western Australia Act 2003*.

¹¹⁹ The Committee has not conducted an examination into the possible governance ramifications that may arise by an increase in the representative directors (to that of a majority) on the RWWA board.

Code representation

One area of extensive Parliamentary debate concerned the manner in which the codes were to be represented on the board—particularly about the number of code nominees for the thoroughbred and harness codes—or if indeed codes should be specifically represented at all. The Turner Report recommended that there should be no code representation at the board level so a whole-of industry approach to governance could more readily emerge.¹²⁰ This theme was picked up during the debates:

*The concept in the Turner report was that the new board members would represent the racing, pacing and chasing industry as a whole, rather than coming from a vested-interest position from either of the three codes.*¹²¹

The Turner Report envisaged that ‘code bodies’, existing immediately below board level, would capture the needs of the individual codes by negotiating funding and product agreements for each code. The criteria for selection on a code body would be ‘an in depth understanding of’ that particular code—together with ‘...successful general and specific experience in a commercial environment’.¹²² This was the same criteria that the Turner Report set for half of the overarching board—the remaining members of which were to have successful business expertise in a specific area and a general understanding of the racing industry. Whilst there was a view that knowledge of the racing industry was important, the review established a clear imperative for there to be a commercial focus on the skills and experience of the board (and code) members. This concept did not gain favour and it was finally agreed that each code should have one representative at a board level.

During the course of this Inquiry, the Committee received feedback that code representation on the board should be revisited—particularly with regard to the consideration of the appropriateness of code representation. Perth Racing submitted that the RWWA board ‘should be apolitical and not code representative’ which if achieved will enable RWWA to act on an increased commercial platform and be more appropriately placed to respond to new market challenges the industry is facing.¹²³ When asked to elaborate on this view in a hearing, Mr Ted van Heemst, Chair of Perth Racing responded that in theory it is beyond doubt that what is required for the WA industry to survive is a more commercial approach to operations:

¹²⁰ *Future Governance of the Western Australian Racing Industry*, report prepared for the Minister of Racing and Gaming by R Turner, A Di Francesco, M Nadebaum, Western Australian Racing Industry Review Committee, WA, October 2001, p27.

¹²¹ Mr Matt Birney, MLA, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 6 May 2003, p7078.

¹²² *Future Governance of the Western Australian Racing Industry*, report prepared for the Minister of Racing and Gaming by R Turner, A Di Francesco, M Nadebaum, Western Australian Racing Industry Review Committee, WA, October 2001, p30.

¹²³ Primarily increased competition from corporate bookmakers, the inception of product fess and increased pooling fees are putting considerable pressure on the viability of RWWA’s operations. Refer to Chapter 2.9(a) for a further discussion on the impact of these market pressures.

*...there is absolutely no doubt in my mind that in a perfect world you would not have code representation on that board at all; you would have half a dozen professional people who understood your product and made commercial decisions.*¹²⁴

It was further contended that in practice this may be detrimental to the industry as it is inherently complicated and currently the board benefits from the knowledge and expertise that the code representative directors bring. This is because of their past experience and knowledge of and within the industry—benefits that may be lost to the industry if code representation was removed from the decision making processes of the board.

WACHRA submitted that a change to the RWWA Act may be necessary to enable RWWA to pursue a more 'business type, model' and maximise the dividend to government and the codes, but cautioned that this would need to be augmented with increased input from industry stakeholders about the strategic direction of the harness Industry.¹²⁵

The WATA similarly asserted that the board should be kept independent from the codes—with substantial consultation with code based expertise when required. In addition, functions currently taken up by the board in regard to the day to day running of the clubs should be returned to the clubs.¹²⁶ Mr John Burt of WATA contended there are two main benefits to this approach—firstly, without code representation the board can more accurately focus on increasing the whole-of industry product. In addition, it would have the added benefit of guarding against any future circumstance whereby a particularly persuasive code representative is able to exert undue influence over other non-code directors to the detriment of the remaining two codes.¹²⁷

The Committee is of the opinion that the concept of independent board members, as raised by the above stakeholders, could be a valuable asset to the racing and wagering industry in trying to combat emerging market challenges. Nonetheless, the Committee strongly propounds the benefits of retaining code representation at a board level as it enables the board to understand and effectively respond to the complex needs of the racing industry. In addition, the Committee contends that independent knowledge and expertise can be more readily accessed through external means than can knowledge and expertise in racing. Lastly, Principle 2.2 of the *ASX Corporate Governance Principles and Recommendations* recommends that for a board to add most value to an organisation it should have a majority of independent directors. RWWA as it is currently constituted has a majority of independent directors so reflects a preferred governance model. The Committee therefore finds that the number of independent directors should not be increased.

¹²⁴ Mr Edward (Ted) van Heemst, Chairman, Perth Racing, *Transcript of Evidence*, 26 February 2010, p7.

¹²⁵ Submission No. 32 from WA Country Harness Racing Association, 14 January 2010, p3.

¹²⁶ Mr John Burt, President, Western Australian Trotting Association, *Transcript of Evidence*, 26 February 2010, p10.

¹²⁷ *Ibid.*, p12.

Finding 11

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

(iii) *Transparency of board procedures on governance*

Schedule 1 of the RWWA Act outlines the provisions concerning the constitution and proceedings of RWWA's board of directors. Issues of transparency and consultation are examined in a subsequent section of this report.¹²⁸ Nonetheless a number of stakeholders have noted specific issues concerning the awareness of—or transparency of—board procedures that are appropriate to raise here.

Selection and Nomination of Board Members

Clause 1 of Schedule 1 of the RWWA Act specifically relates to the term of office of directors. It states that a director can hold office for three years and is eligible for reappointment. There is no provision in the Act that limits the amount of times a person can be re-elected. Stakeholders have noted that there has only been one change of directorship since the inception of RWWA.¹²⁹

Mr Ray Turner asserted that it is acceptable governance practice to not limit the times a person can be re-elected to a board as it prevents the risk of good people being lost to the industry:

*I know of instances where very valuable people have been lost to various areas because of that restriction. I have never, ever agreed that there should be a limited period, as distinct from the need to stand for re-election at a given period...*¹³⁰

Mr Barry Sargeant of the Department of Racing, Gaming and Liquor warned against change purely for the sake of change and explained that the selection panel for the board¹³¹ has actively sought nominations but has not yet found anyone 'actually outstanding enough' to replace an existing member.¹³² Mr Robert Pearson of RWWA, remarked that the process for his initial appointment as a code nominated director was 'exhaustive in interviews' and when the time came for his reappointment the position was advertised but '...for some unknown reason, no-one wanted to take it over'.¹³³

¹²⁸ Refer to Chapter 2.6 (Consultation).

¹²⁹ Mr Gino Monaco, President, Fremantle Harness Racing Club, *Transcript of Evidence*, 4 June 2010, p7.

¹³⁰ Mr Raymond Turner, *Transcript of Evidence*, 19 February 2010, p4.

¹³¹ Section 11 of the RWWA Act (2003) establishes a 'selection panel' for the purposes of nominating Directors under Section 8(1)(e).

¹³² Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, *Transcript of Evidence*, 19 February 2010, p4.

¹³³ Mr Robert Pearson, Director, Racing and Wagering Western Australia, *Transcript of Evidence*, 20 August 2010, p32.

It appears then that the reason there has only been one change in directorship since the inception of RWWA is because no suitable candidates have been identified to replace the existing board members. This is in part underpinned by the quality of the incumbent RWWA board members.¹³⁴

The process for selecting and nominating board members is briefly explained here.¹³⁵ Under Section 8 of the RWWA Act, the board comprises:

- the chair, nominated by the Minister;
- three code representatives, nominated directly by the code eligible bodies; and
- four non-code representatives, selected by a selection panel.

The selection panel is prescribed under Section 11, which determines that the selection panel will comprise five people; one nominated by the Minister; one nominated by the board; and three 'code' appointments nominated by each of the corresponding code eligible bodies. The selection panel is to appoint its own chair¹³⁶ and is to determine its own procedures.¹³⁷ Members of the selection panel remain for a period of three years but are eligible for reappointment or renomination.¹³⁸

Section 12 of the RWWA Act determines that RWWA is to declare who the eligible bodies are. Eligible bodies are responsible for nominating the three code representatives to the board and the three code representatives on the selection panel. It is clear that in this process the eligible code racing bodies exert considerable influence over the selection and nomination of board members.

Notwithstanding this, considerable ambiguity exists as to how these eligible bodies are chosen. There is no prescribed procedure for either the selection or publication of eligible code racing bodies by RWWA. Nor is there a prescribed method by which the eligible bodies must call for nominations of candidates who wish to be considered for the position of Director on the RWWA board. Clearly nominations will be impacted if there is a general lack of awareness within the industry and the broader community that board nominations are occurring. Mr Tony Marwick of the Northam Race Club noted that whilst nominations for board members are no doubt advertised in the newspaper, there is no notification through industry channels.¹³⁹ The Albany Racing Club admitted that they are not aware of the nomination process of the RWWA board.¹⁴⁰

¹³⁴ Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, *Transcript of Evidence*, 19 February 2010, p3.

¹³⁵ This process is also described earlier in this section under prescribed governance functions of RWWA.

¹³⁶ Section 11(7) *Racing and Wagering Western Australia Act 2003*.

¹³⁷ Section 11(11) *Racing and Wagering Western Australia Act 2003*.

¹³⁸ Section 11(8) *Racing and Wagering Western Australia Act 2003* (WA).

¹³⁹ Mr Tony Marwick, President, Northam Race Club, *Transcript of Evidence*, 26 March 2010, p7.

¹⁴⁰ Mrs Lesley Solly, President, Albany Racing Club, *Transcript of Evidence*, 12 March 2010, p15.

Despite this, Mr Richard Burt of RWWA stated that whilst ‘entrenched non-replacement’ of board members would be bad for the industry, he did not think that RWWA was at that stage.¹⁴¹ Mr Barry Sargeant noted that there might be changes to the board in the near future.¹⁴² If this was to happen, the Committee asserts that the current procedures will have to be amended prior to any new selection, in order to ensure that suitable candidates of an appropriately high standard are encouraged to nominate. Subsequently, some mechanisms to improve the selection and nomination of board members to facilitate a more effective nomination process are discussed here.

Mechanisms to Improve Selection and Nomination of Board Members

In order to attract the continued placement of appropriate people onto the board of RWWA the Committee finds that the board nomination processes of RWWA must be examined so that, as an organisation, it can more effectively engage in succession planning strategies to recruit appropriate people onto the RWWA board. Ensuring appropriate board renewal will facilitate the ability of the current board to align the future board configuration with the strategic direction of the organisation.

The Committee acknowledges that Section 8(1) of the RWWA Act delegates the selection procedure of board members to bodies outside of the RWWA board and that the current RWWA board feel that succession planning for the board is out of their hands.¹⁴³ However, as part of the board’s leadership role in the pursuit of good governance, the Committee finds that the RWWA board should plan and disclose preferred succession strategies to eligible industry bodies and the selection panel responsible for nominating the board for their consideration prior to any such process being instigated.

Finding 12

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

Given the critical role eligible racing bodies play in the nomination and selection process of directors, and given that RWWA is required to determine who these bodies are under Section 12 of the RWWA Act, the Committee queried the procedures in place to achieve this function. When RWWA was asked how it determines what bodies are to become eligible racing bodies there was uncertainty as to the process for establishing eligible bodies.¹⁴⁴

¹⁴¹ Mr Richard Burt, CEO, Racing and Wagering Western Australia, *Transcript of Evidence*, 20 August 2010, p31.

¹⁴² Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, *Transcript of Evidence*, 19 February 2010, p4.

¹⁴³ Mr Ross Bowe, Chairman, Racing and Wagering Western Australia, *Transcript of Evidence*, 20 August 2010, p29.

¹⁴⁴ Mr Richard Burt, Racing and Wagering Western Australia, 2010, pers. comm., 21 September 2010.

This response may indicate that no new eligible racing bodies have been appointed since initial establishment. Irrespective of this, the Committee is concerned that the establishment of the eligible bodies is currently unclear. The manner in which new bodies may apply to become an eligible racing body and the manner in which an eligible racing body can be removed must be established by RWWA and should be detailed in regulation. The publication of eligible bodies should also occur in regulation. As such, the Committee recommends that Section 12 of the RWWA Act be amended to include a clear instruction as to the establishment of eligible racing bodies.

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.

Section 9 of the RWWA Act prescribes that the Minister may determine: the manner and criteria on which persons are nominated and selected; and the procedures that are to be followed for making nominations, for all directors of RWWA. Despite this provision, only one determination has been made and that occurred at the time RWWA was established. This determination provided that any decision of eligible bodies with respect to the nomination of a ‘code’ director, and any decision made by the selection panel in nominating a ‘non code’ director, was to be made by a simple majority of votes.¹⁴⁵ No determination has been made as to what procedures should be followed in calling for nominations in the first instance.

Consequently, the Committee is concerned that the current nomination procedures being used to select directors of the RWWA board are not open and transparent.¹⁴⁶ The Committee strongly believes that the nomination procedures should be open, structured and appropriately broad to attract a strong calibre of candidates for nomination and selection. As such, the Committee recommends that pursuant to Section 9 of the RWWA Act, the Minister clarifies the nomination and selection procedures to include the following:

- any pending board vacancy be advertised widely; and
- all clubs and industry associations be given notice through appropriate mediums of pending board vacancies to be distributed to their members; and
- 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.

¹⁴⁵ Hon. Nicholas Griffiths, Government Gazette, No 114, 4 July 2003, p2691.

¹⁴⁶ The Committee also asked RWWA about the various procedures for nominating possible candidates for a directorship on the RWWA board—to which there was again uncertainty regarding exact procedures (as indicated by Mr Richard Burt, Racing and Wagering Western Australia, 2010, pers. comm., 21 September 2010).

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.

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.

In addition, it is the Committee's view that the provision allowing selection panel members to serve long terms may have a negative impact upon the already small turnover of the RWWA board, and may increase the potential for 'entrenched non replacement' of the board. The Committee is aware that some continuity of the selection panel is appropriate for the strategic planning of subsequent board appointments in line with Finding 12 of this report. As such, it finds that it is appropriate for members of the selection panel who are appointed under section 11(2)(a) and (b) of the Act to serve terms longer than three years, pursuant to section 11(8) of the Act. In order to introduce some renewal into the process, the Committee recommends that any member of the selection panel nominated under section 11(2)(c), (d) or (e) should not be eligible to stand for consecutive terms under section 11(8) of the Act.

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.

Relationship between the Board and the CEO

The Committee has received some evidence that there exists a lack of clarity about the roles and responsibilities of the board as distinguished from those of senior management of RWWA.¹⁴⁷

As mentioned, Schedule 1 of the RWWA Act delineates the provisions and proceedings of the RWWA board of directors. Likewise Schedule 2 does the same for the CEO and staff. Clause 1 of Schedule 2 states that the CEO is to have the same fiduciary relationship and duty to act with loyalty and in good faith to RWWA as a director of a company incorporated under the Corporations Act has to a company. Whilst this is prescriptive it is not descriptive.

Section 21 of the RWWA Act prescribes that the CEO has all the responsibility of—and the powers required, to administer the day to day operations of RWWA; yet the management of the staff of RWWA (including the CEO) is vested with the board. The board can nonetheless delegate any matter to the CEO under Section 33 of the RWWA Act.

The Committee acknowledges that it is essential for the effective running of RWWA for the board and the CEO to have an effective operating relationship as ‘the board’s relationship to management is critical to healthy governance’.¹⁴⁸ The Committee is of view that the role of the board and RWWA executive should be clearly delineated. Nonetheless, this does not mean that the relationship between a board and a CEO should be overly prescribed in legislation.¹⁴⁹

RWWA has submitted that the prescribed arrangement is atypical of the division of powers between the CEO and board and recommends that:

- Section 22 of the RWWA Act should be amended to vest the power to engage and manage staff in the CEO;¹⁵⁰ and
- A clause should be inserted into the RWWA Act explicitly preventing the same individual from holding the positions of CEO and Chair of the RWWA board concurrently.¹⁵¹

Mechanisms to Improve transparency on the delineated roles of the board and the CEO

The Committee acknowledges that the arrangement prescribed by the RWWA Act between the CEO and the RWWA board may be atypical of many privately owned companies—nonetheless as

¹⁴⁷ Mr John Burt, President, Western Australian Trotting Association, *Transcript of Evidence*, 26 February 2010, p13; Mr Steven McGuire, Tote Manager, Kojonup Race Club, *Transcript of Evidence*, 3 May 2010 p10; Mr Tony Marwick, President, Northam Race Club, *Transcript of Evidence*, 26 March 2010,p6; Mr Kenneth Godley, President, Bunbury Trotting Club, *Transcript of Evidence*, 6 April 2010, p2.

¹⁴⁸ Australian National Audit Office, *Achieving Better Practice Corporate Governance in the Public Sector*, June 2002, p13. Available at: www.anao.gov.au/uploads/documents/Achieving_Better_Practice_Corporate_Governance_in_the_Public_Sector1.pdf Accessed on 8 September 2010.

¹⁴⁹ Having such an interrelationship prescribed in the Act could introduce inherent inflexibility into governance procedures and decrease RWWA’s ability to adapt their governance to changing operating conditions.

¹⁵⁰ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p83.

¹⁵¹ Ibid.

RWWA is a statutory authority and the Chair of the RWWA board is appointed by the Minister, the Committee does not feel it can recommend that Section 22 of the Act be amended to vest all power to engage and manage staff in the CEO.

The Committee acknowledges that Section 33 provides for the board to delegate any and all powers to the CEO. There is no prescribed limit to this delegation in either function or time. Consequently, the Committee considers that it is an appropriately flexible delegation to enable the CEO to perform all duties as prescribed under Section 21. In addition, the Committee finds that any written delegation pursuant to Section 33(3) should be publicly disclosed.

In relation to the second matter, the Committee supports the principle of a clause in the RWWA Act that explicitly prevents the same individual from holding the positions of CEO and Chair of the RWWA board concurrently.

Finding 14

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

Finding 15

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

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*.

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.

Charter of the board and management

Whilst RWWA publish information on their governance guidelines and enabling legislation on their website, it contains only a small amount of descriptive content beyond the naming of what practices are in place. There is little to no information on the processes behind the practice or how a stakeholder may become aware of, or engage in, any appropriate governance process.

Allowing stakeholders to see and understand many of the procedures of the board is increasingly considered good governance practice. A key principle that the ASX emphasises is the public disclosure *and explanation* of any governance procedures that an organisation may have in place because governance is about ‘preserving stakeholder confidence’.¹⁵² To this end, the ASX corporate governance council has recently incorporated a change to their governance principles by recommending that the disclosure by an organisation when reporting on their governance practices should include the specific policies that govern these practices; rather than simply allowing a company to report it has certain practices in place. The Australian Auditor General recently indicated support for this concept in a speech presented to the Australian Institute of Company Directors Public Sector Governance Conference.¹⁵³

Mechanisms to Improve Transparency of procedures of the RWWA Board

The Committee acknowledges that an essential part of good governance is being open and transparent about the board’s operating procedures and practices. The Committee notes that RWWA states that the roles and delegated authorities of the board, board committees, Chairperson, CEO and Executive Members, ‘are clearly defined and understood within RWWA’.¹⁵⁴ The Committee recommends however that these be publicly disclosed and updated as required, inclusive of such items as the board minutes (where appropriate), code of conduct for board members and the performance management measures of the board and senior management, so that a greater understanding of the goals, objectives, accomplishments and efficacy of the board may be gained by all racing and wagering industry participants.

Finding 16

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

¹⁵² ASX, ‘Corporate Governance Principles and Recommendations with 2010 Amendments, 2nd Edition’, 2007. Available at: www.asx.com.au/about/pdf/cg_principles_recommendations_with_2010_amendments.pdf. Accessed on 31 August 2010.

¹⁵³ Australian National Audit Office, *Different Perspectives of Public Sector Governance Asia and Australia*, October 2009, p5. Available at: http://anao.gov.au/uploads/documents/AICD_speech_October09.pdf. Accessed on 7 September 2010.

¹⁵⁴ Racing and Wagering Western Australia, *Annual Report 2009*, RWWA, p73.

Recommendation 9

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

(e) Future Considerations: the changing governance landscape of RWWA**(i) Market Challenges**

Earlier in this section it was noted that good governance principles are evolutionary in their nature. The ongoing obligation for RWWA to ensure their governance practices are reviewed in light of significant changes in circumstances has been emphasised.¹⁵⁵ This is particularly relevant to RWWA at the present time. During the course of this Inquiry the Committee has heard about the advent of a number of external circumstances that have deeply impacted the operational environment of RWWA in recent years. The external nature of these conditions has placed pressure on the internal operating procedures of RWWA as the organisation attempts to manage and adapt to changing market conditions. Notwithstanding that the board and management have been able to combat many of these pressures effectively, market pressures continue to create an imperative for RWWA to adapt their governance strategies to successfully manage them. This imperative has been raised by RWWA, and the means by which to responsibly counteract these market pressures form the corner stone of their recommendations to the Committee.¹⁵⁶

While these external challenges are examined in greater detail later in the report, in summary these are as follows:

- The advent of corporate bookmakers and other providers of wagering product have injected a considerable amount of competition into the racing and wagering market;¹⁵⁷
- Current and planned reductions in interstate taxation rates have rendered the RWWA wagering product less attractive in the market—resulting in substantial reductions in revenue;
- The increased cost of providing core wagering services due to product and pooling fees, which currently amount to \$4 million and \$11 million per annum, respectively; and
- The rising costs associated with infrastructure maintenance¹⁵⁸ and infrastructure and facility upgrades.

¹⁵⁵ Refer to the part (a)(iii) of this Chapter.

¹⁵⁶ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010.

¹⁵⁷ Constitutional constraints prevent the state from protecting its wagering monopoly and industry funding model. Refer to Chapter 2.9 (Wagering Revenues) for detail on the impact increased competition in the supply of wagering product has had on RWWA.

¹⁵⁸ Maintenance costs include the rising costs associated with additional regulatory and environmental requirements for racing grounds.

Mechanisms to alleviate the strain these market challenges are placing on the industry are discussed in detail throughout this review in acknowledgment of the negative impact they are having on the operational effectiveness of RWWA.

The Committee is mindful of the impact these market challenges are placing on the overall governance of RWWA, particularly at this juncture with respect to the imperative that exists for the RWWA board to most appropriately value add to the activities of RWWA.

The Economic Audit Committee Report notes that the market pressures RWWA currently face may have serious consequences for the future sustainability of the racing and wagering industry. The report argues that if the market share of the TAB continues to erode, then the current industry funding model will be undermined—in which case, alternative models of funding for the industry will have to be explored.¹⁵⁹

The Committee requested clarification on what *alternative funding models* might be considered and received the following response from the Department of Treasury and Finance:

*If the market share continues to be eroded steps could be taken to narrow the scope of Totalisator Agency Board operations to the things that they are most efficient at to provide a return. Ultimately, alternative models may need to be examined in the future, in consultation with the agency and stakeholders, in order to identify a sustainable model that will best, satisfy the requirements of the State Government and other stakeholders.*¹⁶⁰

(ii) Committee structure of RWWA board in response to market challenges

It is clear that RWWA must become increasingly strategic in their governance in an effort to ensure the long term sustainability of the industry. The committee structure of the RWWA board provides a mechanism for focusing on specific strategic issues. To this end, the Committee is of the opinion that the committee structure of the RWWA board should be reviewed to determine if a more appropriate framework can respond to the market challenges RWWA is now facing.

As stated above, Section 16 of the RWWA Act empowers the board to appoint committees of which three currently exist, specifically the IAC, Racing Operations Committee, and Executive Committee. The IAC is established under Section 47 of the RWWA Act and has functions relating to overseeing stewards, drug testing and control, licensing and registration, handicapping, and racing appeals.¹⁶¹ In addition, the IAC has the extra responsibility of performing the role of RWWA's Audit Committee—which includes oversight for internal Risk Management strategies.

An approach considered by the Committee is one recommended in a UK government commissioned review on the governance procedures of financial institutions in response to the

¹⁵⁹ Economic Audit Committee, Final Report October 2009, Government of Western Australia, Perth, 2009, p122.

¹⁶⁰ Mr Timothy Marney, Under Treasurer, Department of Treasury and Finance, Committee Correspondence, 2 August 2010.

¹⁶¹ Section 48 *Racing and Wagering Western Australia Act 2003*.

critical failure these institutions faced during the global financial crisis.¹⁶² The Committee finds that there may be some relevancy in examining a similar framework for RWWA in light of the serious threat market challenges are placing on the future sustainability of the racing and wagering industry in Western Australia.

In brief, it recommends for the establishment of a clearly distinguished Audit Committee and the establishment of a separate Risk Committee. The approach outlines that in practice, Audit Committees have clear responsibilities for oversight and reporting to the board on the financial accounts and adoption of appropriate accounting policies, internal control, compliance and other matters. This is a vital role but is in many ways backward looking whereas, Risk Management, whilst obviously closely related to functions associated with an Audit Committee, could be vested with a largely forward-looking focus if it is given oversight for the board's consideration of both current and future risk exposure.¹⁶³ This could include future infrastructure planning (as discussed in Chapter 2.7(c)).

It may be that such a framework would enable the RWWA board to become increasingly responsive to dynamic market conditions that are placing pressure on RWWA's operations. Section 16 provides the legislative ability for RWWA to review and implement changes to their committee framework. As such, the Committee recommends that such a review be carried out.

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.

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.

¹⁶² David Walker, 'A review of corporate governance in UK banks and other financial industry entities', 16 July 2009. Available at: www.audit-committee-institute.be/dbfetch/52616e646f6d4956f9ed6cb8ae5277dbec35c233bab54a5b/walker_review_consultation_160709.pdf Accessed on 13 September 2010.

¹⁶³ Ibid, p81.

(iii) The Economic Audit Committee (EAC)

The Economic Audit Committee's final report listed a number of recommendations that will be relevant to the future governance of RWWA.¹⁶⁴

The report is aimed at providing recommendations for immediate and ongoing improvement in the outcomes achieved by the Western Australian public sector—and largely focuses on appropriateness of the governance arrangements of entities within the public sector. RWWA is classified as a Government Trading Enterprise (GTE) and as such will be subject to any of the recommendations made in the report that apply to GTEs.¹⁶⁵

The two overarching aims of the EAC report were to recommend that a transparent and consistent governance policy be developed, alongside enhanced general government sector support for the key stakeholders in each GTE. These are reflected in recommendations 28 to 30 of the report which are summarised here:

Recommendation 28: Introduce umbrella legislation to standardise, strengthen and clarify governance arrangements for all GTEs.

Recommendation 29: Establish a GTE advisory and monitoring unit.

Recommendation 30: Review GTEs to ensure that the governance and ownership of each business is appropriate for delivering Government's policy objectives. The review should address the following issues:

- a) Does Government need to be an active participant in the market (due to market failure) or is it simply replicating something the private sector can do (with appropriate regulation)?
- b) Can the GTE operate independently of Government? What policy outcomes is Government seeking from the GTE (for example, fully commercial provider of specific outputs, a source of revenue, industry and/or social policy)?
- c) What is Government's broader policy for the market in which the GTE operates and does the policy have implications for the appropriate ownership and governance of a GTE participating in the market?
- d) The relative merits of outsourcing, rationalising or decorporatising.¹⁶⁶

If implemented, these recommendations will impact on the overarching governance arrangements of RWWA. How much will largely be determined by:

- what provisions RWWA would be subject to under the umbrella legislation;

¹⁶⁴ Economic Audit Committee, Final Report October 2009, Government of Western Australia, Perth, 2009.

¹⁶⁵ Mr Timothy Marney, Under Treasurer, Department of Treasury and Finance, letter, 26 August 2010.

¹⁶⁶ Economic Audit Committee, Final Report October 2009, Government of Western Australia, Perth, 2009, pp x-xi.

- what support RWWA would be able to access from the GTE advisory unit; and
- the findings of the governance and ownership review of RWWA as a GTE.

The Committee finds it is incumbent on RWWA to consider the potential or real impact of these recommendations on any of its current or future governance arrangements.

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.

2.3 Objectives of RWWA

(a) Background

An objective is something that is sought or aimed at.¹⁶⁷ For the purposes of reviewing the operational effectiveness of RWWA, the Committee attempted to gauge what the aims of RWWA are—what RWWA is seeking to achieve, so that an opinion can be formed as to whether RWWA has achieved these aims. The Committee examined the aims behind the establishment of RWWA in 2003 and what objectives or aims were prescribed in the Act; as well as examining feedback on what the industry felt RWWA should be achieving on its behalf and what RWWA considered its main objectives to be.

Whilst the latter views were comprehensively gathered from industry participants and RWWA, the process in its entirety is only briefly summarised here. The Committee discovered considerable ambiguity surrounding the role of RWWA and therefore did not form an opinion on the appropriateness of that role. Instead, stakeholder views are summarised here to highlight the confusion that is present within the racing and wagering industry on this matter, and the importance of RWWA clarifying its objectives will be discussed.

(b) Establishment of RWWA's objectives

The RWWA Act established RWWA as the single controlling body for thoroughbred, harness and greyhound racing in WA. When considering the rationale behind 'the most significant change to the racing industry in its long history',¹⁶⁸ the responsible Minister at the time, Hon. Nick

¹⁶⁷ The Australian Oxford Dictionary, Second Edition, Oxford University Press, 2004.

¹⁶⁸ Hon. Nick Griffiths, MLC, Minister for Racing and Gaming, WA, Legislative Council, *Parliamentary Debates* (Hansard), 9 May 2003, p7416.

Griffiths, MLC offered the following observations made in the Turner Report¹⁶⁹ as a primary driver for the establishment of RWWA:

*...the present governance structure of the racing industry in Western Australia lacks cohesion and strategic direction...Each of the code governing bodies manages its own affairs in isolation. The Minister for Racing and Gaming is [the] last resort...because, in the absence of any strategic directions agreed to for the industry as a whole, or any body responsible for the development of the whole of the industry, there is no other avenue through which individuals or stakeholder groups can represent their concerns or needs and seek action.*¹⁷⁰

From this statement it could be suggested that the founding objectives of RWWA were to offer strategic direction and development of the whole industry—and to provide a means by which stakeholder groups or individuals could raise their concerns and seek action; thus removing the responsible Minister from the role of ‘last resort’. Whilst RWWA may have succeeded in achieving some of these aims, particularly in regard to relieving the Minister from acting on a last resort basis for the industry,¹⁷¹ these aims are not prescribed in the Act.

During the same second reading speech on the Racing and Wagering Western Australia Bill 2003, the Minister indicated that Section 35 of the Bill outlined the governance functions of RWWA with regard to racing.¹⁷² Whilst there was some minor change during the passage of the Bill through Parliament, the governance functions referred to were accepted as the functions of RWWA in relation to racing in general and now constitute Section 35 of the RWWA Act. This section includes that it is a function of RWWA to:¹⁷³

- control, supervise and regulate racing in the State;¹⁷⁴
- to foster the development, promote the welfare and ensure the integrity of metropolitan and country thoroughbred racing, harness racing and greyhound racing, in the interests of the long term viability of the racing industry in Western Australia;¹⁷⁵
- to undertake and manage racing industry strategic planning, promotion, marketing, sponsorship and administration;¹⁷⁶

¹⁶⁹ Western Australian Racing Industry Review Committee, *Future Governance of the Western Australian Racing Industry. A Report to the Minister for Racing and Gaming*, Western Australia, October 2001.

¹⁷⁰ Hon. Nick Griffiths, MLC, Minister for Racing and Gaming, WA, Legislative Council, *Parliamentary Debates* (Hansard), 9 May 2003, p7412.

¹⁷¹ Refer to Chapter 2.4 (a) for information of the Minister’s current role in directing the operations of the racing and wagering industry.

¹⁷² Hon. Nick Griffiths, MLC, Minister for Racing and Gaming, WA, Legislative Council, *Parliamentary Debates* (Hansard), 9 May 2003, p7413.

¹⁷³ Refer to the section 35 *Racing and Wagering Western Australia Act 2003* for a full list of the prescribed functions.

¹⁷⁴ Section 35(1)(a) *Racing and Wagering Western Australia Act 2003*.

¹⁷⁵ Section 35(1)(b) *Racing and Wagering Western Australia Act 2003*.

¹⁷⁶ Section 35(1)(c) *Racing and Wagering Western Australia Act 2003*.

- to supervise racing clubs and their affairs;¹⁷⁷
- to determine the race meetings on which RWWA will conduct off-course wagering;¹⁷⁸
- in consultation with racing clubs, to establish policies for stake money levels and race conditions and programs;¹⁷⁹
- to establish policies for, and manage the provision of, programs for apprentice jockey, trainee driver and other racing industry training requirements,¹⁸⁰ and
- to liaise with government and other authorities, whether in or out of Western Australia, with respect to, and to represent the interests of, the racing industry in Western Australia.¹⁸¹

The Committee notes that it is a comprehensive list of functions, but it fails to attach any priorities to these functions, and its focus concerns many day to day operations of RWWA that offer no guidance as to what the government's long term objectives for RWWA—or the racing industry—are. As such, Section 35, whilst very useful in prescribing the governance functions of RWWA on an operational level, is not a statement of objectives for RWWA. The RWWA Act, when passed, contained no prescribed objectives for RWWA.

(c) RWWA's views on its objectives

The omission from the RWWA Act of any prescribed objectives was a significant issue raised by RWWA in its submission to the Committee. In it, RWWA stated that there are no 'explicit statements of objectives other than the administrative objectives of establishing RWWA as the governing body for the racing industry'.¹⁸² As the body subject to review, RWWA attempted to define a scope of issues by which the Committee could review its performance. As such, RWWA recognised that the lack of any objectives was clearly an impediment for the Committee in exercising this function.

In the absence of any explicit objectives, RWWA suggested that an overriding objective could be inferred from Section 35,¹⁸³ that is, that the objective of the legislation is to 'ensure the long term welfare and sustainability of racing in Western Australia'.¹⁸⁴ While the Committee agrees this

¹⁷⁷ Section 35(1)(d) *Racing and Wagering Western Australia Act 2003*.

¹⁷⁸ Section 35(1)(f) *Racing and Wagering Western Australia Act 2003*.

¹⁷⁹ Section 35(1)(g) *Racing and Wagering Western Australia Act 2003*.

¹⁸⁰ Section 35(1)(h) *Racing and Wagering Western Australia Act 2003*.

¹⁸¹ Section 35(1)(j) *Racing and Wagering Western Australia Act 2003*.

¹⁸² Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p1. The 'administrative objectives' RWWA mentioned in this statement has been inferred to mean the prescribed functions under section 35.

¹⁸³ Specifically Section 35(1)(b), noted earlier, which provides that RWWA is to foster the development, promote the welfare and ensure the integrity of metropolitan and country thoroughbred racing, harness racing and greyhound racing, in the interests of the long term viability of the racing industry in Western Australia.

¹⁸⁴ Submission No. 7C from Racing and Wagering Western Australia, 9 May 2010, p1.

objective is sound, it is of the opinion that the objectives of RWWA, or any statutory body, should not need to be inferred.

(d) Industry views on RWWA's objectives

Evidence received by the Committee demonstrated that industry participants, whilst not in agreement about what the objectives of RWWA should be, nonetheless focus on the functions prescribed in Section 35. Opposing stakeholder views surrounding the issue of RWWA's objectives are briefly summarised here. Views centre on the main issues of country and provincial racing and racing club activities. RWWA's role in regard to education and industry lobbying are also raised here.¹⁸⁵

(i) Views on RWWA's role in regard to country and provincial racing

There is a perception that RWWA has an obligation to foster country racing as much as it does any other area of the industry; yet its focus on wagering activities and generating turnover is undermining the ability of country clubs to survive.¹⁸⁶ Other comments received by the Committee in this regard can be summarised as follows:

- Small clubs which generate very little wagering turnover are vulnerable to being shut down and RWWA should be trying to protect them;¹⁸⁷
- It should be the role of RWWA to ensure that country clubs are 'not allowed (just) to continue, but actually helped to prosper';¹⁸⁸
- A conflict exists between the betting side of the industry and the running of racing, which needs to be resolved through a clear statement of objectives so that clubs, and country and provincial racing, will know if they have protection for existence beyond the good will of the board;¹⁸⁹
- Some country clubs resent being labelled as a liability on the industry and believe it should be the role of RWWA to promote them as an important asset;¹⁹⁰ and
- RWWA puts too much emphasis on wagering and revenue generation at the risk of losing sight of the sustainability of the racing industry, particularly small clubs. This may be due to conflict of interests and/or a lack of resources by the board.¹⁹¹

¹⁸⁵ It should be noted that industry views on RWWA's role with respect to consultation, accountability, funding distribution and infrastructure funding have been discussed in detail in other sections of this report and are therefore not repeated here.

¹⁸⁶ Submission No. 14 from Western Australian Greyhounds Association, 30 November 2009, p5; Mr Jonathan Menzel, Manager, Narrogin Racing, *Transcript of Evidence*, 3 May 2010, p5; Submission No. 46 from Pinjarra Harness Racing Club, 6 April 2010, p4; Mr Matthew Spurr, President, Wagin Trotting Club, *Transcript of Evidence*, 3 May 2010, p2.

¹⁸⁷ Mr Alfred Paganoni, Past President, Western Australian Country Harness Association, *Transcript of Evidence*, 26 February 2010, p15.

¹⁸⁸ Mr Brendon Gardiner, Secretary/Treasurer, Bridgetown Harness Racing Club, *Transcript of Evidence*, 6 April 2010, p2.

¹⁸⁹ Mr Steven McGuire, Tote Manager, Kojonup Race Club, *Transcript of Evidence*, 3 May 2010, p10.

¹⁹⁰ Submission No. 41 from Country Racing Association, 16 April 2010, p12; Submission No. 21 from Broome Turf Club, 17 December 2009 p2.

According to some stakeholders, RWWA must foster regional and remote racing communities in conjunction with metropolitan races, because it will benefit the entire racing industry.¹⁹² Mr Geoff Fahl of the Carnarvon Race Club indicated that maintaining country racing should be the role of RWWA because ‘if you have got strong country racing, eventually you are going to have strong city racing.’¹⁹³ Mr John Biggs, on behalf of NE Goldfields Racing Clubs stated it should be an objective of RWWA to promote country racing, because loss of country racing would have severe ramifications for the industry:

*If those country race meetings were lost, a lot of people would lose interest in the racing industry as a whole. They would not go into the TAB shop and they would not invest money in the TAB; therefore, the turnover will go down. It is very important that we ensure that none of these clubs is allowed to close under any circumstances whatsoever.*¹⁹⁴

Similarly, many stakeholders argued that RWWA has an obligation to foster the needs of all racing throughout the state, regardless of whether it is metropolitan, provincial, country or outer country. It was suggested that RWWA is failing in this obligation by supporting metro-centric policies.¹⁹⁵ WACHRA noted that ‘there is a growing trend to “offload” smaller to medium sized Clubs to fend for themselves’.¹⁹⁶ Mr Mathew Spurr of the Wagin Trotting Club suggested that RWWA is favouring metropolitan clubs and larger provincial clubs, yet is stripping races and stake money from smaller clubs to the point that they are at risk of failing:

*The Great Southern has been severely impacted since the introduction of RWWA, with a stripping of meetings and a lack of stake money to the point where the clubs are still viable...[RWWA] have created scenarios where some clubs will achieve and some will not. This was pretty evident right from the start.*¹⁹⁷

Some stakeholders argued that RWWA has an obligation to grow the industry by retaining industry participants and attracting new people to it. It was proposed that this could only be achieved by RWWA having a clear aim to increase races in country communities—rather than to minimise those races which is RWWA’s current policy. Increasing country races will assist those

¹⁹¹ Submission No. 41 from Country Racing Association, 16 April 2010, p4.

¹⁹² Mrs Margaret Skinner, Secretary, Mt Barker Turf Club, *Transcript of Evidence*, 12 March 2010, p10; Mr Maxwell (Dixie) Solly, President, Country Racing Association, *Transcript of Evidence*, 7 May 2010, pp2, 9.

¹⁹³ Mr Geoff Fahl, Chairman/Treasurer, Carnarvon Race Club, *Transcript of Evidence*, 16 May 2010, p8.

¹⁹⁴ Mr John Biggs, Representative, NE Goldfields Racing Clubs, *Transcript of Evidence*, 19 March 2010, p3.

¹⁹⁵ Mr Tony Marwick, Chief Executive officer, Western Australian Provincial Thoroughbred Association, *Transcript of Evidence*, 26 February 2010, pp6-7; Mr David Prance, Immediate Past Chairman, Kalgoorlie-Boulder Racing Club, 19 March 2010, p2; Submission No 5 from York Racing, 26 November 2009, p4; Submission No. 9 from Mr Frank Peczka, 30 November 2009, p2.

¹⁹⁶ Submission No. 33 from Western Australian Country Harness Racing Association, 19 January 2010, p3.

¹⁹⁷ Mr Matthew Spurr, President, Wagin Trotting Club, *Transcript of Evidence*, 3 May 2010, p2.

owners and trainers that have been required to move out to country areas in order to obtain more affordable land and facilities.¹⁹⁸

Mr Evan Spencer, President of the Golden Mile Trotting Club, asserted that the function of RWWA is to distribute TAB monies to the community—for the benefit of the community. Therefore it is incumbent on RWWA to support country racing as a part of this, because country clubs drive the community focus of RWWA:

*The role of the Golden Mile Trotting Club and the strength of harness racing—all industries like harness racing and gallops—is that it has a regional focus...[they] are community features. RWWA is there to distribute gambling moneys or TAB moneys to the community for the benefit of the community. While it has to be commercial, they certainly are community funds driven from the community, and they should be put back into the community.*¹⁹⁹

(ii) Views on RWWA's role in regard to managing and organising club activities

A number of stakeholders held the firm view that RWWA's charter requires RWWA to engage in activities much broader than just facilitating race meetings, summarised as follows:

- A number of stakeholders asserted that it is the objective of RWWA to assist clubs in the marketing and promotion of their events and their product;²⁰⁰
- RWWA's role should be broader than just facilitating race meetings, they should also be offering professional advice to club secretaries, particularly in regard to the administration of club financial records;²⁰¹ and
- RWWA needs to promote on-course turnover for the long term viability of racing clubs by investing in on-course facilities to encourage people to attend race meetings.²⁰²

It was suggested by a number of industry participants that an objective of RWWA is to promote local racing product but that it has allowed national and international product to take precedence. It was argued that it is essential that RWWA addresses this.²⁰³ The Fremantle Harness Racing

¹⁹⁸ Mr Barry Mahood, Chairman, York Racing Inc, *Transcript of Evidence*, 26 March 2010, pp7-8; Mr Patrick Flynn, Vice President, York Harness Racing Club, *Transcript of Evidence*, 26 March 2010, p7; Mrs Patricia Abbott, Secretary/Treasurer, Busselton Trotting Club, *Transcript of Evidence*, 6 April 2010, p4.

¹⁹⁹ Mr Evan Spencer, President, Golden Mile Trotting Club, *Transcript of Evidence*, 19 March 2010, p13.

²⁰⁰ Submission No. 33 from West Australian Country Harness Racing Association, 19 January 2010, p3; Submission No. 9 from Mr Frank Peczka, 30 November 2009, p2.

²⁰¹ Ms Julie Caldwell, Manager, Bunbury Trotting Club, *Transcript of Evidence*, 6 April 2010, p9; Mr Evan Spencer, President, Golden Mile Trotting Club, *Transcript of Evidence*, 19 March 2010, p13; Mr Bruce Brown, Treasurer and Committee member, Geraldton Harness Racing Club, *Transcript of Evidence*, 29 March 2010, p15; Submission No. 23 from Bunbury Turf Club, 18 December 2009, p1.

²⁰² Mr Robert Howat, President, Western Australian Bookmakers Association, *Transcript of Evidence*, 8 March 2010, p4; Mr Brendon Gardiner, Secretary/Treasurer, Bridgetown Harness Racing Club, *Transcript of Evidence*, 6 April 2010, p7; Mr Kenneth Godley, President, Bunbury Trotting Club, *Transcript of Evidence*, 6 April 2010, p4.

²⁰³ Mr Peter Hemsley, Secretary, Collie Harness Racing Club, *Transcript of Evidence*, 6 April 2010, p2; Mr Nicholas Bosly-Pask, Acting Chair, Narrogin Racing, *Transcript of Evidence*, 3 May 2010, p15.

Club asserted that RWWA has not been strong on promotion and has a role to become more of a corporate citizen and help racing clubs promote their product:

*I believe that RWWA has an obligation to the industry to explore every opportunity that there is to help a club to foster it in the environment that it is in.*²⁰⁴

It was suggested that RWWA should also be building the national and international profile of local racing product by helping clubs build their reputation and by providing some continuity in a club's programming.^{205 206}

Conversely, some stakeholders suggested that it was never the intent for RWWA to have such a say over the day to day operational activities of individual clubs. These stakeholders argued that RWWA should be focusing only on the broader industry issues concerning overall strategy of the industry going forward. The WATA contended that RWWA has too much control over clubs and subsequently limit a club's ability to grow its own local product:

*I think there is a responsibility for RWWA to a certain degree to market the betting engine of racing. But as we mentioned earlier...the fact is that we are a business. Every club is a business. We need to be in a situation where we can stock our own shelves.*²⁰⁷

Perth Racing similarly contended that RWWA's role is to focus on the overall promotion of the industry and to hand back the event management of race meetings to the clubs:

*...RWWA's role...obviously needs to be focused on generic advertising; that is, advertising the product, the betting product, through its agency network and in totality its marketing network... There is a greater level of knowledge within the racing clubs that have become, in effect, the event managers regarding the racing product. It would benefit the industry if some of those functions...came back to the clubs.*²⁰⁸

It is not just metropolitan clubs that have the view that RWWA's role has become too focused on operational activities of clubs. Mr Brett Smith of the Junction Race Club believed that RWWA's purpose should be to keep the allocations going and to help clubs achieve infrastructure upgrades—without being totally dictatorial about what the club can and cannot do.²⁰⁹

²⁰⁴ Mr Geoffrey Warwick, Vice President, Fremantle Harness Racing Club, *Transcript of Evidence*, 4 June 2010, p8.

²⁰⁵ Mr Nicholas Bosly-Pask, Acting Chair, Narrogin Racing, *Transcript of Evidence*, 3 May 2010, p15.

²⁰⁶ Race programming is discussed further at Chapter 3.5 of this report.

²⁰⁷ Mr Robert Bovell, Chief Executive, Western Australian Trotting Association, *Transcript of Evidence*, 26 February 2010, pp9-10.

²⁰⁸ Mr Edward (Ted) van Heemst, Chairman, Perth Racing, *Transcript of Evidence*, 26 February 2010, p2.

²⁰⁹ Mr Brett Smith, Committee Member, Junction Race Club, *Transcript of Evidence*, 16 May 2010, p10.

(iii) Other views on RWWA's role in regard to the racing and wagering industry

Some stakeholders believe that RWWA has an essential role as the controlling body for the industry to lobby the government on issues concerning the industry. WAPTRA submitted that it is the role of RWWA to lobby the government on issues like taxation relief:

*It is incumbent on RWWA to actively and vigorously explore every avenue of political lobbying of all persuasions.*²¹⁰

Mr Evan Spencer of the Golden Mile Trotting Club considered it a core function of RWWA to lobby on behalf of clubs on issues surrounding the stabling of horses and other animal welfare issues:

*Horse stabling is core business to RWWA. RWWA should have a say in legislation for housing and cost effective health issues for horses.. I do not think that RWWA has lobbied hard with health requirements for stabling of horses. No-one else has a better knowledge, control and ability to drive, purchase power, common design, commonality and approach than RWWA, and I believe that should be a core function of RWWA.*²¹¹

From yet another angle, some stakeholders considered it of vital importance that RWWA promotes and develops education courses for the industry. WACHRA highlighted that there may be a skills shortage looming with respect to farriers:

*There is a really urgent need for something to be done there...The farrier is more important in harness racing than in the thoroughbred industry, but there is really nothing happening there... Something could be done through TAFE to train farriers.*²¹²

The Pinjarra Harness Racing Club suggested that some forward planning needs to be implemented so that courses are developed before a skills shortage occurs.²¹³

(e) Clarifying RWWA's objectives - why it is important

The Committee notes that throughout the Inquiry stakeholders have offered differing views on a number of issues. The significance of this as it relates to the aims of RWWA is that if stakeholders, at the most primary level, do not agree on *what RWWA is meant to be doing*, considerable operational pressure may be put on RWWA in its role as the controlling body for the many and varied interests within the racing and wagering industry. Many industry stakeholders have a strong view as to what the function of RWWA is, which will sometimes be in direct opposition to another stakeholder's view.

²¹⁰ Submission No. 24 from Western Australian Provincial Thoroughbred Racing Association, 24 December 2009, p2.

²¹¹ Mr Evan Spencer, President, Golden Mile Trotting Club, *Transcript of Evidence*, 19 March 2010, p15;

²¹² Mr Kerry Clarke, President, Western Australian Standardbred Breeders Association, *Transcript of Evidence*, 7 May 2010, p23.

²¹³ Mr Kimberley Tuckey, President, Pinjarra Harness Racing Club, *Transcript of Evidence*, 6 April 2010, p7.

This phenomenon is only exacerbated by the current economic pressure that RWWA is experiencing. Currently, RWWA is without any protection from industry frustration in the event that it makes an unpopular decision that appears to be contrary to Section 35. The failing of Section 35, as previously noted, is that it does not place any priority onto any given function. Hence, in an environment of limited resources, some of these functions may necessarily compete with other functions. From the evidence it can be seen that stakeholders are of the view that RWWA is giving priority to some areas of the industry at the detriment of others. The Committee argues that this has created confusion and opposition amongst stakeholders as to what priorities, or objectives, RWWA should be trying to achieve through its operations.

It is also problematic for RWWA in trying to manage industry expectations about what it can effectively achieve in the coming years. If RWWA's objectives are clarified, that is, if it was provided with an objective or 'mission statement' explicitly stated within the Act—set by the government—in light of what the government wants RWWA to achieve in the long term, it would provide a framework within which RWWA can operate and make decisions in the short term to best achieve its long term objectives.

It is not the function of an overarching objective to determine day to day functions of RWWA; as RWWA must be able to perform its operations in an environment that is responsive to market conditions. Nonetheless, it is the Committee's opinion that if the broader industry is aware of the long term explicit objectives of RWWA—and has the confidence that, through legislation, RWWA must work towards trying to achieve these objectives, stakeholder frustration about day to day decisions made by RWWA will diminish. The Committee finds therefore that the RWWA Act should be amended to include an explicit statement of objectives for RWWA.

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.

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.

When asked to comment about the absence of any explicit statement of objectives in the legislation, RWWA agreed it was problematic because some of the functions listed in Section 35 could lead to conflicting outcomes.²¹⁴ Mr Richard Burt, CEO of RWWA highlighted that the key

²¹⁴ Mr Richard Burt, CEO, Racing and Wagering Western Australia, *Transcript of Evidence*, 30 April 2010, p11.

word that would need to be included in a statement of objectives for RWWA is the word ‘sustainability’.²¹⁵ Expanding on this theme, RWWA was asked to provide the Committee a further elaboration on the wording associated with Section 35. RWWA’s response to the Committee was as follows:

*...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, RWWA is to recognise the unique characteristics of each racing code so as to maximise the sustainability of racing in Western Australia.*²¹⁶

Elaborating on this wording, RWWA advised that:

*...the mission statement of RWWA should include words to the effect [that]...In undertaking these objectives—this is new—RWWA is to recognise the unique characteristics of each racing code so as to maximise the sustainability of racing in Western Australia. This is the key.*²¹⁷

The Committee agrees with the mission statement put forward by RWWA. It is of the view that it will assist both RWWA and stakeholders define what it is that RWWA is trying to achieve.

In order for the statement to satisfy this purpose, it should not be given the same practical designation as any other function listed in Section 35. As such, it would be appropriate for the statement to be inserted into the RWWA Act as a stand alone statement of RWWA’s objectives with respect to racing.

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.

²¹⁵ Ibid., p12.

²¹⁶ Submission No. 7C from Racing and Wagering Western Australia, 31 May 2010, p4.

²¹⁷ Mr Richard Burt, CEO, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, p46.

2.4 Accountability

(a) Accountability functions of RWWA

As part of the governance framework of an organisation, accountability is generally considered to be an indispensable check on how power is exercised. It is a measure that those exercising public power are answerable, responsive and transparent.²¹⁸ This section presents a summary of stakeholder views on accountability. An examination is also provided of the prescribed framework within Part 6 of the RWWA Act and other operational procedures that constitute the accountability system for RWWA, and whether these facilitate RWWA being an *answerable, responsive and transparent* organisation.

Part 6 of the RWWA Act 2003 requires RWWA to comply with two basic accountability mechanisms:

- A Strategic Development Plan (SDP); and
- A Statement of Corporate Intent (SCI).

The processes by which these two mechanisms are prescribed accountability measures of RWWA are explained below.

(i) **Strategic Development Plan (SDP)**

Section 66 of the RWWA Act requires the RWWA board to prepare a draft SDP each year and submit it to the Minister for Racing and Gaming for the Minister's agreement. The RWWA Act specifies matters to be considered when preparing a plan, specifically:

- 1 competitive strategies, pricing of products, productivity levels, financial requirements, capital expenditure and personnel requirements;
- 2 how funds are to be distributed to racing clubs across the various codes and between metropolitan and regional areas; and
- 3 any other matters as agreed between the Minister and the board.²¹⁹

The plan must cover a forecast period of 5 years unless otherwise agreed with the Minister and is to 'set out economic and financial objectives and operational targets and how those objectives and targets will be achieved'.²²⁰

²¹⁸ Commonwealth Ombudsman, 'Accountability of Government', 12 May 2007. Available at: www.ombudsman.gov.au/pages/publications-and-media/speeches-and-presentations/speech-2007-may-12.php Accessed on 19 February 2010.

²¹⁹ Section 68(2) *Racing and Wagering Western Australia Act 2003*.

²²⁰ Sections 66, 67, 68(1) and 72 *Racing and Wagering Western Australia Act 2003*.

Minister's power in relation to the Strategic Development Plan (SDP)

Upon receipt of the draft SDP from the RWWA board, Section 70 allows the Minister to return the draft to the RWWA board requesting that any matter be considered further should the Minister not agree with some section of the plan. The board must comply with this request as soon as it is practicable—or, if agreement is not reached,²²¹ the Minister can direct the board to take specific steps or make specific modifications to the draft plan. Once RWWA and the Minister agree on a draft plan, it then becomes the SDP for the relevant financial year (or remainder of the year if the time taken for the Minister and board to reach agreement was prolonged).²²²

Subsequent modifications may be made to the SDP. The RWWA board can modify it with the agreement of the Minister; or after consultation with the board, the Minister can direct the board to modify the SDP which it must comply with.²²³ Notably, Section 74 prescribes that the Minister is not to agree to any draft plan, or direct any modifications to a plan without the concurrence of the Treasurer.²²⁴

(ii) Statement of Corporate Intent (SCI)

Every year, RWWA is also required to prepare and submit to the Minister a Statement of Corporate Intent (SCI). The SCI must be consistent with the Strategic Development Plan for that financial year and must include the following considerations:

- 1 an outline of objectives;
- 2 an outline of main undertakings during the relevant financial year;
- 3 how funds are to be apportioned to racing clubs across the various codes and between metropolitan and regional areas;
- 4 an outline of the nature and scope of functions RWWA propose to perform in the relevant financial year;
- 5 accounting policies;
- 6 information of the type given to the Minister in annual reports; and
- 7 performance targets and other matters that the board consider relevant to include.²²⁵

Section 77(3) allows the Minister to exempt RWWA from including any matter listed above.

²²¹ That is, that the Minister and the RWWA board do not reach an agreement on the draft SDP.

²²² Section 72 *Racing and Wagering Western Australia Act 2003*.

²²³ Section 73(2) *Racing and Wagering Western Australia Act 2003*.

²²⁴ The significance of this is discussed later in this section.

²²⁵ Section 77 *Racing and Wagering Western Australia Act 2003*.

Minister's power in relation to the Statement of Corporate Intent (SCI)

The Minister may request that the board considers any matter and revises the Statement of Corporate Intent accordingly. The board must comply with this request as soon as practicable. The SCI must be tabled in Parliament within 14 days of receipt by the Minister.²²⁶ RWWA may request—and the Minister can comply, that a commercially sensitive matter be deleted from the tabled SCI. If this is the case, the tabled SCI must contain a statement detailing the reasons for the deletion in its place—together with an opinion on the commercial sensitivity of the deleted portion from the Auditor General.²²⁷

It is interesting to note that whilst the Minister does not have any provision to alter the SCI once it has been tabled, Section 80 prescribes that the Statement of Corporate Intent can be modified by the RWWA board.

(iii) Other prescribed roles with respect to accountability

Other than the Minister's role in the development and approval of SDPs and SCIs, the Minister for Racing and Gaming has limited involvement in the accountability operations of RWWA:

- Section 83 prescribes that the Minister is entitled to access, copy and retain information and documents from RWWA and any subsidiary and that RWWA is to comply with this request and make staff and facilities available for this process to be carried out;
- RWWA is also required to keep the Minister reasonably informed of its operations, financial performance and financial position of RWWA and its subsidiaries, including information such as 'assets and liabilities, profits and losses and prospects of RWWA and its subsidiaries.'²²⁸ This includes notifying the Minister if any matter arises that will significantly impact on RWWA's ability to either achieve the targets contained in its Strategic Development Plan or the objectives outlined in its Statement of Corporate Intent.²²⁹
- If RWWA or a subsidiary becomes unable to fulfil, or is likely to be unable to fulfil—any financial obligation of RWWA or a subsidiary, notice must be given to the Minister in writing and include the reasons for the board's opinion and any information determined by the board to be relevant. There is no prescribed time frame within which this notice to the Minister must be carried out;²³⁰
- RWWA's accounts and managements records must be kept in a place approved by the Gaming and Wagering Commission ('the Commission'), which also has access to those records.²³¹

²²⁶ Section 79 *Racing and Wagering Western Australia Act 2003*.

²²⁷ Sections 79(2) and 79(3) *Racing and Wagering Western Australia Act 2003*.

²²⁸ Section 84(a) *Racing and Wagering Western Australia Act 2003*.

²²⁹ Sections 83 and 84 *Racing and Wagering Western Australia Act 2003*.

²³⁰ Section 85 *Racing and Wagering Western Australia Act 2003*.

²³¹ Section 8 *Racing and Wagering Western Australia Act 2003*.

No prescribed role exists under the RWWA Act for the Department of Racing, Gaming and Liquor. Mr Barry Sargeant, Director General of DRGL noted that the Department has reduced involvement in the racing and wagering industry compared to the previous system of governance under the principal clubs and the Totalisator Agency Board. He summed up the role of the Department in the following way:

*I still control the correspondence and complaints that come through about RWWA and other matters. I get involved in some of the broad government policy but a lot of it is generated through RWWA. My agency does not have that involvement. I still regulate the TAB through the Gaming and Wagering Commission. We still regulate the bookmakers through the Gaming and Wagering Commission.*²³²

Significantly, Section 81 of the RWWA Act states that RWWA is not subject to direction from government and—except as provided by the Act, RWWA is not required to comply with any direction or administrative request made by or on behalf of government. It is also important to note that RWWA has a duty under Section 28 of the RWWA Act to perform its functions in accordance with its SDP and SCI and while RWWA also has a duty to act on commercial principles, where there is a conflict the SDP and SCI prevail.²³³

Other legislated accountability requirements are as follows:

- RWWA is subject to the provisions of the *Financial Management Act 2006*; and the *Auditor General Act 2006*;²³⁴
- The Minister may (with the concurrence of the Treasurer) impose monetary limits on what RWWA can borrow/obtain in the form of credit;²³⁵
- RWWA is subject to regulation by the Gaming and Wagering Commission for many of its prescribed functions, including the licensing of its Directors and Key Employees;²³⁶
- The Commissioner of State Revenue has the power to access and inspect RWWA premises, including totalisators, totalisator agencies and other premises of RWWA and to perform other duties as required;²³⁷ and
- A police officer, RWWA director, steward or authorised person can enter any of RWWA's premises to audit, inspect and determine that the requirements of the RWWA Act 2003 are being met;²³⁸

²³² Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, *Transcript of Evidence*, 19 February 2010, pp8-9.

²³³ Section 29 *Racing and Wagering Western Australia Act 2003*.

²³⁴ Section 108 *Racing and Wagering Western Australia Act 2003*.

²³⁵ Section 98 *Racing and Wagering Western Australia Act 2003*.

²³⁶ Sections 14 and 24 *Racing and Wagering Western Australia Act 2003*.

²³⁷ Section 114 *Racing and Wagering Western Australia Act 2003*.

The Committee notes that whilst there is obviously a suite of legislation to which RWWA must comply and that will, in practice, contribute to the overall accountability framework,²³⁹ they are nonetheless outside the scope of this Inquiry. The Committee will therefore not examine the impact of these—other than to acknowledge that RWWA is subject to external accountability requirements which involve considerable reporting and administrative demands.

Finding 21

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

(b) Views on the accountability of RWWA and mechanisms to improve accountability

The Committee received evidence highlighting concerns regarding the exercise of RWWA's accountability functions. In this regard the majority of stakeholders felt that RWWA has a broad obligation to industry participants to be accountable for its financial operations and its strategic decision making processes. Correspondingly, industry participants were generally of the view that RWWA should be accountable to government, either directly or through the development and tabling of the Statement of Corporate Intent. Lastly, racing clubs in particular noted that there was no external accountability mechanism that allowed clubs the ability to appeal decisions by RWWA which would impact significantly on a club. Feedback surrounding these points are summarised briefly here along with suggested mechanisms for improvement.

(i) RWWA's accountability for financial operations and transparency regarding its strategic decision making processes

A number of stakeholders expressed the opinion that there is a lack of accountability with respect to general decision making processes within RWWA. The main comments put to the Committee can be summarised as follows:

- Some very big decisions have been made by RWWA that affect a lot of people in the industry but there is no accountability about who makes those decisions;²⁴⁰

²³⁸ Section 113 *Racing and Wagering Western Australia Act 2003*. This right to enter includes premises of totalisators, totalisator agencies and other premises of RWWA or any racecourse; race club or other sporting venue where wagering takes place; or any premises where a racing horse or greyhound is kept, trained or raced.

²³⁹ Examples of other legislation that contribute to the accountability framework of RWWA are: *Racing Restriction Act 2003*; *Gaming and Wagering Commission Act 1987*; *Betting Control Act 1954*; and the *Statutory Corporations (Liabilities of Directors) Act 1996*; *Equal Opportunity Act 1984*. In addition, there are clearly a vast number of general legislation requirements such as *Corruption and Crime Commission Act 2003*; *the Freedom of Information Act 1992*; *Public Interest Disclosure Act 2003*; *Occupational Safety and Health Act 1984*; *Equal Opportunity Act 1984*; *Criminal Code Act 1913 (WA)* and *Criminal Code Act 1995 (Commonwealth)* and the *Trade Practice Act 1974*.

²⁴⁰ Mr David Wrensted, Vice Chair, Western Australian Provincial Thoroughbred Racing Association, *Transcript of Evidence*, 26 February 2010, p12.

- The [Northam Race Club] is totally unaware of the decision-making process within RWWA and what their priorities are;²⁴¹
- RWWA does not seem answerable to the industry and is not open about its decision making processes;²⁴²
- RWWA needs to become more accountable, particularly in regard to its responsibility to administer the racing industry because if unchecked, RWWA will simply focus on growing its wagering interests;²⁴³ and
- RWWA appears to have no accountability in many areas and seems intent to grow metropolitan racing to the detriment of regional WA.²⁴⁴

There was concern expressed over the lack of accountability with respect to RWWA's financial operations. Both wagering and racing stakeholders claimed that there is a lack of accountability surrounding the manner in which RWWA spends money before it is distributed to the codes—particularly in regard to the operating costs of RWWA.²⁴⁵

Mr Tony Marwick, Northam Race Club, noted that there is a lack of explanation concerning the rationale behind RWWA's funding decisions. He said of RWWA that whilst he understood RWWA needs to make decisions as the governing body, it is not transparent and many clubs are in the dark regarding why a funding model has been presented, what the logic is behind it, and where RWWA has gathered its information on which to base its decisions.²⁴⁶ Mr Robert Tomlinson, BOTRA, said that the harness industry would benefit greatly if there was more transparency about where funding distributions were going—whether it is into infrastructure; racing, or stakes, as it would help participants plan for the future.²⁴⁷

Evidence was also received by the Committee suggesting a lack of information put to clubs regarding the financial performance of clubs relative to each other. It was noted that prior to the advent of RWWA, each club was able to see how well another club was performing—which in turn would assist the club to gauge its performance, and would allow clubs to have a complete understanding of how and where club funding was being distributed.²⁴⁸ Mrs Margaret Skinner, Mt

²⁴¹ Mr Tony Marwick, President, Northam Race Club, *Transcript of Evidence*, 26 March 2010, p2.

²⁴² Mr Kenneth Godley, President, Bunbury Trotting Club, *Transcript of Evidence*, 6 April 2010, p2.

²⁴³ Mr Brendon Gardiner, Secretary/Treasurer, Bridgetown Harness Racing Club, *Transcript of Evidence*, 6 April 2010, p8.

²⁴⁴ Submission No. 12 from Narrogin Racing, 30 November 2009, p6.

²⁴⁵ Submission No. 41 from Country Racing Association, 16 April 2010, p3; Mr Dino Di Cianno, Director, Best Bookies Price Pty Ltd, *Transcript of Evidence*, 8 March 2010, p14; Mr Jonathan Menzel, Manager, Narrogin Racing, *Transcript of Evidence*, 3 May 2010, p10.

²⁴⁶ Mr Tony Marwick, President, Northam Race Club, *Transcript of Evidence*, 26 March 2010, p2.

²⁴⁷ Mr Robert Tomlinson, President, Breeders, Owners, Trainers, Reinspersons Association, *Transcript of Evidence*, 7 May 2010, p5.

²⁴⁸ Mr Kenneth Nottle, President, Harvey District Trotting Club, *Transcript of Evidence*, 6 April 2010, p12; Submission No. 13 from Mt Barker Turf Club, 30 November 2009, p2.

Barker Turf Club, noted that the previous system would contribute to the overall accountability on club funding, as every aspect of it was open:

*Everybody in the provincial association knew exactly where every club was and what their stake money was. Every aspect of each club's finances was clear.*²⁴⁹

Mrs Skinner continued that because these figures are no longer shared, clubs have to rely on each other to share this information in order to gauge how they are faring compared to their competitors; how clubs in particular areas are performing overall and to establish where the money is going.²⁵⁰ When asked if it would be useful to know what competing clubs are doing and how much turnover they are producing, Mr Paul Rossiter of the Bunbury Turf Club noted that it would be hugely beneficial to clubs.²⁵¹

In summary therefore, the feedback received by the Committee shows that there is a perceived lack of transparency about decision making processes within RWWA. It is apparent that this issue is having a negative impact on the industry. This is evidenced by the CRA's view that there is a sense of deficiency about the accountability of RWWA board decisions which has led to 'a feeling of distrust and concern between parties'.²⁵² It is the Committee's opinion that if this issue is allowed to continue, it will have an increasingly negative impact on the effectiveness of the operations of RWWA. As such, the Committee finds that this issue should be explored further and remedied by RWWA as a priority.

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.

As noted in Chapter 2.2, a basic principle of good governance—of which accountability is an integral part—is preserving stakeholder confidence.²⁵³ It is not unreasonable that a stakeholder may therefore feel a lack of confidence about decisions if they are unable to determine the quality of information being factored into—or have any knowledge of, any decision making process. Conversely, if RWWA was to be more accountable about its decision making processes, stakeholder confidence in these decisions may increase which could—in turn, increase the overall operational effectiveness of RWWA. The Committee therefore recommends that RWWA

²⁴⁹ Mrs Margaret Skinner, Secretary, Mt Barker Turf club, *Transcript of Evidence*, 12 March 2009, p8.

²⁵⁰ Ibid.

²⁵¹ Mr Paul Rossiter, Manager, Bunbury Turf Club, *Transcript of Evidence*, 7 May 2010, pp7-9.

²⁵² Submission No. 41 from Country Racing Association, 16 April 2010, pp3-4.

²⁵³ ASX, 'Corporate Governance Principles and Recommendations with 2010 Amendments, 2nd Edition', 2007. Available at: www.asx.com.au/about/pdf/cg_principles_recommendations_with_2010_amendments.pdf Accessed on 31 August 2010.

discloses its decision making procedures as this would facilitate a greater understanding among industry stakeholders of how long-term planning decisions are made.

Recommendation 12

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

The Committee received extensive feedback about the lack of open and up to date sharing of individual club financial information. It was asserted that this is becoming a barrier to stakeholder confidence. The Committee finds that, given this evidence, there is merit in clubs being made aware of their relative financial performance so that there is clear and open accountability in regard to club financing. While the Committee acknowledges that RWWA currently publishes annual Racing Industry Status Reports, which compare racing statistics and turnover for the season just gone, the criticism seems to relate primarily to openness surrounding the allocation of funds to clubs for the season to come. As such, the Committee finds that greater transparency measures should be introduced to enable one club to see another club's finances in the context of RWWA's distribution of funds.

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.

Recommendation 13

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

(ii) Accountability to government

The former Minister for Racing and Gaming, Hon. Nick Griffiths contends that the RWWA Act, when passed, went 'a long way in getting rid of government from the racing industry, and the job should be completed'.²⁵⁴ Mr Griffiths is of the view that the industry should be left to run the industry—that the Minister should not appoint the chair of the board, indeed that there is no need

²⁵⁴ Hon. Nicholas Griffiths, Former Minister for Racing and Gaming, *Transcript of Evidence*, 19 February 2010, p9.

to have a racing minister or the Department of Racing Gaming and Liquor.²⁵⁵ Mr Griffiths' rationale is that 'there is no benefit at all in having government involved in these activities'.²⁵⁶ Interestingly, the Committee sought the broad opinion of industry participants on the view put forward by the former Minister, and it became clear that widespread support is lacking for RWWA to become completely independent of government, a matter discussed further in the context of the structure of RWWA in Chapter 2.10.

Stakeholders held the view that some governmental oversight within RWWA's accountability framework was beneficial for the racing and wagering industry.²⁵⁷ Mr Robert Bovell, WATA, went so far as to say that allowing RWWA to be completely independent of government could be a dangerous thing because it would give RWWA absolute power and remove the ability of any club or any government to have a say.²⁵⁸

Evidence to the Inquiry suggested that government oversight is necessary, and because RWWA currently requires the assistance of government to meet its burgeoning capital infrastructure requirements, it is appropriate that RWWA is held accountable to the government for the funding it receives.²⁵⁹ Similarly, Mr Ross Bowe, Chairman of RWWA, noted that because RWWA will need to call on the government in extraordinary circumstances²⁶⁰ it is not reasonable to expect that RWWA can be independent of government and that, if it did occur, the implications would be felt across the industry.

*It is unrealistic to expect that we can be totally removed from some sort of government oversight. That would have social and community implications across the state. I am inclined to think that the present model is the preferable one.*²⁶¹

Mr Kevin Jeavons of BOTRA asserted that RWWA is dependent on government for funding and given that this will continue to happen in one form or another, the government should know how these funds are spent.²⁶²

²⁵⁵ Ibid., pp8-9.

²⁵⁶ Ibid., p9. By proposing that the racing and wagering industry should be completely independent from government, the former racing minister assumes that there is no public money involved in funding the industry—which is a fact not supported by the views above nor the findings of this Inquiry. Refer to Chapter 2.2 Governance) and 2.8 (Taxation) for a discussion on the public nature of RWWA's funds.

²⁵⁷ Mr Brian Paddick, Secretary, Western Australian Racing Trainers Association, *Transcript of Evidence*, 26 February 2010, p11; Mr Rodney O'Bree, Chairman, Geraldton Turf Club, *Transcript of Evidence*, 29 March 2010, p12; Mr Harvey Crossman, President, Western Australian Racehorse Owners Association, *Transcript of Evidence*, 26 February 2010, p2.

²⁵⁸ Mr Robert Bovell, Chief Executive, Western Australian Trotting Association, *Transcript of Evidence*, 26 February 2010, p8.

²⁵⁹ The implications of this view are discussed in Chapter 2.8 (Taxation) of this Report.

²⁶⁰ Such as the current financial pressures that RWWA is facing - refer to Chapter 2.9 (Wagering revenues) for detail.

²⁶¹ Mr Ross Bowe, Chairman, Racing and Wagering Western Australia, *Transcript of Evidence*, 30 April 2010, p19.

²⁶² Mr Kevin Jeavons, President, Harness Racing Owners Association of Western Australia, *Transcript of Evidence*, 7 May 2010, p18.

Another argument for RWWA to remain accountable to government relates to the fact that the industry encompasses community and country aspects of racing that are not necessarily commercially profitable. The evidence from stakeholders suggests that because RWWA is largely focused on increasing wagering turnover, this could potentially occur at the expense of community and country clubs which have limited opportunity to profitably compete. As such, country and community clubs require the oversight and protection of the government to ensure their continued existence.²⁶³ The Geraldton Turf Club stated that country clubs would be wary if there was less government involvement.²⁶⁴ Mr Tony Marwick, Northam Race Club, suggested that Ministerial oversight as it currently exists is necessary; otherwise, if RWWA was to become completely independent, the community aspects of racing will be surrendered because they are not profitable enough:

*It is not all about financial decisions; it is about communities, the industry and industry participants all through the state. If [RWWA] are allowed to be totally independent, you may well find...that you have a lot of these small community clubs fall off the cliff.*²⁶⁵

Evidence therefore suggests that the majority of stakeholders would prefer that the Minister retains the current involvement in the racing and wagering industry for accountability purposes.

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.

(iii) External accountability mechanisms

The third major component of evidence to the Committee concerned external accountability mechanisms that would enable clubs to appeal decisions by RWWA. This matter is discussed in greater detail in Chapter 2.5.

(c) The need for a Statement of Corporate Intent and other accountability mechanisms

In 2009, the Auditor General noted that RWWA had not tabled an SCI for the 2008 or 2009 financial years.²⁶⁶ The CRA highlighted the fact that RWWA has not posted a Statement of

²⁶³ Ministerial oversight has also been propounded by clubs in the context of an external accountability measure for clubs appealing decisions made by RWWA. Appeals are discussed in Chapter 2.5.

²⁶⁴ Mr David Wrensted, Manager, Geraldton Turf Club, *Transcript of Evidence*, 29 March 2010, p12.

²⁶⁵ Mr Tony Marwick, President, Northam Race Club, *Transcript of Evidence*, 26 March 2010, pp7-8.

²⁶⁶ Western Australian Auditor General, *Audit Results Report 2008-09 Assurance Audits*, November 2009, p27. Available at: www.audit.wa.gov.au/reports/pdfreports/report2009_13.pdf Accessed on 1 July 2010.

Corporate Intent on its website for some years and that it is ‘unclear that these vital documents even exist’.²⁶⁷

It could be argued therefore that the Statement of Corporate Intent is not really effective as an accountability mechanism and could be removed as a requirement that RWWA has to satisfy. The former Racing and Wagering Minister, Hon. Nick Griffiths, was very strong in his opposition to the requirement for RWWA to submit an SDP or an SCI. He argued that these mechanisms were put in place merely to help the passage of the bill through Parliament and should not continue as they place an unnecessary burden by government on the industry:

*Why should there be a need for this industry...to prepare and submit for approval an annual strategic development plan? This uses up resources, and it is not done in a timely way anyway. Why should it be required to prepare and submit for tabling in Parliament an annual statement of corporate intent? These provisions for the most part are there because I had to get the job done...so I put in place these bells and whistles... But I do not think they should exist.*²⁶⁸

This view was put to Mr Barry Sargeant of DRGL who responded that both the SCI and the Strategic Development Plan were appropriate accountability mechanisms for RWWA as long as it remains a statutory body.²⁶⁹ He summed up the process as follows:

*The requirement is that [RWWA] have to submit only their strategic development plan to the minister and it is approved by the Treasurer. The statement of corporate intent is the only one that is tabled. The other remains a confidential document. That comes back to the philosophy of whether you want it within government or not... If you expect the public purse to support it, it is fair enough for the public purse to look at what the liabilities are and what is happening. It is a philosophical position...The government basically still has responsibility for much of it; therefore, it is only appropriate that the government of the day sees what is going on.*²⁷⁰

Given therefore, that the Committee has found it appropriate that RWWA should remain within the auspices of the government,²⁷¹ Mr Sargeant’s argument suggests that RWWA should continue to comply with Sections 66 and 75 of the RWWA Act. It is important to note that the powers of the Minister in relation to the drafting and approval of any draft strategic plan are arguably the most prescriptive in the context of directing any operational aspect of RWWA. This is primarily because Section 81 states that unless specifically prescribed under the RWWA Act, RWWA is not otherwise subject to direction from government. The Committee’s view is that it is appropriate for RWWA to provide information to the Minister on the strategic direction of RWWA—and that the

²⁶⁷ Submission No. 41 from Country Racing Association, 16 April 2010, p4.

²⁶⁸ Hon. Nick Griffiths, Former Minister for Racing and Gaming, *Transcript of Evidence*, 19 February 2010, pp8-9.

²⁶⁹ Refer to Chapter 2.2 (c)(ii) on Governance for detail on the establishment of RWWA as a statutory body.

²⁷⁰ Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, *Transcript of Evidence*, 19 February 2010, p6.

²⁷¹ Refer to Chapter 2.10 (Structure of RWWA) for a discussion on the Committee’s findings.

Minister, as the representative of the government of the day, can in turn provide input into the future direction of the racing and wagering industry.

A further aspect to consider when examining the need for RWWA to table an SCI is the needs of stakeholders. Industry stakeholders and the broader community are of the view that RWWA has an obligation to the industry to be more accountable—which supports the tabling of an SCI. Industry participants have strong regard for the direction RWWA is proposing for the industry. Determining a particular direction must necessarily involve strategic decisions—many of which may financially impact on industry participants with vested interests. It is therefore fitting that these stakeholders are able to have access to what RWWA intends to achieve. Whilst the SDP is confidential, the SCI is a public document which, if tabled, can be accessed by all industry participants. Significant too is that RWWA is obligated to perform its functions in accordance with its SCI.²⁷² As such, this accountability mechanism is critical for ensuring that RWWA is a more responsive and transparent organisation.

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.

(i) Mechanisms to improve the SCI

Given the relative importance of the SDP and SCI, the Committee was concerned that RWWA had not tabled a SCI since the 2007 financial year. When asked to explain, RWWA stated that it had in fact submitted a draft SDP to the Minister for approval in the two years since 2007 but the Treasurer did not concur with either of them.²⁷³ As such, RWWA was unable to prepare an SCI based on an approved SDP.²⁷⁴ It is clear that being unable to table an SCI is currently limiting RWWA's accountability efforts. The state government's Economic Audit Committee Final Report made note of this problem as it generally applies to Government Trading Enterprises (GTEs),²⁷⁵ stating that:

²⁷² This relates to RWWA's duty under Section 28 of the RWWA Act to perform its functions in accordance with its SDP and SCI.

²⁷³ Submission No. 7D from Racing and Wagering Western Australia, 2 August 2010, p17.

²⁷⁴ Sections 72 and 74 provide that the Minister cannot agree to a draft strategic development plan (thus becoming the strategic development plan for the relevant financial year) except with the Treasurer's **concurrence**; and Section 75 prescribes that the SCI must be based on the relevant strategic plan for the financial year to which the SCI relates.

²⁷⁵ Page 110 of the Economic Audit Committee, Final Report October 2009 (Government of Western Australia, Perth) distinguishes a GTE from other parts of the public sector by the fact that GTE's charge for the goods and services they provide and are in most cases self-financing.

*The State Solicitor's Office has recently advised the term concur prevents the Treasurer from being able to impose any conditions or restrictions on the operation of the SCI and SDP. This is inconsistent with the intent of the wording, which seeks to recognise the role of the Treasurer and the impact of the operation of GTEs on the government's finances more generally.*²⁷⁶

As such, the Committee recommends that Section 74 of the RWWA Act be amended to include the ability of the Treasurer to offer some direction on the operation of the SDP and SCI. In so doing it is hoped that the impediment can be removed thereby allowing for an SCI to be tabled.

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.

Despite the Committee finding that the SDP and SCI are effective accountability tools, there is room for improvement—particularly in regard to the sort of information that is included in the SCI. As noted earlier, Sections 68 and 77 of the RWWA Act require the SDP and the SCI to contain specific information. These provisions are in some cases generic performance measures that may not necessarily apply to the 'mixed bowl of lollies'²⁷⁷ that comprise the racing and wagering industry—and may in fact, hinder the efforts of RWWA to be accountable.

The challenge for RWWA with some of these provisions is how it can produce measures across all codes and wagering that will be meaningful to stakeholders. Further exacerbating the effectiveness of these mechanisms is that because the requirements are set in legislation, the capacity of RWWA to include matters that more appropriately reflect changing operational environments are limited.²⁷⁸ The Committee proposes that in order for the SDP and SCI to be effective accountability measures, the information contained therein must be useful to the industry, to RWWA, and to the government. The Committee therefore finds that the content requirements for the SDP and the SCI should more appropriately be specified in regulation to allow for greater flexibility in the face of changing market conditions. Further, that the current requirements be reviewed to ensure that the information contained within the SDP and the SCI is meaningful and relevant to the current operations of RWWA.

²⁷⁶ Economic Audit Committee, Final Report October 2009, Government of Western Australia, Perth, 2009, p118.

²⁷⁷ Mr David Simonette, CEO, Western Australian Greyhound Racing Association, *Transcript of Evidence*, 30 April 2010, p10.

²⁷⁸ Refer to Chapter 2.9(a) for a discussion on the market challenges that are impacting on RWWA's current operational environment.

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.

Recommendation 16

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

One final aspect of RWWA's accountability provisions is outlined in Sections 84 and 85 of the RWWA Act. As detailed earlier, RWWA must keep the Minister informed of any operational or financial aspects of RWWA operations that may significantly impinge on its effectiveness. RWWA must provide notice to the Minister if it or a subsidiary becomes unable to fulfil, or is likely to be unable to fulfil—any financial obligation. Given the serious market challenges that RWWA currently faces, the Committee recommends that Section 85 of the RWWA Act be amended to include a timeframe within which this notice to the Minister must be carried out.

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.

2.5 Appealing decisions by RWWA

During the course of the Inquiry, the Committee heard various grievances from industry participants regarding decisions made by RWWA. While it is not the purpose of this Inquiry to investigate individual complaints, the Committee has examined points raised in evidence only so far as it highlights more generic concerns. Issues largely relate to RWWA's decision making processes and/or avenues available for industry participants to appeal decisions made by RWWA.

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 this state and have a bearing on appeals. Among them is the Gaming and Wagering Commission which is responsible for administering gaming and wagering law in Western Australia and has certain responsibilities

under the RWWA Act.²⁷⁹ These include licensing RWWA directors and key employees and regulating the conduct of wagering operations by RWWA. The Department of Racing, Gaming and Liquor (DRGL) facilitates and provides executive support to the Commission and also the Racing Penalties Appeal Tribunal (RPAT).²⁸⁰ The latter is an independent judicial body established under the *Racing Penalties (Appeals) Act 1990* which is tasked with 'hearing and determining appeals against penalties imposed in disciplinary proceedings arising from, or in relation to, the conduct of greyhound racing, horse racing and harness racing'.²⁸¹ Parties aggrieved by a decision made by RWWA or a determination of a steward or committee of a racing club may lodge an appeal to RPAT within 14 days of the decision being handed down.²⁸² A visual representation of how the integrity assurance framework in WA is structured²⁸³ is reproduced at Appendix Five.

(a) Issues

Evidence suggests that existing mechanisms to appeal RWWA's decisions are ineffective. Some of the points raised by industry participants can be summarised as follows:

- There is no formal appeal body for TAB agents;²⁸⁴
- Appeals against RWWA's decisions are reviewed by RWWA which is itself the decision maker;²⁸⁵
- There is no clear avenue of appeal for decisions made by RWWA;²⁸⁶
- The Committee also received several specific complaints which commented on individual cases and highlighted the unsatisfactory handling of issues/appeals by RWWA,²⁸⁷ the Gaming and Wagering Commission,²⁸⁸ or RPAT.²⁸⁹

²⁷⁹ Department of Racing, Gaming and Liquor, 'The Role of the Gaming and Wagering Commission of Western Australia', January 2010. Available at: www.rgl.wa.gov.au/Default.aspx?NodeId=68&DocId=128 Accessed on 25 June 2010.

²⁸⁰ Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, *Transcript of Evidence*, 13 August 2010, p2.

²⁸¹ Department of Racing, Gaming and Liquor, 'The role of Racing Penalties Appeal Tribunal', 24 September 2007. Available at: www.rgl.wa.gov.au/Default.aspx?NodeId=68&DocId=130 Accessed on 18 September 2010.

²⁸² Section 13 *Racing Penalties (Appeals) Act 1990*.

²⁸³ Diagram taken from Judge G.D. Lewis, AM, *A Report on Integrity Assurance in the Victorian Racing Industry*, 1 August 2008, p94. Available at: www.justice.vic.gov.au/wps/wcm/connect/e2d0aa80404a6ff3a2befbf5f2791d4a/Lewis+Report+-+Integrity+Assurance+-+Vic+Racing+Industry+Aug+08.pdf?MOD=AJPERES Accessed on 18 September 2010.

²⁸⁴ Submission No. 16 from Morley TAB Agents, 27 November 2009, p3.

²⁸⁵ Submission No. 8 from WA TAB Agents' Association, 30 November 2009, p8.

²⁸⁶ Submission No. 13 from Mt Barker Turf Club, 30 November 2009, p2; Mrs Lesley Solly, President, Albany Racing Club, *Transcript of Evidence*, 12 March 2010, p13.

²⁸⁷ Submission No. 4 from Mr N.A. Harman, 19 November 2009, pp1-13.

²⁸⁸ Submission No. 11 from Best Bookies Price Pty Ltd, 30 November 2009, p7.

²⁸⁹ Submission No. 27 from Mr L. Harper, 21 December 2009, p3.

As alluded to in Chapter 2.4 (Accountability), a particular subset of stakeholder concerns pertained to RWWA's decisions to close race clubs or reduce a club's meetings. Comments were largely influenced by RWWA's decisions affecting two race clubs, namely the Mt Barker Turf Club, and Geraldton Harness Racing Club. In April 2010 immediately prior to the launch of RWWA's vision statements for the thoroughbred and harness racing codes, the Mt Barker Turf Club was advised that two of its eight meetings would be reallocated to Albany from the 2010-11 season, and the Geraldton Harness Racing Club was advised that it would not receive any race dates for 2010-11, effectively closing the club.²⁹⁰ The latter caused significant industry concern,²⁹¹ particularly with regard to the manner in which Geraldton Harness Racing Club was closed. Concerns put to the Committee by industry participants reflected perceptions that:

- RWWA had not consulted adequately;²⁹² and
- RWWA had not given due consideration to all pertinent factors when making the decision.²⁹³

The Geraldton Harness Racing Club stressed that there was no prior indication from RWWA that the club would not receive further meeting allocations until the decision had already been made, highlighting RWWA's poor communication with the club. The club also indicated that it had always performed well financially,²⁹⁴ questioning factors considered by RWWA in its decision making. RWWA cited the lack of locally based horses and trainers as the primary reason for its decision but indicated that other factors, including wider regional implications, were taken into account.²⁹⁵

A contrary view was held by Hon. Grant Woodhams, MLA, Member for Moore and patron of the Geraldton Harness Racing Club. It was suggested that RWWA's decision making was flawed since the club could clearly demonstrate it had met three key criteria, specifically: its location in a major growth region of the state; access to Sky Vision which had been secured by the club; and infrastructure needs that were already in place courtesy of the club's co-location with the Geraldton Turf Club.²⁹⁶ The Committee is particularly concerned that RWWA did not negotiate

²⁹⁰ The proposals for the Mt Barker Turf Club and Geraldton Harness Racing Club are reflected in RWWA's documents, *Securing the Future: A Vision of Sustainability for the WA Thoroughbred Racing Industry* (p13); and *Protecting our Product: A Vision of Sustainability for the WA Harness Industry* (p12) respectively.

²⁹¹ Rooney, J., 'Trots legend Kersley angry over Geraldton axe', *The West Australian* (online edition), 5 August 2010; 'Woodhams slams harness club closure', *Geraldton Guardian*, 23 August 2010, p25.

²⁹² Mr Peter Dempster, President, Northam Harness Racing Club, *Transcript of Evidence*, 26 March 2010, p3; Mr Kerry Clarke, President, WASBA, *Transcript of Evidence*, 7 May 2010, p19; Mr Robert Tomlinson, President, BOTRA, 7 May 2010, *Transcript of Evidence*, p19.

²⁹³ Mr Rob Deadman, Secretary, York Harness Racing Club, *Transcript of Evidence*, 26 March 2010, p4; Mr Kevin Jeavons, President, HROAWA, *Transcript of Evidence*, 7 May 2010, p11; Mr Gino Monaco, President, Fremantle Harness Racing Club, *Transcript of Evidence*, 4 June 2010, p8.

²⁹⁴ Mr Graham Cox, President, Geraldton Harness Racing Club, *Transcript of Evidence*, 29 March 2010, p2.

²⁹⁵ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 20 August 2010, p19.

²⁹⁶ Submission No. 48 from Hon. Grant Woodhams, MLA, 13 September 2010, pp1-2.

for Sky Vision coverage on behalf of the club and therefore it had no chance to improve its immediate viability.

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.

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.

Other evidence received by the Committee revealed a general sense of uncertainty among clubs and, in many cases, a desire to be able to contest RWWA's decisions particularly those relating to club closure. The uncertainty among small clubs, especially country/community clubs, at the threat of being closed down by RWWA is encapsulated in the following statement by Mr Brett Taylor of the Central Wheatbelt Harness Racing Club:

*It is always a worry for a small club. Are we going to be here next year? ... A lot of us do it because we love the sport. If we lost our club a lot of us would leave. That will not do the industry any good whatsoever ... We just do not know how long we have or how we stand in the grand scheme of things.*²⁹⁷

A similar concern was articulated by Mr Brendon Gardiner of the Bridgetown Harness Racing Club:

*But what we do not have is any guarantees for the future. Each year you have got your fingers crossed, waiting for the race dates to come out to see if you have been wiped off the map or not. Financially, at the moment, the club is pretty sound, but ... as a club gets chopped off the bottom of the ladder, you are one closer to the chopping block.*²⁹⁸

Other issues conveyed to the Committee in this regard can be summarised as follows:

- Small clubs lack leverage with RWWA from a wagering point of view and are easy targets for closure;²⁹⁹

²⁹⁷ Mr Brett Taylor, President, Central Wheatbelt Harness Racing Club, *Transcript of Evidence*, 26 March 2010, p15.

²⁹⁸ Mr Brendon Gardiner, Secretary/Treasurer, Bridgetown Harness Racing Club, *Transcript of Evidence*, 6 April 2010, p3.

²⁹⁹ Mr Alf Paganoni, Past President, WA Country Harness Racing Association, 26 February 2010, p9; Mr Kevin Spurr, Vice President, Wagin Trotting Club, *Transcript of Evidence*, 3 May 2010, p15.

- Based on RWWA's policies, looking ahead there is little prospect for small clubs except the threat of closure;³⁰⁰
- RWWA's processes for reducing meetings in outer country areas are not understood by industry participants and seem counterintuitive when clubs are told their meetings have been removed because the industry is struggling and yet these same meetings appear to be awarded to other clubs;³⁰¹
- Sufficient community support should protect community clubs from closure;³⁰²
- The only recourse available to a club facing closure is to try appealing to the Minister but the Minister lacks power under the RWWA Act to reverse the board's decision;³⁰³
- RWWA is quick to make a decision that will adversely affect a club without first providing a club with assistance so it can improve its performance;³⁰⁴
- While closing a club may contain costs, it has significant impacts from the perspective of people lost to the industry;³⁰⁵
- It is uncertain where the cost savings achieved from club closure actually go;³⁰⁶
- The closure of a racing club should be the last resort and RWWA should assist the club in the first instance.³⁰⁷

From the evidence, it is clear to the Committee that race clubs experience uncertainty with respect to race programming and the effects this may have on long-term survival. Further, there appears to be a lack of clarity among industry participants as to the factors which RWWA considers when making its decisions and where the purported cost savings (from closing a club for example) actually go. These matters largely speak to inadequacies in RWWA's consultation and reporting processes which are explored further in Chapter 2.6.

In the present context of decisions which adversely affect a club or code, the Committee believes that it is critical for RWWA to adopt a more consultative and transparent approach.

³⁰⁰ Mr Kevin Spurr, Vice President, Wagin Trotting Club, *Transcript of Evidence*, 3 May 2010, p15.

³⁰¹ Mr Brett Snell, Past President, Golden Mile Trotting Club, *Transcript of Evidence*, 19 March 2010, p12.

³⁰² Mr Peter Hemsley, Secretary, Collie Harness Racing Club, *Transcript of Evidence*, 6 April 2010, p6.

³⁰³ Mr Kevin Spurr, Vice President, Wagin Trotting Club, *Transcript of Evidence*, 3 May 2010, p15; Mr John Biggs, Representative, NE Goldfields Racing Clubs, *Transcript of Evidence*, 19 March 2010, p8.

³⁰⁴ Mr Rob Deadman, Secretary, York Harness Racing Club, *Transcript of Evidence*, 26 March 2010, pp2-3; Mr Graham Cox, President, Geraldton Harness Racing Club, *Transcript of Evidence*, 29 March 2010, p2.

³⁰⁵ Mr Kevin Jeavons, President, WA Harness Racing Owners' Association, *Transcript of Evidence*, 7 May 2010, p10.

³⁰⁶ Mr Robert Tomlinson, President, Breeders Owners Trainers and Reinspersons Association, *Transcript of Evidence*, 7 May 2010, p11.

³⁰⁷ Mr Geoffrey Warwick, Vice President, Fremantle Harness Racing Club, *Transcript of Evidence*, 4 June 2010, p8.

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.

Adding to the uncertainty experienced by clubs is a pervading sense of powerlessness at not being able to appeal a decision by RWWA to reduce a club's meetings or to close a club. The only avenue available at present is for clubs to appeal to the board of RWWA.

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.

(b) Mechanisms to enhance the appeals process

The RWWA Act does not define a dedicated appeal body or conflict resolution process. This is largely due to multiple external bodies having responsibility for investigating and/or adjudicating on different aspects of racing and wagering. As mentioned above, racing penalties come under the jurisdiction of the RPAT. By virtue of racing related matters being dealt with by a dedicated independent judicial panel, RWWA is excluded from the jurisdiction of the Ombudsman under Schedule 1 of the *Parliamentary Commissioner Act 1971*.³⁰⁸ For the same reason, RWWA is outside the jurisdiction of the State Administrative Tribunal.³⁰⁹

The Gaming and Wagering Commission has significant investigatory powers with respect to RWWA's gambling operations. Section 109I of the *Gaming and Wagering Commission Act 1987* enables it to investigate and deal with complaints from members of the public 'with respect to any aspect of the gambling operations of RWWA, and advise the complainant of the result of the complaint'. Mr Barry Sargeant of DRGL indicated that no formal complaints had been lodged with the Commission since RWWA's establishment although acknowledged that this could be

³⁰⁸ The *Parliamentary Commissioner Act 1971* was amended to exclude RWWA as per Section 22 of the *Racing and Gambling Legislation Amendment and Repeal Act 2003*. The Ombudsman generally cannot investigate complaints which can be taken to a court or tribunal (as indicated by Ombudsman Western Australia, 'What you can complain about', nd. Available at: www.ombudsman.wa.gov.au/Complaints/What.htm Accessed on 24 September 2010).

³⁰⁹ State Administrative Tribunal, 'Outside SAT's Scope', nd. Available at: www.sat.justice.wa.gov.au/M/mattersNotCovered.aspx?uid=3280-1879-1680-3393 Accessed on 27 September 2010.

because the Commission had not actively promoted this aspect of the legislation and people could be unaware of this function.³¹⁰

Under Section 109J of the *Gaming and Wagering Commission Act 1987*, the Commission may (at its own instigation) report to the Minister and make recommendations as to any actions the Minister should take in relation to RWWA.³¹¹ The Minister may also direct the Commission to inquire into the affairs of RWWA including but not limited to: RWWA's gambling operations; compliance with the RWWA Act and any other written laws; or suspected corruption.³¹² Although this power has never been exercised, Mr Barry Sargeant of DRGL indicated that it is appropriate for an independent body like the Commission to have the power to investigate RWWA should this ever be required.³¹³ Mr Sargeant also emphasised that the Commission's investigatory powers are restricted to gambling related matters only:

*It has got to be about gambling. We have not got a carte blanche authority to relate to other aspects of RWWA's operations.*³¹⁴

More broadly, the Corruption and Crime Commission has jurisdiction to investigate claims relating to misconduct by public officers,³¹⁵ the definition of which would include RWWA and its officers.³¹⁶

With the exception of the abovementioned external investigatory and/or appeal mechanisms, RWWA is otherwise responsible for hearing and adjudicating on complaints that it receives.³¹⁷ The existence of multiple complaints/appeals pathways has highlighted two major issues to the Committee: firstly, the lack of information available for industry participants on where to go with a complaint or issue; and secondly, how issues that fall outside of existing appeal pathways should be dealt with effectively.

³¹⁰ Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, *Transcript of Evidence*, 13 August 2010, pp4-5.

³¹¹ Under Section 109K of the *Gaming and Wagering Commission Act 1987* actions the Minister could take in relation to RWWA include serving a letter of censure on RWWA, revoking the license of a director or ordering RWWA to pay a monetary penalty.

³¹² Section 109J(3) *Gaming and Wagering Commission Act 1987*.

³¹³ Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, *Transcript of Evidence*, 19 February 2010, p9.

³¹⁴ Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, *Transcript of Evidence*, 13 August 2010, p5.

³¹⁵ Section 4 and Section 18 *Corruption and Crime Commission Act 2003*.

³¹⁶ Section 3 of the *Corruption and Crime Commission Act 2003* gives the same definition of 'public officer' as Section 1 of the Criminal Code. The definition of 'public officer' under the Criminal Code includes 'a person exercising authority under a written law' (s1(ad)) and 'a member, officer or employee of any authority, board, corporation, commission, ..., established under a written law' (s1(d)).

³¹⁷ This would include wagering-related issues raised by TAB agents; and racing-related issues outside of racing penalties such as club closure and reductions in meetings.

(i) Greater definition of the appeals process

In the first instance, the Country Racing Association suggested that an appeal process should be defined and included in the RWWA Act in order to avoid confusion and protect the rights of individuals and associations.³¹⁸ The Committee concurs that complaint and appeals processes in relation to racing and wagering require clarification, however, the fact that multiple agencies play a role precludes definition in the RWWA Act. The Committee believes that clarification would best be achieved through better communication on the part of RWWA and other agencies, specifically DRGL on behalf of the RPAT and the Commission.

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.

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.

(ii) Addressing issues that fall outside of existing appeal pathways

It is clear that external appeal mechanisms cover racing penalties and gambling related matters. The issue of club closure appears to fall between the gaps however as it is clearly not related to racing penalties or wagering. In this respect, RWWA is responsible for hearing appeals.

RWWA's procedure involves escalating complaints and disputes through a complaints handling system through the hierarchy. RWWA advised that its staff and managers are accessible by industry participants who may raise issues at any time without prejudice and in confidence. For racing related issues, matters may be escalated from racing code managers ultimately to the relevant board committee (in this case the Racing Operation Committee) and the board itself. Similarly, issues in relation to stewards may be brought to the attention of the IAC and ultimately the board itself.³¹⁹

The right of a club to make representations to the RWWA board is provided for in Section 96 of the RWWA Act but only so far as it relates to loans and grants. Nonetheless RWWA has

³¹⁸ Submission No. 41 from Country Racing Association, 16 April 2010, p7.

³¹⁹ Submission No. 7D from Racing and Wagering Western Australia, 2 August 2010, p18.

demonstrated that its internal dispute resolution process allows clubs to make representation to the board on more extensive grounds than those defined in the Act. In both the instances of the Mt Barker Turf Club and Geraldton Harness Racing Club, clubs presented their cases directly to the RWWA board. In the case of Mt Barker, RWWA revised its initial decision by agreeing to provide an extra race for every allocated meeting:

*They walked away, from where I sit, relatively contented in the fact that they knew they were going to have a future and that they had been listened to, on an appeal, by the board. I just thought it is important to demonstrate that there are areas where the board has made changes when compelling evidence has been put to us.*³²⁰

Although a similar compromise could not be reached in relation to the Geraldton Harness Racing Club and RWWA's original decision stood, an avenue of appeal was made available to the club. Mr Richard Burt, CEO of RWWA stressed that the decision of the board was made independently of Management's position and that the board took into consideration not only the club's perspective but written submissions from various sources including trainers, Geraldton stakeholders and the Mid West Development Commission:

*All their submissions were put to the board independently. Their views were read by the board independently of management's view. The president of the Geraldton harness club...physically presented to the board. It was not like management receiving the input, changing it and presenting it.*³²¹

Some industry participants argued in favour of a right of appeal to either an independent body³²² or to the Minister for Racing and Gaming.³²³ The Country Racing Association believes there should be a right of appeal to the Minister, although qualified this by stating that it should only exist in exceptional circumstances (such as closure of a race club):

*We are of the opinion—that this would only be in exceptional circumstances—that in the event that we wanted to appeal against any decision—"we" being any sector of the industry—who do we go to? RWWA is judge, jury and executioner. It is no good going to the people who have already made the decision. We would like to see incorporated in the act a right of appeal to the minister of the day so that in exceptional circumstances there is a preferred umpire.*³²⁴

³²⁰ Mr Robert Pearson, Director, Racing and Wagering Western Australia, *Transcript of Evidence*, 20 August 2010, p28.

³²¹ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 20 August 2010, p20.

³²² Submission No. 5 from York Racing, 18 November 2009, p5.

³²³ Submission No. 25 from Geraldton Turf Club, 25 November 2009, p4; Mr Gino Monaco, President, Fremantle Harness Racing Club, *Transcript of Evidence*, 4 June 2010, p7.

³²⁴ Mr Maxwell (Dixie) Solly, President, Country Racing Association, *Transcript of Evidence*, 7 May 2010, p7.

The Wagin Trotting Club similarly supported greater Ministerial involvement whereby RWWA would not be able to take any action resulting in closure of a club without the approval of the Minister.³²⁵

Other industry participants acknowledged that RWWA had to make difficult decisions and provided this occurred with sufficient consultation beforehand, a third party appeals body or appealing to the Minister should not be necessary:

*We do not want to go back to the days where everybody just rang their local parliamentarian or the minister and things got reversed for, sometimes, the wrong reasons. It is a very dangerous area in my view. Whilst you need them to run it—let us be honest, they are dependent on government anyway; for instance, some of these decisions they make are made on flexibility and turnover so it gets back to the government anyway. But if you put a middle person in to oversee them, I wonder if it will get too complicated in terms of an appeal process and people will be appealing all the time over everything.*³²⁶

In a similar vein, RWWA reinforced the importance of staying at arm's length from government:

*If this business was at the direction of the minister, you would have a situation in which you would not be able to pursue your strategic direction because whatever we do ruffles feathers because of these black and white attitudes. You would constantly have people going to the minister and the minister saying, "Don't do that" and the business would die; it would decline rapidly because you cannot bring innovation and change to the business. ... I think a good and very wise process was put in place with the RWWA Act that you did not have the ability of a group to be able to say that this is the way the industry is going to run. You are better off letting the industry run itself.*³²⁷

The Committee believes that RWWA should retain the responsibility for hearing appeals in relation to matters not otherwise covered by external appeal bodies. It was established earlier³²⁸ that the Minister's existing role in RWWA's accountability framework should remain. While existing levels of Ministerial involvement are warranted, the Committee finds it would be inappropriate to expand the Minister's role any further without compromising RWWA's operational independence.

Finding 31

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

³²⁵ Submission No. 42 from Wagin Trotting Club, 26 May 2010, p1.

³²⁶ Mr Kevin Jeavons, President, WA Harness Racing Owners' Association, *Transcript of Evidence*, 7 May 2010, pp14, 18.

³²⁷ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 20 August 2010, p19.

³²⁸ Refer to Chapter 2.4(b) of this report.

Recommendation 19

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

While the Committee acknowledges that RWWA's internal processes give clubs the opportunity to make direct representation to the board in instances where decisions will severely impact on a club's operations (such as meeting reduction or closure), this is currently not provided for in the Act. Section 96 only provides for a club to make representations in very limited circumstances of a financial nature. It would be appropriate for grounds to include any instance where a club's operations will be severely impacted as a consequence of RWWA's decisions.

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.

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.

2.6 Consultation

The RWWA Act requires RWWA to establish procedures for consulting with prescribed racing bodies and other prescribed bodies with an interest in the racing industry in relation to RWWA's operations.³²⁹ Prescribed bodies are defined in the RWWA Regulations.³³⁰ In accordance with this provision of the Act, RWWA established three code specific racing industry consultative groups which meet with RWWA representatives on a quarterly basis to provide industry feedback

³²⁹ Section 82(2) *Racing and Wagering Western Australia Act 2003*.

³³⁰ Regulation 71 *Racing and Wagering Western Australia Regulations 2003*.

on racing operational policy and issues. The consultative groups, one each for thoroughbred racing, harness racing, and greyhound racing, comprise nominated representatives of racing clubs, industry associations and industry participant groups.^{331 332}

Despite the procedures RWWA has developed pursuant to Section 82 of the RWWA Act, the Committee received substantial feedback criticising the consultative capacity of RWWA. Stakeholders felt that RWWA has failed to consult with the industry in any meaningful way. The specific matters relating to consultation practice which industry participants have concern reflect the main issues the Committee has identified and discussed throughout this report.³³³ As such, individual concerns will not be raised further here. That the lack of consultation has been a disappointment to many industry participants is clear and will be discussed, together with some mechanisms to improve the consultation practices of RWWA.

(a) Industry views on consultation

The main issues raised are summarised here:

- RWWA has demonstrated a significant lack of consultation with industry participants across a variety of issues;³³⁴
- RWWA dictates to the industry rather than consults—club and consultative groups alike are presented with decisions as a *fait accompli*;³³⁵
- The current process provides little to no opportunity for stakeholders to have input into any major decision making processes—irrespective of the impacts these decisions may have on stakeholders;³³⁶

³³¹ Racing and Wagering Western Australia, 'Consultative Groups', 2007. Available at: www.rwwa.com.au/home/consultative-groups.html Accessed on 25 June 2010.

³³² A contractual arrangement between RWWA and the WA TAB Agents Association is in place whereby the TAB agents' advisory group meets regularly with RWWA. The Committee received feedback that the consultation within this arrangement is limited. As this arrangement is contractual, refer to Chapter 3.8 (a)(ii) for further information.

³³³ For example, industry participants have raised concerns about RWWA's ability to consult on issues of industry and club funding, race programming, and infrastructure funding; to name a few. Many of the concerns raised have consequently been captured within the examinations of these issues as they appear in this report.

³³⁴ Submission No. 24 from Western Australian Provincial Thoroughbred Racing Association, received 24 December 2009, p7; Submission No. 26 from Northam Race Club, received 24 December 2009, pp1, 3; Submission No. 16 from Morley TAB Agents, received 30 November 2009, p5; Submission No. 9 from Frank Peczk, received 30 November 2009, p2; Mr David Wrensted, Manager, Geraldton Turf Club, *Transcript of Evidence*, 29 March 2010, p6.

³³⁵ Submission No. 6 from Geraldton Harness Racing Club, received on 29 September 2009, p2; Mr Graham Cox, President, Geraldton Harness Racing Club, *Transcript of Evidence*, 29 March 2010, pp6-7; Mrs Margaret Skinner, Secretary, Mt Barker Turf Club Inc, *Transcript of Evidence*, 12 March 2010, p8; Mr Tony Marwick, President, Western Australian Provincial Thoroughbred Racing Association, *Transcript of Evidence*, 26 February 2010, p3; Mr Kevin O'Brien, Treasurer, York Racing Inc, *Transcript of Evidence*, 26 March 2010, p4; Mr Robin Deadman, Secretary, York Harness Racing Club, *Transcript of Evidence*, 26 March 2010, p11; Mr Mark Roberts, President, Western Australian Country Harness Racing Association, *Transcript of Evidence*, 26 February 2010, p9; Mr Allen Kinnish, Committee Member, Western Australian Greyhound Breeders, Owners and Trainers Association, *Transcript of Evidence*, 30 April, 2010, p8.

- The manner of consultation has reduced the capacity of industry bodies, together with the clubs and industry participants they represent—particularly those in provincial and country areas, to have a say in the future direction of the industry.³³⁷

Expanding on the evidence above, the Committee received a number of comments about the general lack of consultation by RWWA. Mr Colin Bellchambers, Pinjarra Race Club, indicated that RWWA has fallen down as far as consultation is concerned, both with their club and the industry overall.³³⁸ Mr Allen Kinnish, WAGBOTA made the following comment which is indicative of many industry concerns:

*We tend to be told what is taking place rather than having meaningful discussions and consultation.*³³⁹

The consultative groups also received criticism. Mr John Burt of WATA said the following about the Harness Racing Consultative Group (HRCG):

*The harness racing consultative group is lip-service to the industry... decisions have already previously been made, and it is basically a forum for our being advised what is going to happen before industries know.*³⁴⁰

Mr Ted van Heemst of Perth Racing stated that the Thoroughbred Racing Consultative Group (TRCG) was very light weight and only played ‘lip service to the industry’.³⁴¹ Mr David Prance, appearing for the Kalgoorlie Boulder Racing Club, noted that the thoroughbred consultative group was consultative in name only, and cautioned that the lack of consultation was having a negative impact on the effectiveness of RWWA:

It is a misnomer: there is no consultation and things are handed down from the executive and, at times, from the board through the executive...It is basically, “This is what we have decided. This is how it is going to be.” I do believe that it is clearly stated in the act that there needs to be a consultative process. Just creating a thoroughbred consultative group,

³³⁶ Submission No. 12 from Narrogin Racing, received 30 November 2009, pp3-4; Mr Kenneth Nottle, President, Harvey District Trotting Club, *Transcript of Evidence*, 6 April 2010, p13; Mr Alan Smith, Secretary/Treasurer, Pingrup Race Club, *Transcript of Evidence*, 3 May 2010, p13; Mr Maxwell (Dixie) Solly, President, Country Racing Association, *Transcript of Evidence*, 7 May 2010, p7; Mr Peter Hemsley, Secretary, Collie Harness Racing Club, *Transcript of Evidence*, 6 April 2010, p11; Mr Jonathan Menzel, Manager, Narrogin Racing, *Transcript of Evidence*, 3 May 2010, p8; Mr Donald Davies, Vice President, Wagin Trotting Club, *Transcript of Evidence*, 3 May 2010, pp7-8.

³³⁷ Mr Barry Mahood, President, York Racing Inc, *Transcript of Evidence*, 26 March 2010, p2; Mr Victor Jury, Trainer, Albany Harness Racing Club, *Transcript of Evidence*, 12 March 2010, p12; Submission No. 13, Mt Barker Turf Club, received 30 November 2009, p2 Mr Tony Marwick, President, Northam Race Club, *Transcript of Evidence*, 26 March 2010, p13; Submission No. 24, Geraldton Turf Club, received 24 December 2009, p2; Mr John Biggs, representative, North Eastern Goldfields Racing Clubs, *Transcript of Evidence*, 19 March 2010, p5; Mr Brett Taylor, President, Central Wheatbelt Harness Racing Club, *Transcript of Evidence*, 26 March 2010, p5.

³³⁸ Mr Colin Bellchambers, General Manager, Pinjarra Race Club, *Transcript of Evidence*, 6 April 2010, p5.

³³⁹ Mr Allen Kinnish, Committee Member, WA Greyhound Breeders, Owners, Trainers’ Association, *Transcript of Evidence*, 30 April 2010, p8.

³⁴⁰ Mr John Burt, President, Western Australian Trotting Association, *Transcript of Evidence*, 26 February 2010, p6.

³⁴¹ Mr Edward (Ted) van Heemst, Chairman, Perth Racing, *Transcript of Evidence*, 26 February 2010, p10.

*by name, and bringing in bookmakers, owners and breeders, and the various different groups to be sat around the table and just delivering the result is not consultative.*³⁴²

Lack of consultation with individual clubs was reported by the Wagin Trotting Club.³⁴³ Mr Brendon Gardiner, Bridgetown Harness Racing Club, asserted that clubs being excluded from the consultation process was unhelpful for the industry and was cause for disappointment:

*I think we are being let down. We are being neglected. We know that our role in the industry is a small one; nonetheless, it is an important one...more open and free communication would be very helpful.*³⁴⁴

Mr Kenneth Godley, Bunbury Trotting Club stated that if RWWA could consult more with clubs about what it is doing, all clubs would have a better idea of where they are going:

*At the moment, we are just a club treading water, wondering what [RWWA] is going to do to us next time.*³⁴⁵

The lack of input stakeholders have in the decision making process was stressed by Mr Jonathan Menzel of Narrogin Racing, who stated that RWWA tended to 'dictate what is going to happen in the industry, without calling for submissions beforehand'.³⁴⁶ Mr Revell Douglas, General Manager, Pinjarra Harness Racing Club, was of the opinion that if RWWA was to ask industry bodies or individual clubs about issues, it would uncover ideas that would assist it with strategic planning.³⁴⁷ Mr Rob Deadman, York Harness Racing Club, suggested that if RWWA had consulted with the industry, the industry would be in better shape now:

*I am very critical of a lot of desk decisions that are made by RWWA where people have not gone to the extent of coming to the industry to find out more.*³⁴⁸

Geraldton Turf Club submitted that since the formation of RWWA there has been even less consultation with clubs than under the previous principal club system—despite the best hopes of many industry participants:

*...unfortunately little changed, it can be argued it has been significantly worse with no consultation and again decisions made by a few with little or no input from industry participants.*³⁴⁹

³⁴² Mr David Prance, Immediate Past Chairman, Kalgoorlie-Boulder Racing Club, *Transcript of Evidence*, 19 March 2010, p13.

³⁴³ Mr Donald Davies, Vice President, Wagin Trotting Club, *Transcript of Evidence*, 3 May 2010, pp7-8.

³⁴⁴ Mr Brendon Gardiner, Secretary Treasurer, Bridgetown Harness Racing Club, *Transcript of Evidence*, 6 April 2010, p7.

³⁴⁵ Mr Kenneth Godly, President, Bunbury Trotting Club, *Transcript of Evidence*, 6 April 2010, p12.

³⁴⁶ Mr Jonathan Menzel, Manager, Narrogin Racing, *Transcript of Evidence*, 3 May 2010, p8.

³⁴⁷ Mr Revell Douglas, General Manager, Pinjarra Harness Racing Club, *Transcript of Evidence*, 6 April 2010, p10.

³⁴⁸ Mr Robin Deadman, Secretary, York Harness Racing Club, *Transcript of Evidence*, 26 March 2010, p11.

³⁴⁹ Submission No. 25 from Geraldton Turf Club, 24 December 2009, p1.

The decline of industry bodies to represent the needs of participants was noted by a number of stakeholders. The Albany Harness Racing Club indicated that RWWA makes decisions that impact on the club without any consultation or right of appeal and that their main representative body, WACHRA is ‘toothless’.³⁵⁰ The Mt Barker Turf Club noted that the establishment of RWWA had led to the decline of WAPTRA.³⁵¹ York Racing concurred that provincial bodies have lost their power.³⁵²

Mr Tony Marwick, President, Northam Race Club, indicated that the provincial bodies like WAPTRA were powerless and had no say:

*All provincial clubs find it difficult and frustrating because we simply do not have the avenue to have discussion. We nearly withdrew from the Western Australian Provincial Thoroughbred Racing Association, because ...it does nothing ... RWWA does not really recognise it. You have to beat your drum pretty hard. RWWA would prefer to deal with individual clubs, and it is a great frustration.*³⁵³

The Geraldton Turf Club further stated that RWWA’s ‘divide and conquer’ approach of dealing individually with clubs has not benefited the clubs and has made industry groups and associations irrelevant.³⁵⁴

Smaller country clubs expressed that they have less of a consultative voice with RWWA. Mr Kenneth Nottle, Harvey District Trotting Club, stated that more consultation is needed with country clubs.³⁵⁵ Mr John Biggs, speaking on behalf of North East Goldfields Racing Clubs, asserted that small clubs do not get enough say in any decision making processes:

*I do not think the country clubs get enough say as to what they want to do and how they want to conduct their race meetings; the types of races they can run and the classes of races. They are being told and are being dictated to by the administration too much.*³⁵⁶

Some country clubs suggested the demise of a country voice in decision making procedures is creating the need for a contact person within the auspices of RWWA to whom they can go to for representation or information.³⁵⁷ The York Harness Racing Club believed that a go-to person for country clubs would be beneficial and has raised the matter with RWWA:

³⁵⁰ Mr Victor Jury, Trainer, Albany Harness Racing Club, Transcript of Evidence, 12 March 2010, p12.

³⁵¹ Submission No. 13 from Mt Barker Turf Club, received 30 November 2009, p2.

³⁵² Mr Barry Mahood, President, York Racing Inc, Transcript of Evidence, 26 March 2010, p2.

³⁵³ Mr Tony Marwick, President, Northam Race Club, Transcript of Evidence, 26 March 2010, p13.

³⁵⁴ Submission No. 24, Geraldton Turf Club, received 24 December 2009, p2.

³⁵⁵ Mr Kenneth Nottle, President, Harvey District Trotting Club, Transcript of Evidence , 6 April 2010, p13

³⁵⁶ Mr John Biggs, representative, North Eastern Goldfields Racing Clubs, Transcript of Evidence, 19 March 2010, p5.

³⁵⁷ This view is not limited to small clubs. Mr Paul Rossiter of the Bunbury Turf Club intimated that clubs needed a point of call in RWWA via a go-to person (Mr Paul Rossiter, Manager, Bunbury Turf Club, Transcript of Evidence , 7 May 2010, p13).

*The proposal we put to RWWA was: give us a country liaison officer...it has been on the table now with RWWA for some time.*³⁵⁸

The Central Wheatbelt Harness Racing Club indicated frustration at locating the appropriate person within RWWA to speak to.³⁵⁹ The importance of a ‘middle person’ was further reinforced by Mr Patrick Flynn, York Harness Racing Club:

*...my own perception is that at the moment RWWA and the board in general is made up of policy makers and managers. There has got to be someone in the middle who actually can speak to both parties because it is very hard for clubs in general...to actually talk to people in the policy region or the management region.*³⁶⁰

Not every comment received by the Committee was critical about RWWA’s consultative process. Western Australian Racehorse Owners Association submitted that consultation is adequate and RWWA’s Thoroughbred Racing Consultative Group is effective.³⁶¹ This view was later confirmed by Mr Harvey Crossman, WAROA President, who made the following statement:

*We have a very solid relationship with RWWA. We do not always agree with where it is going, and we certainly voice our opinions. Sometimes we sway its opinion a little. We have some wins and losses. In general, I am happy with the performance of RWWA.*³⁶²

When asked if the Mingenew Race Club had good communication with RWWA, Mr Robert Newton, Vice President of the club, replied that as far as he is aware, RWWA has a good rapport with them.³⁶³

Mr Bob Howat, WA Bookmakers’ Association, was asked if there is a good enough process in place for consultation within the industry, to which he answered that there is certainly a forum for it, and that whilst he is new to the process, the CEO for RWWA ‘has thrown open the doors to talk about everything in relation to betting’.³⁶⁴

Mr Ted van Heemst of Perth Racing commented that the relationship Perth Racing has with RWWA is ‘quite a good relationship’, indicating that the CEO was very approachable and that the thoroughbred board member has been ‘doing a very good job for us’.³⁶⁵

³⁵⁸ Mr Robin Deadman, Secretary, York Harness Racing Club, *Transcript of Evidence*, 26 March 2010, p11.

³⁵⁹ Mr Brett Taylor, President, Central Wheatbelt Harness Racing Club, *Transcript of Evidence*, 26 March 2010, p5.

³⁶⁰ Mr Patrick Flynn, Vice President, York Harness Racing Club, *Transcript of Evidence*, 26 March 2010, p12.

³⁶¹ Submission No. 28 from Western Australian Racehorse Owners Association received 6 January 2010, p1.

³⁶² Mr Harvey Crossman, President, Western Australian Racehorse Owners Association, *Transcript of Evidence*, 26 February 2010, p3.

³⁶³ Mr Robert Newton, Vice President, Mingenew, Turf Club, *Transcript of Evidence*, 29 March 2010, p5.

³⁶⁴ Mr Robert Howat, President, WA Bookmakers’ Association, *Transcript of Evidence*, 8 March 2010, p11.

³⁶⁵ Mr Edward (Ted) van Heemst, Chairman, Perth Racing, *Transcript of Evidence*, 26 February 2010, p10.

Despite these positive comments, a clear majority of stakeholders expressed negative views to the Committee on the effectiveness of RWWA's consultation practice. It is an issue that has caused frustration within the industry, particularly in regard to information being presented to stakeholders as a *fait accompli*; and the lack of opportunity stakeholders, be it industry bodies, individual clubs or participants, have to input into major decisions that may affect them.

Finding 33

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

Notwithstanding the imperative on RWWA to consult with industry participants under the RWWA Act, the Committee finds that RWWA must seek strategies to improve its consultation with stakeholders as a part of its governance framework. If stakeholders have the ability to add their knowledge, views and industry experience into the decision making processes of RWWA, industry confidence in RWWA's decision making processes will increase—which in turn will increase the operational effectiveness of RWWA.

Finding 34

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

(b) Mechanisms to enhance consultation with the industry

RWWA is entirely cognisant of the criticism it has received about its consultation techniques during the course of this Inquiry. On first meeting with the Committee, RWWA acknowledged and accepted that a major criticism of RWWA was that it does not consult adequately. Mr Richard Burt, CEO of RWWA, stated that there were certainly areas where improvements were warranted—particularly regarding race programming, meeting numbers and consultation in general. It was put forward that with the advent of the strategic vision papers providing indicative leadership for the industry, RWWA will be able to put in place a greater certainty of meetings.³⁶⁶

Nonetheless, RWWA suggested that it does 'incredible amounts of consulting, particularly in the past couple of years. Right the way back there has been a structured process of consulting'.³⁶⁷ In a subsequent hearing, RWWA again noted that it has been very consultative in the last couple of years. Mr Robert Pearson, Chair of the Thoroughbred Racing Consultative Group (TRCG), said

³⁶⁶ Mr Richard Burt, CEO, Racing and Wagering Western Australia, Transcript of Evidence, 30 April 2010, p46.

³⁶⁷ Ibid.

that he knows of incidences when RWWA has raised issues with the consultative groups, whereby these groups tell RWWA ‘why it would not work, or should not work, or should not be done, and [RWWA] have gone back and make adjustments accordingly’.³⁶⁸ He further pointed out that these consultative groups are given the opportunity to place items on the agenda for discussion, but this does not generally occur in the TRCG:

*I would say that the average we would have at any meeting would be one or two things that are put to the groups, but in the main we have no items that are presented to us from those representative groups.*³⁶⁹

In comparison, with the Harness Racing Consultative Group, there seemed to be ‘a lot more meat on the table from the various representatives’.³⁷⁰

Mr Dixie Solly of the CRA offered a possible reason for the apparent lack of items being put up for discussion by the representative groups in thoroughbred racing. He noted that not all the issues faced by some stakeholders at these groups are relevant to all the stakeholders and it is therefore inappropriate for them to be raised at the quarterly meetings. He also suggested that the groups themselves have been a little ‘derelict’ whereas prior to RWWA’s establishment, the old industry councils would meet and discuss all the issues they wanted to raise prior to meeting with the then principal club, the WATC.³⁷¹

Mr John Burt, WATA, further highlighted the benefits of convening a meeting of industry group representatives prior to code consultative group meetings. He argued that this could be a democratic approach whereby the industry could vote on what issues they felt should be raised—or what position should be taken, at the consultative groups. If there was a unanimous vote, that documented position could be presented to RWWA as an accurate view of that particular group’s thoughts. If one particular body was strongly opposed, they would also have the opportunity to present their views at the consultative group for RWWA’s consideration. In this way, Mr Burt argued, RWWA would be presented with an accurate snapshot of the industry’s views before decisions are made.³⁷²

In the Committee’s opinion, the convening of representative industry groups prior to the consultative groups has merit. While this may already occur on an ad hoc basis, a more structured process where groups commit to meeting prior to quarterly consultative groups could provide RWWA with an ongoing, current and useful insight into the thoughts and feelings of the broader racing and wagering industry—which will only help to positively inform RWWA’s decision making process on behalf of the industry. Overall, this approach may help to address some of the frustration felt by industry participants as a result of the demise of the old industry councils. In addition, it may lend more of a voice to smaller clubs which feel they have less representation at

³⁶⁸ Mr Robert Pearson, Director, Racing and Wagering Western Australia, Transcript of Evidence, 20 August 2010, p6.

³⁶⁹ Ibid., p5.

³⁷⁰ Ibid.

³⁷¹ Mr Maxwell (Dixie) Solly, President, Country Racing Association, Transcript of Evidence, 7 May 2010, p6.

³⁷² Mr John Burt, President, WA Trotting Association, *Transcript of Evidence*, 26 February 2010, p6.

the consultative group level; or where clubs are conscious about the appropriateness of items to be discussed at the quarterly consultative group meetings. RWWA's procedures for the consultative groups do not preclude this from occurring.³⁷³

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.

Section 82 of the RWWA Act only makes provision for RWWA to establish procedures for consulting with prescribed bodies, which are listed in the RWWA Regulations. Section 35(1)(g) of the Act also allows RWWA to consult with individual racing clubs in relation to matters such as stake money levels and programs. As it stands RWWA can either talk to the prescribed bodies—or to the thousands of individual participants, and it currently attempts to do both, in so doing creating ‘an absolute nightmare’³⁷⁴ for itself. Returning to the original rationale for prescribed bodies, the Turner Report - which informed the restructure of the racing industry and establishment of RWWA - had identified a need for structured consultation between the governing body and associations representing stakeholders.³⁷⁵ The Committee agrees that structured consultation is necessary and therefore supports the continuation of the system of consulting with prescribed bodies, however also acknowledges that, as suggested by one industry participant, there is a lot of expertise available across the industry which RWWA is not necessarily accessing before making decisions.³⁷⁶ The current procedures and terms of reference for consultative groups permits RWWA to ‘at any time, co-opt a person/s to attend meetings of a specific Consultative Group’.³⁷⁷ The Committee considers that this provision is sufficient to allow RWWA to capture the views of individuals or groups outside of the defined prescribed bodies if and when necessary. Even though RWWA's consultation procedures indicate that RWWA can consult outside of the consultative groups, the Committee considers it worthwhile reinforcing this point in the RWWA Act.

³⁷³ Racing and Wagering Western Australia, ‘Thoroughbred Racing Consultative Group’, January 2010. Available at: www.rwwa.com.au/home/thoroughbreds-consultative-group.html Accessed on 29 September 2010. It should be noted that the same provisions apply to the harness, and greyhound racing consultative groups.

³⁷⁴ Mr Robert Tomlinson President, BOTRA, *Transcript of Evidence*, 7 May 2010, p19.

³⁷⁵ Western Australian Racing Industry Review Committee, *Future Governance of the Western Australian Racing Industry. A Report to the Minister for Racing and Gaming*, Western Australia, October 2001, p23.

³⁷⁶ Mr Kerry Clarke, President, WASBA, *Transcript of Evidence*, 7 May 2010, p19.

³⁷⁷ Racing and Wagering Western Australia, ‘Thoroughbred Racing Consultative Group’, January 2010. Available at: www.rwwa.com.au/home/thoroughbreds-consultative-group.html Accessed on 29 September 2010. It should be noted that the same provisions apply to the harness, and greyhound racing consultative groups.

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.

In terms of attempting to consult with industry groups as well as individuals, this is a matter of RWWA striking the appropriate balance. The Committee notes that RWWA has instituted a change as of 2010 to its consultative group meeting format that may assist in this regard. RWWA has indicated that in relation to consultative group meetings for all three racing codes:

*...from 2010 onwards, three Head Office meetings would be held annually, with the fourth meeting to be a regional visit by Racing Operations Directors and Senior Racing Management. These regional meetings will allow for the dissemination of operational and strategic racing issues to the wider racing industry. This will usually take place around February-April each year and will coincide with the release of racing fixtures and distribution of funds to the racing clubs and participants.*³⁷⁸

The Committee cautions however that these meetings should not simply present information to regional industry participants but allow input into decisions on racing fixtures and distribution of funds.

By far the greatest criticism concerning RWWA's consultation is the widespread feeling among industry participants that they lack a meaningful input into RWWA's decision making process. The overarching issues raised with the Committee concerned decisions that had already been made and matters that had been presented to the industry as a *fait accompli*. Mr Dixie Solly, CRA, said of RWWA that industry stakeholders do not 'get to know about lots of the things that they have in their tray until a decision has been made'.³⁷⁹ This suggests that despite RWWA's structured consultation process, many industry stakeholders are unaware of what issues are being considered at any given time. Mr Richard Burt, CEO of RWWA noted that the difficulty involved in consulting with industry stakeholders within the racing and wagering industry is the existence of very divergent views. He contends that this is a well known fact within the industry and the industry wants RWWA to make a decision—even if RWWA receives complaints when it does so:

*So they want decisiveness, but the moment you act decisively you get labelled as autocratic. So it is a balance.*³⁸⁰

³⁷⁸ Ibid.

³⁷⁹ Mr Maxwell (Dixie) Solly, President, Country Racing Association, Transcript of Evidence, 7 May 2010, p6.

³⁸⁰ Mr Richard Burt, CEO, Racing and Wagering Western Australia, Transcript of Evidence, 20 August 2010, p6.

Mr Burt noted that because of this, RWWA does not try to please all parties—yet RWWA also does not want to upset people and they want people to accept what has to happen.³⁸¹ The Committee fully concurs with this as an outcome of good consultation, but suggests that for stakeholders to accept the sometimes difficult decisions that RWWA has to make they must first be made aware of any issues that inform the decision making process—and be given some opportunity to contribute to the process, prior to the decision actually being made.³⁸² As such, the Committee strongly recommends that RWWA makes its consultation procedures widely known.

Recommendation 22

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

Improving the consultation process is essential to helping industry participants feel part of the decision making process. That said, the Committee is mindful that during the consultation process for this Inquiry, RWWA announced some significant changes to the way they intend to consult with industry stakeholders. If RWWA continues developing these innovations through to implementation, the Committee is satisfied that many of the stakeholder criticisms about RWWA's lack of consultation will be addressed.

The proposed changes include the following:

- (As indicated above) an 'outreach' program whereby the executive management, directors and other staff travel to regional areas, presenting information and discussing 'the year we have had, the year ahead, our financial situation, how we do the programming and how we do distributions';³⁸³
- An AGM style of meeting whereby the agenda is 'the chairman and full board giving a report on the year-end results and what is happening';³⁸⁴ and
- The above to be combined with an industry wide conference whereby the information is not just presented but workshopped and the benefits of bringing people together to share and develop ideas is realised.

Mr Richard Burt expanded on the idea of the AGM and conference with the following comment:

³⁸¹ Ibid.

³⁸² Evidence suggests stakeholders would like to be able to submit information prior to any decision being made final, so that if relevant, the information might have a bearing on that process. (As indicated by Mr Jonathan Menzel, Manager, Narrogin Racing, *Transcript of Evidence*, 3 May 2010, p8; Mr Tony Marwick, President, Northam Race Club, *Transcript of Evidence*, 26 March 2010, p2).

³⁸³ Mr Richard Burt, CEO, Racing and Wagering Western Australia, *Transcript of Evidence*, 20 August 2010, p4.

³⁸⁴ Mr Ross Bowe, Chairman, Racing and Wagering Western Australia, *Transcript of Evidence*, 20 August 2010, p4.

*Typically you would come together like an AGM, and then you would go off into these sort of workshops to talk about programming, sponsorship and things, where they can get ideas from others. Because there is a lot of best practice going on in one but not in another so you share that.*³⁸⁵

The Committee considers RWWA's proposed initiatives to be essential. If RWWA implements these changes it will raise the standard of consultation, transparency and accountability within the industry; increase the profile of the industry to external stakeholders and potential sponsors; allow industry knowledge to be maintained and improved; assist all industry participants in becoming more productive, and will ultimately allow the industry to become more competitive and responsive to challenging market conditions.

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:

4. an outreach program to regional areas;
5. the convening of an Annual General Meeting; combined with
6. the establishment of an industry wide conference.

2.7 The distribution of funds by RWWA

RWWA sources the majority of its income from off-course and on-course wagering, with a smaller proportion of revenue derived from non-wagering income. The latter includes unclaimed dividends³⁸⁶ and grants and subsidies from the state government.³⁸⁷

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 2006, Section 105 of the Act required RWWA to distribute profits after taxes and expenses or \$50 million, whichever is the lesser amount,³⁸⁸ to

³⁸⁵ Mr Richard Burt, CEO, Racing and Wagering Western Australia, *Transcript of Evidence*, 20 August 2010, p5.

³⁸⁶ Section 104 of the RWWA Act states that dividends, fixed odds winnings or refunds in respect of wagers unclaimed after 7 months are turned over to income.

³⁸⁷ Racing and Wagering Western Australia, *Annual Report 2009*, 12 October 2009, p41. Available at: www.rwwa.com.au/home/rwwa-annual-report-2009.pdf Accessed on 25 June 2010. It should be noted that the state government provides reimbursement for GST paid on the operators' margin and for accounting purposes this is considered a 'grant' from the state government.

³⁸⁸ Section 105 maintained arrangements that already existed within the *Totalisator Agency Board Betting (Modification of Operation) Act 2000* whereby the first \$50 million of wagering profits after taxes and expenses would be distributed to the codes in accordance with set percentages (Hon. Nick Griffiths, MLC, Minister for Racing and Gaming, Western Australia, Legislative Council, *Parliamentary Debates* (Hansard), 9 May 2003, p7416).

thoroughbred, harness, and greyhound racing in the proportions defined in Section 105(2). Profits in excess of \$50 million were then to be distributed at the discretion of RWWA.³⁸⁹ From 1 August 2006,³⁹⁰ section 106 took effect stating that after expenses RWWA is to distribute wagering profits among the three racing codes in such amounts as it determines. Notwithstanding RWWA's discretion:

*RWWA is to use its best endeavours to ensure that the amount paid or credited to any racing club...in any racing year is not less than the revenue, after taxes and expenses are deducted, generated from wagering conducted by RWWA on races conducted by that racing club during that year.*³⁹¹

In early 2010 the RWWA Act was amended as a consequence of the *Racing and Wagering Legislation Amendment Act 2009*. The new Section 107A establishes a racing bets levy account and requires RWWA to also distribute moneys received from the Gaming and Wagering Commission (in relation to product fees) to each of the three racing codes.³⁹² Funds in the racing bets levy account are to be distributed to the three codes by RWWA in such amounts as it determines.³⁹³

Funds distributed to the three codes are in the form of stakes, capital grants, subsidies and participant payments.³⁹⁴ Thoroughbred and harness racing distributions are made directly to clubs whereas greyhound distributions go to the Western Australian Greyhound Racing Association.³⁹⁵ WAGRA manages three venues (Cannington, Mandurah, and Northam) and is responsible for allocating the funds it receives to the volunteer committees (such as AVGRA) which perform race day functions at the venues.³⁹⁶

When broken down further, the distributions made to racing clubs by RWWA comprise participant funding and club funding. The former underwrites stakes and also includes among other things, breeding incentives and driver/rider fees. The latter returns a contribution to clubs for operating race meetings, providing training infrastructure and usage and product fees (arising from wagering turnover at meetings conducted by the club).³⁹⁷

³⁸⁹ Section 105(5) *Racing and Wagering Western Australia Act 2003*.

³⁹⁰ This date was subject to extensive debate in the Legislative Council during consideration of the *Racing and Wagering Western Australia Bill 2003*. The bill was amended from a cut off of 31 July 2005 to that of 31 July 2006 to provide a suitable period of transition for RWWA while ensuring fair returns for stakeholders in the racing industry.

³⁹¹ Section 106(2) *Racing and Wagering Western Australia Act 2003* (WA).

³⁹² Hon. T.K. Waldron, MLA, Minister for Racing and Gaming, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 23 September 2009, pp7556-7557.

³⁹³ Section 107A *Racing and Wagering Western Australia Act 2003* (WA).

³⁹⁴ Racing and Wagering Western Australia, *Annual Report 2008*, 13 October 2008, p6. Available at: www.rwwa.com.au/home/annual-report-2008.pdf Accessed on 31 August 2010.

³⁹⁵ WAGRA is a statutory authority established under the *Western Australian Greyhound Racing Association Act 1981* (WA).

³⁹⁶ Mr David Simonette, Chief Executive Officer, Western Australian Greyhound Racing Association, *Transcript of Evidence*, 30 April 2010, p3.

³⁹⁷ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p42.

In terms of funds distributed to the racing industry since RWWA's establishment in 2003, annual distributions increased until 2008-09.³⁹⁸ The distribution to the racing industry in 2009-10 was less than for 2008-09 as a consequence of downward pressures on revenues (detailed in Chapter 2.9). In 2009-10, RWWA provided \$103.2 million to the three racing codes in the form of club and participant distributions. An additional \$2.1 million was provided as industry infrastructure and development grants. RWWA announced a \$104.9 million distribution to the codes for 2010-11 thereby maintaining stake money levels; however no similar commitment was made for infrastructure.³⁹⁹

According to RWWA, \$24.5 million has been distributed to the industry in direct capital grants between 2003-04 and 2008-09.⁴⁰⁰ The emphasis of RWWA's distribution however has been on maintaining stake money levels in order to deliver adequate returns to industry participants and maintain an industry incentive.⁴⁰¹

(a) The effectiveness of RWWA's funding distribution

The Committee received extensive feedback on the topic of funding distribution. In relation to the effectiveness of RWWA's distribution model, the main criticisms are summarised here with further analysis below:

- The distribution model favours the thoroughbred racing code at the expense of harness racing⁴⁰² and greyhound racing;⁴⁰³
- RWWA's distribution model fails to recognise performance as distributions are not truly reflective of contribution to turnover⁴⁰⁴ and a more adequate performance based model is required;⁴⁰⁵
- The distribution of funds to the thoroughbred racing code suggests that provincial racing is subsidising country racing to a greater extent compared with metropolitan racing;⁴⁰⁶

³⁹⁸ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p37.

³⁹⁹ Edwards, R., 'No cutbacks in stakes', *The West Australian*, 4 June 2010, p72.

⁴⁰⁰ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, p19. It should be noted that this figure excludes the \$20 million Regional Racing Infrastructure Grants Program introduced by the state government in 2005.

⁴⁰¹ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, pp34, 70.

⁴⁰² Submission No. 30 from Western Australian Trotting Association, 15 January 2010, pp1-15.

⁴⁰³ Submission No. 14 from Western Australian Greyhound Racing Association, 30 November 2009, pp3-4.

⁴⁰⁴ Mr David Wrensted, Vice Chairman, WA Provincial Thoroughbred Racing Association, *Transcript of Evidence*, 26 February 2010, p7.

⁴⁰⁵ Submission No. 26 from Northam Race Club Inc, 23 December 2009, p2.

⁴⁰⁶ This issue was raised in Submission No. 24 from Western Australian Provincial Thoroughbred Racing Association (Inc), 29 December 2009, pp4-5; Mr Keith Jeffreys, Committee Member, Pinjarra Race Club, *Transcript of Evidence*, 6 April 2010, pp3-4; Mr David Wrensted, Manager, Geraldton Turf Club, *Transcript of Evidence*, 29 March 2010, p6; and Submission No. 13 from Mt Barker Turf Club, 30 November 2009, p2.

- Stakes distribution favours metropolitan racing at the expense of provincial and country racing;⁴⁰⁷
- The funding distribution fails to recognise the significant volunteer effort of country/community clubs;⁴⁰⁸
- The funding model differs from year to year and there is no surety for clubs about club or stake money funding;⁴⁰⁹
- RWWA's administrative costs have reduced the pool of funds available for distribution to the codes;⁴¹⁰
- There is a discrepancy in venue fees between metropolitan and regional areas;⁴¹¹
- RWWA's suspension of the Owners' Incentive Payment (OIP) has adversely affected country clubs;⁴¹²
- There has been insufficient expenditure by RWWA on new and/or existing race related and TAB infrastructure:
 - The impost on country racing clubs has been particularly severe;⁴¹³ and
 - There is an urgent need for infrastructure funding across the industry, including training facilities.⁴¹⁴

Expanding on some of the comments above, the Committee received evidence from various provincial thoroughbred racing clubs to the effect that RWWA's funding distribution model is not sufficiently reflective of performance and places an unfair burden on provincial clubs. WAPTRA indicated that provincial racing clubs had received a substantially smaller percentage of distribution when compared to turnover generated while Perth Racing had received a higher percentage distribution than its turnover contribution.⁴¹⁵ According to WAPTRA this represents a 'leakage' of funds generated by provincial clubs to fund country racing.⁴¹⁶ This view was shared

⁴⁰⁷ This issue was raised in Submission No. 25 from Geraldton Turf Club, 24 December 2009, p2; Submission No. 24 from Western Australian Provincial Thoroughbred Racing Association (Inc), 29 December 2009, p4; Submission No. 26 from Northam Race Club (Inc), 24 December 2009, p2; Submission No. 5 from York Racing (Inc), 26 November, p4; and Submission No. 12, 30 November 2009, p3.

⁴⁰⁸ Mr Maxwell (Dixie) Solly, President, Country Racing Association, *Transcript of Evidence*, 7 May 2010, p5.

⁴⁰⁹ Submission No. 30 from Western Australian Trotting Association, 15 January 2010, pp1-15.

⁴¹⁰ Submission No. 28 from Western Australian Racehorse Owners' Association, 30 December 2009, p2.

⁴¹¹ Mr Paul Rossiter, Manager, Bunbury Turf Club, *Transcript of Evidence*, 7 May 2010, p6.

⁴¹² Mr John Biggs, Representative, NE Goldfields Racing Clubs, *Transcript of Evidence*, 19 March 2010, p4.

⁴¹³ Mrs Rosanne Pimm, Treasurer, Collie Race Club, *Transcript of Evidence*, 6 April 2010, p4.

⁴¹⁴ Due to the volume of evidence received with respect to infrastructure, this issue is expanded on in subsequent pages.

⁴¹⁵ Submission No. 24 from Western Australian Provincial Thoroughbred Racing Association, 29 December 2009, p6.

⁴¹⁶ Ibid.

by the Kalgoorlie-Boulder Racing Club⁴¹⁷ and the Pinjarra Race Club,⁴¹⁸ and was reinforced by the Geraldton Turf Club:

*At the moment the percentages are such that the provincial clubs have less of what they turn over as to what they have generated. That money seems to be drifting to the country racing clubs. The provincial clubs would say that they have a responsibility to support country racing because a lot of us benefit indirectly and directly by country race clubs but the burden should be on the industry as a whole.*⁴¹⁹

A number of country/community race clubs highlighted the substantial volunteer effort that goes into their operations.⁴²⁰ It was put to the Committee that RWWA's funding distribution model fails to reflect the significant contribution of volunteers to these clubs. Given the cost savings to the industry that volunteers represent⁴²¹ and the fact that many of these clubs top up their stakes, this contribution should be accounted for:

*Because of their low overheads, the smaller clubs are pretty low cost maintenance clubs. Everything is pretty well done on a voluntary basis. They survive on the smell of an oily rag...As a whole, country racing clubs contribute around 30 per cent more in actual stakes distribution than they receive. They top their stakes up ... While they are deemed to be not that significant in their financial contribution to the industry, they still receive less than anyone else and put in 30 per cent more than they get. It is a huge contribution in terms of stakes to financial contribution.*⁴²²

Another issue raised with the Committee pertained to differences in levels of stake money between metropolitan and non-metropolitan areas. This is significant given that basic stakes are funded through RWWA's distribution. Mr David Wrensted, Geraldton Turf Club indicated that the gap between metropolitan and provincial stakes is widening in real terms.⁴²³ The Pingrup Race Club believed that metropolitan stakes were unnecessarily high and limited funds available for the rest of the industry.⁴²⁴ Mr Terry Zambonetti, Albany Racing Club highlighted that the gaps between metropolitan, provincial and country stakes distributions have become more pronounced over time.⁴²⁵ Further, Mr Jonathan Menzel, Narrogin Racing indicated that this disparity was not getting any better:

⁴¹⁷ Mr David Prance, Immediate Past Chairman, Kalgoorlie-Boulder Racing Club, *Transcript of Evidence*, 19 March 2010, pp3-5.

⁴¹⁸ Mr Colin Bellchambers, General Manager, Pinjarra Race Club, *Transcript of Evidence*, 6 April 2010, p5.

⁴¹⁹ Mr David Wrensted, Manager, Geraldton Turf Club, *Transcript of Evidence*, 29 March 2010, p6.

⁴²⁰ Mr Bill Pearce, Mt Barker Turf Club, *Transcript of Evidence*, 12 March 2010, p7; Mr Tony Crowhurst, Chairman, Dongara-Irwin Race Club, *Transcript of Evidence*, 29 March 2010, p2.

⁴²¹ Submission No. 32 from Western Australian Country Harness Racing Association, 14 January 2010, p3.

⁴²² Mr Maxwell (Dixie) Solly, President, Country Racing Association, *Transcript of Evidence*, 7 May 2010, p5.

⁴²³ Mr David Wrensted, Manager, Geraldton Turf Club, *Transcript of Evidence*, 29 March 2010, p5.

⁴²⁴ Mr Alan Smith, Secretary/Treasurer, Pingrup Race Club, *Transcript of Evidence*, 3 May 2010, p14.

⁴²⁵ Mr Terence Zambonetti, Vice President, Albany Racing Club, *Transcript of Evidence*, 12 March 2010, p16.

*It is a huge difference between the stake money of country clubs and the stake money in Perth. It is something that has grown exponentially in Perth, but it has not changed essentially in the country; if anything, it has gone down.*⁴²⁶

There were suggestions also from provincial thoroughbred racing clubs that RWWA's contribution to metropolitan feature stakes in particular was unnecessarily high. According to the Northam Race Club, provincial clubs are forced to reduce maiden stakes in order to top up their feature races while Perth Racing receives full funding from RWWA for its feature races.⁴²⁷ Narrogin Racing⁴²⁸ and the Bunbury Turf Club⁴²⁹ also highlighted the disproportionately higher feature race stakes in the metropolitan area. The Geraldton Turf Club also drew attention to the scale of metropolitan feature stakes such as the Railway Stakes and while acknowledging that it was important for a premier event such as this to be funded significantly by RWWA, this funding should not occur at the expense of other clubs.⁴³⁰

In relation to RWWA's distribution of capital grants, the Committee received extensive comment suggesting critical need across the industry for infrastructure funding. The main issues can be summarised as follows:

- Race clubs have not received adequate development funding and/or require additional funds to upgrade facilities;⁴³¹
- There is a need for a dedicated horse sales and/or quarantine facility in Western Australia;⁴³²
- It is critical to retain a dedicated metropolitan facility for greyhound racing. A new racing facility constructed at Cannington would cost approximately \$19.2 million and is beyond the capacity of WAGRA to fund;⁴³³
- Compared to other states, there has been insufficient infrastructure investment in the harness industry in WA;⁴³⁴

⁴²⁶ Mr Jonathan Menzel, Manager, Narrogin Racing, *Transcript of Evidence*, 3 May 2010, p14.

⁴²⁷ Submission No. 26 from Northam Race Club Inc, 23 December 2009, p2.

⁴²⁸ Mr Jonathan Menzel, Manager, Narrogin Racing, *Transcript of Evidence*, 3 May 2010, p10.

⁴²⁹ Mr Paul Rossiter, Manager, Bunbury Turf Club, *Transcript of Evidence*, 7 May 2010, p7.

⁴³⁰ Mr David Wrensted, Manager, Geraldton Turf Club, *Transcript of Evidence*, 29 March 2010, p5.

⁴³¹ The Committee received evidence of infrastructure need from numerous clubs, a sample of which is cited here: Submission No. 13 from Mt Barker Turf Club, 30 November 2009, p2; Submission No. 5 from York Racing Inc, 26 November 2009, p4; Submission No. 12 from Narrogin Racing, 30 November 2009, p3; Submission No. 23 from Bunbury Turf Club, 18 December 2009, p1; and Mr Brendon Gardiner, Secretary/Treasurer, Bridgetown Harness Racing Club, *Transcript of Evidence*, 6 April 2010, p2.

⁴³² Submission No. 18 from West Australian Bloodhorse Breeders Association Inc, 3 December 2009, p3.

⁴³³ Mr David Simonette, Chief Executive Officer, Western Australian Greyhound Racing Association, *Transcript of Evidence*, 30 April 2010, p4.

⁴³⁴ Submission No. 46 from Pinjarra Harness Racing Club, 6 April 2010, p3.

- Safety upgrades to race tracks as required by RWWA have been a particular financial impost on country race clubs⁴³⁵ although RWWA has provided some limited funding assistance in this regard;⁴³⁶
- Country clubs in particular struggle to fund infrastructure and/or lack funding support from RWWA in this regard;⁴³⁷ and
- Infrastructure needs are not confined to racing with a lack of capital expenditure on TAB retail agencies also brought to the Committee's attention.⁴³⁸

A specific subset of infrastructure concerns related to training facilities and the Committee heard extensive evidence suggesting that more funding is required in this regard. The main points can be summarised as follows:

- Thoroughbred training facilities in the metropolitan area (Ascot, Belmont and Lark Hill) are under significant pressure⁴³⁹ and/or better facilities are required;⁴⁴⁰
- The metropolitan/near metropolitan area is one track short of requirements for training (and racing);⁴⁴¹
- Clubs receive some financial compensation from RWWA for the provision of training facilities but this only partially covers costs and clubs are left to meet significant shortfalls,⁴⁴² for example Perth Racing (\$750,000),⁴⁴³ Geraldton Turf Club (up to \$50,000 per year),⁴⁴⁴ and Albany Racing Club (RWWA covers less than half of the \$250,000 annual cost);⁴⁴⁵

⁴³⁵ Mr Steven McGuire, Tote Manager, Kojonup Race Club, *Transcript of Evidence*, 3 May 2010, p4; Mr Alan Smith, Secretary/Treasurer, Pingrup Race Club, *Transcript of Evidence*, 3 May 2010, pp6-7; Mr Brett Smith, Committee Member, Junction Race Club, *Transcript of Evidence*, 16 May 2010, p6.

⁴³⁶ Mr Robert Newton, Vice President, Mingenew Turf Club and Mr Tony Crowhurst, Chairman, Dongara-Irwin Race Club, *Transcript of Evidence*, 29 March 2010, p4; Mrs Rosanne Pimm, Treasurer, Collie Race Club, *Transcript of Evidence*, 6 April 2010, p9; Mr Geoff Fahl, Chairman/Treasurer, Carnarvon Race Club, *Transcript of Evidence*, 16 May 2010, p5.

⁴³⁷ Submission No. 9 from Mr F Peczka, 30 November 2009, p2; Mrs Rosanne Pimm, Treasurer, Collie Race Club, *Transcript of Evidence*, 6 April 2010, p4.

⁴³⁸ Submission No. 16 from Morley TAB Agents, 2 December 2009, p5; Submission No. 8 from WA TAB Agents' Association, 30 November 2009, p7.

⁴³⁹ Mr Edward (Ted) van Heemst, Chairman, Perth Racing, *Transcript of Evidence*, 26 February 2010, pp4,6; Mr Keith Jeffreys, Committee Member, Pinjarra Race Club, *Transcript of Evidence*, 6 April 2010, p11.

⁴⁴⁰ Mr Bruce Hyde, President, WA Racing Trainers' Association, *Transcript of Evidence*, 26 February 2010, p8;

⁴⁴¹ Submission No. 22B from WA Racing Trainers' Association, 6 August 2010, p2.

⁴⁴² Mr Tony Marwick, President, Northam Race Club, *Transcript of Evidence*, 26 March 2010, p10.

⁴⁴³ Mr Edward (Ted) van Heemst, Chairman, Perth Racing, *Transcript of Evidence*, 26 February 2010, p4

⁴⁴⁴ Mr David Wrensted, Manager, Geraldton Turf Club, *Transcript of Evidence*, 29 March 2010, p4.

⁴⁴⁵ Mr Shane O'Loughlin, Committee Member, Albany Racing Club, *Transcript of Evidence*, 12 March 2010, p9.

- RWWA's funding model needs to give greater recognition to clubs that provide training facilities;⁴⁴⁶
- The harness industry requires training facilities;⁴⁴⁷
- The greyhound code lacks dedicated training facilities⁴⁴⁸ and without training facilities and a metropolitan race track, the code cannot survive;⁴⁴⁹ and
- There is some acknowledgement within the industry that RWWA has limited finances to support training facilities.⁴⁵⁰

Finding 36

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

In relation to other club funding, various stakeholders cited the loss of the OIP⁴⁵¹ as a particular issue. It should be noted that RWWA suspended the OIP for the 2009-10 racing season as a consequence of escalating financial pressures and as a means of preserving the level of stakes funding. The Committee was told that the loss of the OIP had been particularly difficult for country clubs⁴⁵² and should be reinstated.⁴⁵³ While the Committee heard that people involved in the industry would continue regardless,⁴⁵⁴ the OIP definitely assisted industry participants to recover costs⁴⁵⁵ and stay in the industry:

⁴⁴⁶ Submission No. 25 from Geraldton Turf Club, 24 December 2009, p3; Mr David Prance, Immediate Past Chairman, Kalgoorlie-Boulder Racing Club, *Transcript of Evidence*, 19 March 2010, p9; Mr Craig Chadwick, Chairman, Bunbury Turf Club, *Transcript of Evidence*, 7 May 2010, pp2-4.

⁴⁴⁷ Mr Kevin Jeavons, President, Western Australian Harness Racing Owners' Association, *Transcript of Evidence*, 7 May 2010, p22; Mr Mark Roberts, Vice President, Northam Harness Racing Club, *Transcript of Evidence*, 26 March 2010, p14; Mr Rob Deadman, Secretary, York Harness Racing Club, *Transcript of Evidence*, 26 March 2010, p2.

⁴⁴⁸ Mr David Simonette, Chief Executive Officer, Western Australian Greyhound Racing Association, *Transcript of Evidence*, 30 April 2010, p12.

⁴⁴⁹ Mr Sam Celenza, President, Western Australian Greyhound Breeders, Owners and Trainers' Association, *Transcript of Evidence*, 30 April 2010, p2.

⁴⁵⁰ Mr Barry Mahood, Chairman, York Racing Inc, *Transcript of Evidence*, 26 March 2010, p8; Mr Kevin Jeavons, President, Western Australian Harness Racing Owners' Association, *Transcript of Evidence*, 7 May 2010, p22.

⁴⁵¹ The OIP comprised a \$125 payment to owners of non-stakes earners which would subsidise owners somewhat for the feeding and transportation of horses to regional race meetings.

⁴⁵² Mr John Biggs, Representative, NE Goldfields Racing Clubs, *Transcript of Evidence*, 19 March 2010, p4.

⁴⁵³ Submission No. 12 from Narrogin Racing, 30 November 2009, p4; Mr Geoff Fahl, Chairman/Treasurer, Carnarvon Race Club, *Transcript of Evidence*, 16 May 2010, p15.

⁴⁵⁴ Mr Brett Taylor, President, Central Wheatbelt Harness Racing Club, *Transcript of Evidence*, 26 March 2010, p10.

⁴⁵⁵ Mr Kerry Clarke, President, Western Australian Standardbred Breeders' Association, *Transcript of Evidence*, 7 May 2010, p6.

*It does help for people to stay in the industry. I think that is another point: that you really need to be looking after them. You need to encourage people to come into the industry. We do not want too many stumbling blocks to stop people.*⁴⁵⁶

Also relevant to club funding, a number of clubs raised the issue of meeting fees, which refers to the financial contribution made by RWWA to clubs to operate their race meetings. The Albany Harness Racing Club indicated that meeting fees did not fully take into account clubs which owned their own premises and therefore had to shoulder a higher financial burden.⁴⁵⁷ Various harness racing clubs highlighted the significantly lower meeting fee secured by country clubs compared to Gloucester Park.⁴⁵⁸ With respect to thoroughbreds, the Bunbury Turf Club highlighted meeting fee discrepancies between metropolitan and regional areas:

*With the venue fees, I find it very hard to gauge why it would cost Belmont or Ascot \$15 000 to conduct a race meeting and we get paid a \$5 000 venue fee... Our crowds are very similar. We have the same expenses as their midweek race meetings.*⁴⁵⁹

Summary

Although many comments put to the Committee suggested deficiencies in RWWA's funding distribution and the need for additional funds, it must also be acknowledged that many (mainly country and community) clubs prided their ability to raise their own funds and avoid being a financial burden on the industry. Although by no means an exhaustive list, this included Busselton Trotting Club (responsible for topping up stakes and providing petrol vouchers),⁴⁶⁰ Wagin Trotting Club (upgraded its own track at a cost of \$20,000),⁴⁶¹ and Albany Harness Racing Club (petrol vouchers).⁴⁶² A number of clubs cited local government support including York Racing Inc,⁴⁶³ Mt Barker Turf Club,⁴⁶⁴ and Williams Harness Racing Club.⁴⁶⁵ Many clubs also

⁴⁵⁶ Mr Peter Dempster, President, Northam Harness Racing Club, *Transcript of Evidence*, 26 March 2010, p10.

⁴⁵⁷ Submission No. 36 from Albany Harness Racing Club, 2 February 2010, p2.

⁴⁵⁸ Mr Peter Dempster, President, Northam Harness Racing Club, *Transcript of Evidence*, 26 March 2010, p9; Mr Bruce Jones, Vice President, Harvey Districts Trotting Club, *Transcript of Evidence*, 6 April 2010, p8; Mr Revell Douglas, General Manager, Pinjarra Harness Racing Club, *Transcript of Evidence*, 6 April 2010, p4.

⁴⁵⁹ Mr Paul Rossiter, Manager, Bunbury Turf Club, *Transcript of Evidence*, 7 May 2010, p6.

⁴⁶⁰ Mrs Patricia Abbott, Secretary/Treasurer, Busselton Trotting Club, *Transcript of Evidence*, 6 April 2010, p5.

⁴⁶¹ Mr Kevin Spurr, Vice President, Wagin Trotting Club, *Transcript of Evidence*, 3 May 2010, p5.

⁴⁶² Mr Colin Park, General Manager, Albany Harness Racing Club, *Transcript of Evidence*, 12 March 2010, p6.

⁴⁶³ Mr Anthony Boyle, Committee Member, York Racing Inc, *Transcript of Evidence*, 26 March 2010, p9.

⁴⁶⁴ Mrs Margaret Skinner, Secretary, Mt Barker Turf Club, *Transcript of Evidence*, 12 March 2010, p2.

⁴⁶⁵ Ms Helen Bunch, Secretary-Treasurer, Williams Harness Racing Club, *Transcript of Evidence*, 3 May 2010, pp2-3.

asserted that they operated as financially self-sufficiently as possible including WAGRA,⁴⁶⁶ Geraldton Harness Racing Club⁴⁶⁷ and Dongara-Irwin Race Club.⁴⁶⁸

The arguments heard by the Committee in relation to RWWA's distribution to the three racing codes and to clubs within the codes are fundamentally linked to RWWA's discretionary funding model and whether industry participants feel they are receiving their fair share. Prescribed intercode and intracode allocations under Section 105 of the RWWA Act ceased to operate as at 1 August 2006. The Committee's analysis of the discretionary funding model and whether or not greater prescription is required in the Act is discussed below at Chapter 2.7(b). Infrastructure funding is discussed separately below at Chapter 2.7(c).

(b) Improving the effectiveness of funding distribution - the funding distribution model

RWWA has defended its distribution, stating that it has 'consistently delivered a higher proportion of wagering turnover to industry than the totalisator businesses of any other Australian jurisdiction other than Victoria, for which distributions to racing clubs are supplemented by profits from gaming machines'.⁴⁶⁹ Figures provided by RWWA demonstrate that 8.3% of totalisator turnover in 2008-09 was distributed to the industry, second only to Victoria.⁴⁷⁰

In terms of how RWWA exercises its discretion under Section 106 of the RWWA Act to distribute funds to the industry, Mr Richard Burt, CEO of RWWA advised:

*We, in our distribution model, have many categories of allocation of funds. The largest category goes to basic feature stakes. There is money that goes to training, there is money that goes to club funding, there is money that goes to jockey payments and driver payments.*⁴⁷¹

RWWA has continually emphasised the pre-eminence of stakes in its funding distribution,⁴⁷² an emphasis which many stakeholders consider justified since it has preserved the status of the Western Australian industry nationally.⁴⁷³ Conversely, any reduction in stakes could lead to a loss of confidence in the industry.⁴⁷⁴ Various stakeholders indicated that the level of RWWA's stakes

⁴⁶⁶ Mr David Simonette, Chief Executive Officer, Western Australian Greyhound Racing Association, *Transcript of Evidence*, 30 April 2010, pp5-6.

⁴⁶⁷ Mr Graham Cox, President, Geraldton Harness Racing Club, *Transcript of Evidence*, 29 March 2010, p9.

⁴⁶⁸ Mr Tony Crowhurst, Chairman, Dongara-Irwin Race Club, *Transcript of Evidence*, 29 March 2010, p4.

⁴⁶⁹ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, piv.

⁴⁷⁰ *Ibid.*, p36.

⁴⁷¹ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, p51.

⁴⁷² Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, piv.

⁴⁷³ Mr John Biggs, Representative, NE Goldfields Racing Clubs, *Transcript of Evidence*, 19 March 2010, p6; Submission No. 46 from Pinjarra Harness Racing Club, 6 April 2010, p2.

⁴⁷⁴ Mr Maxwell (Dixie) Solly, President, Country Racing Association, *Transcript of Evidence*, 7 May 2010, p11.

funding was not an issue compared to capital funding which was.⁴⁷⁵ That said, there was some argument that an indefinite increase in stakes would not continue to achieve such a significant outcome. WAGRA made the point that stake money is already at a good level and suggested that there was a point at which further increases would be ‘like tipping water into a bucket. There is the right level, and the rest just goes into nothingness’.⁴⁷⁶

As outlined above, evidence to the Committee has suggested that certain aspects of RWWA’s model are ineffective thereby creating perceived inequities ranging from stakes allocations to metropolitan and country clubs, to meeting fees and the loss of incentive payments. In determining the distribution to the industry, RWWA undertakes an annual budgeting process, which involves evaluating future growth and anticipated income from various sources against anticipated expenses, fees (such as pooling fees and product fees) and costs (such as administration). According to RWWA, it is ‘a very businesslike approach in that income less expenses leaves, in theory, a profit’,⁴⁷⁷ which is then distributed to the industry. RWWA is required to consult with racing clubs to establish policies for stake money levels and race conditions and programs.⁴⁷⁸ As such, RWWA’s Racing Operations Committee takes on board ‘comment from the consultative groups, discussions with various race clubs and with industry people such as owners, trainers, drivers and jockeys’ and has a bearing on the distribution.⁴⁷⁹

The funding model itself works by integrating the racing calendar for all three racing codes with the funding allocation to each race, meeting, club and code based on a classification of club, meetings and races. The model coordinates payment of all distribution-related funding including club fees, breeding incentives, stakes, rider and driver fees.⁴⁸⁰

The strength of RWWA’s funding model is that it works forward in anticipation of the coming season. According to Mr Richard Burt, CEO of RWWA, the benefit of this approach is that unlike privatised models that say, “‘This is what we have made and this is all that is available”, and the industry goes up and goes down’, the RWWA model is able to protect the racing product going forward.⁴⁸¹ The major failing is that the budget can come out with an amount of money that is far greater than the amount available for distribution thereby forcing RWWA to make up the difference using its cash reserves. According to the Chairman of the RWWA board:

Ideally we do not want to go into deficit for any particular year, but there may be occasions when we feel that, in order to keep distributions at a reasonable level in hard

⁴⁷⁵ Mr Craig Chadwick, Chairman, Bunbury Turf Club, *Transcript of Evidence*, 7 May 2010, p12; Mr Maxwell (Dixie) Solly, President, Country Racing Association, *Transcript of Evidence*, 7 May 2010, p10.

⁴⁷⁶ Mr David Simonette, Chief Executive Officer, Western Australian Greyhound Racing Association, *Transcript of Evidence*, 30 April 2010, p6.

⁴⁷⁷ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, p31.

⁴⁷⁸ Section 35(g) *Racing and Wagering Western Australia Act 2003* (WA).

⁴⁷⁹ Mr Robert Pearson, Director, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, pp31-32.

⁴⁸⁰ Submission No. 7D from Racing and Wagering Western Australia, 2 August 2010, pp3-4.

⁴⁸¹ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, p31.

*commercial times, it might be appropriate, as it has been over the last two years, to run a deficit and draw down our reserves by a small amount. But it cannot continue to do that. That is a short-term fix while we look at other revenue opportunities or cost-cutting measures that we can introduce in order to bring the books into balance.*⁴⁸²

Aspects of RWWA's funding model that have drawn criticism include perceived expenditure on administration (including staffing and marketing⁴⁸³) although concerns largely relate to the period following RWWA's establishment. RWWA advised that it had streamlined its operations through abolition of 30 positions and has a current staffing of 320 FTE.⁴⁸⁴ This streamlining has helped to allay some stakeholder concerns.⁴⁸⁵ The perception that RWWA is administratively burdensome may also be due to insufficient transparency regarding its administrative costs.⁴⁸⁶ This perception could be addressed through greater transparency by RWWA and therefore highlights again the importance of accountability (which is discussed in Chapter 2.4)

A significant issue raised with the Committee pertains to perceived inequities in stake money allocations between codes and within codes (i.e. between metropolitan, provincial and/or country areas). Regarding the latter, there was some acknowledgement among industry participants that metropolitan stake levels should be higher to preserve their flagship status,⁴⁸⁷ and that maintaining the strength of metropolitan racing would benefit country racing in the long run due to the interconnected nature of metropolitan and country racing.⁴⁸⁸

RWWA put forward a base-stakes model for the thoroughbred racing code which looked to address the significant disparity between metropolitan, provincial, and country stake levels. The model proposed fixing base stakes for metropolitan and provincial meetings which would then be fully funded by RWWA at sustainable levels. RWWA proposed making a contribution towards feature stakes but leaving clubs to top up feature stakes using their own means.⁴⁸⁹ RWWA has since advised the Committee that this initiative will not be progressed and that while a number of provincial clubs supported the idea of set base stakes, widespread support was lacking from industry regarding RWWA's original recommendation to restrict club top ups so that clubs would instead focus on feature race meetings.⁴⁹⁰

⁴⁸² Mr Ross Bowe, Chairman, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, p32.

⁴⁸³ Ms Julie Caldwell, Manager, Bunbury Trotting Club, *Transcript of Evidence*, 6 April 2010, pp8-9.

⁴⁸⁴ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 30 April 2010, p16.

⁴⁸⁵ Mr Jonathan Menzel, Manager, Narrogin Racing, *Transcript of Evidence*, 3 May 2010, p10.

⁴⁸⁶ Submission No. 41 from Country Racing Association, 16 April 2010, p3.

⁴⁸⁷ Mr Maxwell (Dixie) Solly, President, Country Racing Association, *Transcript of Evidence*, 7 May 2010, p12.

⁴⁸⁸ Mr Geoff Fahl, Chairman/Treasurer, Carnarvon Race Club, *Transcript of Evidence*, 16 May 2010, p11.

⁴⁸⁹ Racing and Wagering Western Australia, *Securing the Future: A Vision of Sustainability for the WA Thoroughbred Industry*, RWWA, March 2010, p12.

⁴⁹⁰ Submission No. 7D from Racing and Wagering Western Australia, 2 August 2010, p7.

The Committee acknowledges that stakes are a critical element for sustaining the industry and can appreciate the value of maintaining higher metropolitan stakes to preserve the ‘flagship’ status of metropolitan racing. The Committee is aware however that the disparity in basic and feature stakes between metropolitan, provincial, and country areas remains unresolved and is therefore still an issue of contention.

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.

Insofar as meeting fee discrepancies are concerned, RWWA has proposed a mechanism to address this issue although it is specific only to the thoroughbred code. Moving away from its traditional formula for club funding which is based on a set meeting fee according to club classification (metropolitan, provincial, country), RWWA’s Transition Club Funding Model proposes to allocate funds based on the wagering performance of relative ‘fixture’ meetings as opposed to ‘event’ meetings. Event meetings are defined as meetings with strong customer and community participation with optimal on-course wagering capacity. Fixture meetings are defined as meetings with a capacity for optimal returns to the industry in the provision of wagering related revenue and strong off-course revenue capacity. ‘Event’ meetings will attract lower funding in recognition of a club’s ability to generate increased on-course turnover. In applying the new model, RWWA has committed to working with clubs to develop performance requirements to ensure a fair and competitive allocation of meetings.⁴⁹¹ RWWA has advised that classification and funding will occur on a meeting by meeting basis not the overall nature of a club’s meetings and that pending consultation with the industry, this initiative will be implemented in the 2011-12 season.⁴⁹²

With respect to harness racing, RWWA makes the point that Gloucester Park maintains its flagship status through volume of meetings so even though it might be less costly to run mid-week meetings at provincial tracks, the industry would be at a greater disadvantage if it lost its prime metropolitan venue:

The point is: running at a very expensive quality venue for the promotion of the product, running of elite racing, the drawcard for people in harness racing—all those reasons—like the Subiaco football ground costs more than the local Collie football ground, the benefit of running at Gloucester Park I will not go into, but should be understood. The way in which Gloucester Park is sustained is that it is sustained through scale. It has 108 race meetings,

⁴⁹¹ Racing and Wagering Western Australia, *Securing the Future: A Vision of Sustainability for the WA Thoroughbred Industry*, RWWA, March 2010, p15.

⁴⁹² Submission No. 7D from Racing and Wagering Western Australia, 2 August 2010, p6.

*just over half of which are country front meetings. They could be run at Pinjarra or Harvey. The meeting fees are now the same as Harvey or Pinjarra.*⁴⁹³

RWWA indicated further that the matter is being addressed and that in this year's distribution model, the meeting fee that Gloucester Park will get is the same as what country front meetings will get.⁴⁹⁴ Nonetheless, until the matter is fully resolved, meeting fee discrepancies remain a serious issue for provincial and country race clubs.

Finding 38

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

Recommendation 24

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

With respect to other club funding, the OIP obviously makes a difference to country race clubs and assists participants to stay in the industry. The Country Racing Association suggested that to make it more economically viable, RWWA could limit the payment to outer country clubs where travel is associated and where the payment is particularly critical.⁴⁹⁵ In early 2010, the Minister for Racing and Gaming indicated that RWWA's consideration of the funding model for the 2010-11 racing season would include 'a travel subsidy policy for country and regional race clubs'.⁴⁹⁶ In May 2010, RWWA established a subcommittee to address certain matters raised by the Harness Racing Consultative Group, among them the reintroduction of the OIP however there have been no recent statements in this regard.⁴⁹⁷

The Committee considers the OIP to be important to the sustainability of country racing and should be considered in RWWA's funding distribution model.

⁴⁹³ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, pp41-42.

⁴⁹⁴ *Ibid.*, p41.

⁴⁹⁵ Mr Maxwell (Dixie) Solly, President, Country Racing Association, *Transcript of Evidence*, 7 May 2010, p5.

⁴⁹⁶ Hon. T.K. Waldron, MLA, Minister for Racing and Gaming, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 17 March 2010, p858.

⁴⁹⁷ Harness Racing Consultative Group, Minutes, 5 May 2010, p4. Available at: www.rwwa.com.au/home/HRCG_Minutes_05_05_10.pdf Accessed on 3 September 2010.

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.

Another claimed deficiency of RWWA's funding distribution model relates to the contribution made by volunteers. The Committee acknowledges that substantial volunteer effort goes into the operations of many racing clubs, particularly country clubs, and that this undoubtedly reduces the costs for many clubs. RWWA advised that its financial modelling does not incorporate volunteerism and clubs are not asked to provide records of these contributions. RWWA cites the absence of an accurate and reliable way of weighting or attaching a value to the financial savings (and therefore contribution in real terms) that volunteers make to a club's financial performance. RWWA recognises, and the Committee accepts, the important role that volunteers play in ensuring community based clubs can support a sustainable number of meetings, which would be lost if these clubs sought additional meetings thus leading to greater funding growth but also a greater reliance on paid staff.⁴⁹⁸

By far the greatest criticism of RWWA's existing funding model relates to relative share of funding within codes and between codes. The Committee observed that the harness racing code in particular was concerned about a declining share of distribution relative to the other codes.⁴⁹⁹ The main issues raised in this regard can be summarised as follows:

- The harness industry is faced with uncertainty due to RWWA's absolute control of funding and how that funding is applied;⁵⁰⁰
- Uncertainty regarding funding compromises the ability of clubs to plan for the future;⁵⁰¹
- To protect the harness industry's share and prevent further erosion, the harness code should be assured of receiving a set minimum percentage of the distribution, to be prescribed in the RWWA Act;⁵⁰²
- There should be set intercode and intracode entitlements in the RWWA Act to safeguard the interests of codes and clubs;⁵⁰³
- The harness industry requires sufficient funding, and stakes in particular, in order to keep people in the industry and reverse the decline in quality trainers, owners and reinsmen.⁵⁰⁴

⁴⁹⁸ Submission No. 7D from Racing and Wagering Western Australia, 2 August 2010, p8.

⁴⁹⁹ Submission No. 29 from WAROA/BOTRA/WASBA, 15 January 2010, p2; Mr Ross Pyke, Secretary/Manager, Fremantle Harness Racing Club, *Transcript of Evidence*, 4 June 2010, p13.

⁵⁰⁰ Mr Robert Bovell, Chief Executive, Western Australian Trotting Association, *Transcript of Evidence*, 26 February 2010, p3.

⁵⁰¹ Mr John Burt, President, Western Australian Trotting Association, *Transcript of Evidence*, 26 February 2010, p10.

⁵⁰² Mr Kevin Jeavons, President, Harness Racing Owners Association of Western Australia, 7 May 2010, pp3-4; Mr Gino Monaco, President, Fremantle Harness Racing Club, *Transcript of Evidence*, 4 June 2010, p12; Mr Robert Bovell, Chief Executive, Western Australian Trotting Association, *Transcript of Evidence*, 26 February 2010, p4.

⁵⁰³ Submission No. 30 from Western Australian Trotting Association, 15 January 2010, pp1-15.

In terms of the quantum of the distribution percentage to be set in the Act, some harness stakeholders indicated that this should be no less than 29.7% (this being the percentage that applied under Section 105 of the RWWA Act).⁵⁰⁵ Another suggestion is for an average of percentages which applied over the previous three financial years coupled with a set percentage of funding to metropolitan and country based clubs.⁵⁰⁶

From within the thoroughbred racing code, arguments for greater prescription of funding distributions in the RWWA Act reflect the need to correct the perceived imbalance between metropolitan and non-metropolitan racing clubs.⁵⁰⁷ It should be noted that prior to 2006, Section 105 of the RWWA Act prescribed a minimum percentage of funds to be paid to thoroughbred and harness racing clubs conducting races outside the metropolitan region.⁵⁰⁸

The other side of the argument relates to retaining RWWA's discretion to distribute funds in such amounts as it determines as per Section 106 of the RWWA Act. Perth Racing supports the discretionary funding model,⁵⁰⁹ as does the Country Racing Association, for the same reason that it rewards the clubs that do well.⁵¹⁰

The Turner Report, which prompted the restructuring of governance arrangements for the WA racing industry and the eventual establishment of RWWA, was firm about the need to move away from a set distribution formula:

*As long as the basis of distribution of the off-course wagering profits to the codes is set by statute, there will be no incentive to grow the quality or range of the local product. Without such an incentive, the prospects of strengthening the local industry are bleak...The distribution formula should not be set by statute, but determined by negotiation between the whole-of-industry body and the code bodies.*⁵¹¹

When the Racing and Wagering Western Australia Bill 2003 was before the Parliament, the argument against the retention of set percentages was put by Hon. Nick Griffiths, MLC (then

⁵⁰⁴ Mr Robert Tomlinson, President, Breeders' Owners' Trainer's and Reinspersons' Association, *Transcript of Evidence*, 7 May 2010, pp11-12; Mr Kerry Clarke, President, Western Australian Standardbred Breeders' Association, *Transcript of Evidence*, 7 May 2010, p13; Mr Gino Monaco, President, Fremantle Harness Racing Club, *Transcript of Evidence*, 4 June 2010, p8; Mr Geoffrey Warwick, Vice President, Fremantle Harness Racing Club, *Transcript of Evidence*, 4 June 2010, pp8-9.

⁵⁰⁵ Submission No. 29 from WAROA/BOTRA/WASBA, 15 January 2010, p2.

⁵⁰⁶ Submission No. 31 from Fremantle Harness Racing Club, 15 January 2010, p4; Submission No. 30 from Western Australian Trotting Association, 15 January 2010, p15.

⁵⁰⁷ Submission No. 25 from Geraldton Turf Club, 24 December 2009, p3; Mr John Biggs, Representative, NE Goldfields Racing Clubs, *Transcript of Evidence*, 19 March 2010, p6.

⁵⁰⁸ Section 105(3)(a) and Section 105(4)(a) *Racing and Wagering Western Australia Act 2003* (WA).

⁵⁰⁹ Submission No. 35 from Perth Racing, 22 December 2010, p3.

⁵¹⁰ Mr Maxwell (Dixie) Solly, President, Country Racing Association, *Transcript of Evidence*, 7 May 2010, p10.

⁵¹¹ Western Australian Racing Industry Review Committee, *Future Governance of the Western Australian Racing Industry. A Report to the Minister for Racing and Gaming*, Western Australia, October 2001, p24.

Minister for Racing and Gaming),⁵¹² who recently reinforced this position citing the discretionary model as being one of the original reasons for establishing RWWA as it provided the means for the industry to grow effectively:

*This is racing. You reward success. You do not featherbed failure by protectionist measures... I do not believe in formulae. I think the method of doing it now is the right way.*⁵¹³

RWWA concurred that the fixed percentage distribution system failed to provide incentives for individual racing codes or clubs to increase off-course wagering revenue when ‘any increase would be distributed across all codes according to the fixed percentage formula’.⁵¹⁴ Further, the importance of flexibility that the discretionary model affords has been alluded to by RWWA given the new uncharted territory of product fees and the need for WA racing to remain relevant in a shifting national market:

*As the industry moves into an era of ‘payment for product’ with the national application of product fees, there is a need to reassess distributions based on quality of product for wagering income at a state, national and international level. All principal racing authorities (PRAs) are now unofficially competing for maximum income generation respective to their state/territory in a national market.*⁵¹⁵

Regarding distributions to the codes, RWWA advised that actual distributions have not departed significantly from historical percentages. In relation to the harness code in particular, Mr Richard Burt, CEO of RWWA indicated that historically the harness industry received 29.74% of the distribution and when everything was added up, the harness industry would be getting close to 29% now. RWWA was not purposely trying to follow the historical percentages but the reality was that actual distributions did not differ much and that any changes to distributions had to occur slowly.⁵¹⁶ The funding distribution model is obviously still evolving since, for example, in relation to the greyhound code RWWA is currently in discussions with WAGRA to try and achieve a fairer funding balance within the distribution model.⁵¹⁷

RWWA advised that the percentages currently distributed to the codes better reflect wagering turnover shares than those set by legislation until 2006. However, they are still not truly representative of the share of wagering turnover generated.⁵¹⁸ As detailed above, RWWA’s

⁵¹² Hon. Nick Griffiths, MLC, Minister for Racing and Gaming, Western Australia, Legislative Council, *Parliamentary Debates* (Hansard), 12 June 2003, p8665.

⁵¹³ Hon. Nick Griffiths, *Transcript of Evidence*, 19 February 2010, p7.

⁵¹⁴ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p42.

⁵¹⁵ Racing and Wagering Western Australia, *Securing the Future: A Vision of Sustainability for the WA Thoroughbred Industry*, RWWA, March 2010, p1.

⁵¹⁶ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 30 April 2010, p12.

⁵¹⁷ Greyhound Racing Consultative Group, Minutes, 18 August 2010, p2. Available at: www.rwwa.com.au/home/GRCG_Minutes_20100818.pdf Accessed on 10 September 2010.

⁵¹⁸ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p38.

funding distribution model was criticised for not being sufficiently performance based, resulting in certain sectors of the industry having to subsidise others. RWWA acknowledges that subsidisation is occurring across the industry. This includes the subsidisation of one code by another, specifically subsidisation of the harness industry (which receives more in distributions than it generates in turnover).⁵¹⁹ At a broader level, there is also subsidisation to some extent of wagering operations by racing (i.e. through investment in Racing Radio and the form guide).⁵²⁰

RWWA's funding distribution model is not completely performance based nor can it be by virtue of its charter under Section 35 of the RWWA Act. RWWA's statutory obligation to promote the welfare of the racing industry entails 'regular operational contributions to racing that does not generate a return for the racing industry'.⁵²¹ Due to the requirements of Section 35, RWWA is particularly conscious of the need 'to balance the competing interests of the codes [and] the issue of subsidisation'.⁵²² The Committee considers that RWWA's overall approach to the distribution of funds to the codes is sound although the matter of 'balance' may need further fine tuning to address claims such as those from provincial thoroughbred racing clubs regarding the need for a fairer sharing of subsidisation burdens.⁵²³

The Committee is mindful that RWWA's discretion to distribute funds has certain intrinsic responsibilities. Significantly, while the Turner Report recommended discretionary funding, it also stated that distributions should be determined by negotiation between the governing body and the code bodies.⁵²⁴ A number of stakeholders have favoured a return to an earlier system of distribution whereby funds are distributed by the provincial racing association,⁵²⁵ claiming that this allows more effective benchmarking as clubs are aware of what all other clubs receive in stake money etc.⁵²⁶ Inserting another funding body between RWWA and clubs would add to layers of bureaucracy and would not be desirable given that there has already been criticism of too much bureaucracy.⁵²⁷

A more fundamental issue that this raises is that of negotiation and input into RWWA's funding distribution. The Committee heard evidence to suggest that clubs are 'in the dark' regarding the

⁵¹⁹ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 20 August 2010, p21.

⁵²⁰ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, p26.

⁵²¹ According to RWWA, approximately \$9 million per annum of distributions and other meeting support costs (including stakes, participant funding, and overheads) are directed to racing clubs considered non-commercial or community clubs. Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p73.

⁵²² Mr James Freemantle, Deputy Chairman, Racing and Wagering Western Australia, *Transcript of Evidence*, 20 August 2010, p56.

⁵²³ Submission No. 24 from Western Australian Provincial Thoroughbred Racing Association, 29 December 2009, p4.

⁵²⁴ Western Australian Racing Industry Review Committee, *Future Governance of the Western Australian Racing Industry. A Report to the Minister for Racing and Gaming*, Western Australia, October 2001, p24.

⁵²⁵ Mr Barry Mahood, Chairman, York Racing Inc, *Transcript of Evidence*, 26 March 2010, p3; Mr Alf Paganoni, Past President, WA Country Harness Racing Association, *Transcript of Evidence*, 26 February 2010, p7.

⁵²⁶ Mrs Margaret Skinner, Secretary, Mt Barker Turf Club, *Transcript of Evidence*, 12 March 2010, p8.

⁵²⁷ Mr Maxwell (Dixie) Solly, President, Country Racing Association, *Transcript of Evidence*, 7 May 2010, pp6-7.

logic behind the funding model and what RWWA's decision making process involves.⁵²⁸ This has even prompted the suggestion that there should be an independent arbiter to determine whether RWWA is doing the right thing.⁵²⁹ The uncertainty regarding the operation of RWWA's funding distribution model speaks to the need for greater transparency via improved consultation with clubs and greater accountability⁵³⁰ (as discussed in Chapters 2.4 and 2.6).

Good governance is also critical to the effectiveness of the discretionary funding model as highlighted during debate on the Racing and Wagering Western Australia Bill 2003:

*If we have any faith at all in what we are doing, we must have faith that the people who are appointed to these position will make decisions that will enable the industry to grow and improve its opportunities.*⁵³¹

A sound governance structure coupled with strong accountability would help to address stakeholder fears that discretionary funding is sensitive to board changes.⁵³² Governance is discussed in detail in Chapter 2.2.

In terms of what a discretionary funding distribution model should seek to achieve, the Country Racing Association stressed that the allocation of funds should ensure participation in country racing remains affordable and worthwhile for participants.⁵³³ The sustainability objective was also highlighted by Mr David Simonette of WAGRA and again speaks to the importance of the model finding the right 'balance':

*My belief is that there has never been a distribution model created, or one likely to be created, which meets the needs of the codes, of individual clubs, or metro versus country versus provincial—you name it. There will never be one that is ideal. In our situation, all we are saying is that we would like sufficient money not just to live on a day-to-day basis; we need to be able to grow our business. That means that we need to look after our industry with facilities, we need to make sure that the facilities are attractive to patrons to come on course, and that we can look after our own future.*⁵³⁴

Summary

To summarise the main points considered by the Committee in relation to the effectiveness of RWWA's funding distribution model:

⁵²⁸ Mr Tony Marwick, President, Northam Race Club, *Transcript of Evidence*, 26 March 2010, p2.

⁵²⁹ Mr Kevin O'Brien, Treasurer, York Racing Inc, *Transcript of Evidence*, 26 March 2010, pp5-6.

⁵³⁰ This reinforces the importance of Section 77 of the RWWA Act which requires RWWA to table a Statement of Corporate Intent annually. This must set out the proportion in which funds will be distributed across codes and to metropolitan and non-metropolitan clubs.

⁵³¹ Hon. Murray Criddle, MLC, Western Australia, Legislative Council, *Parliamentary Debates* (Hansard), 12 June 2003, p8665.

⁵³² Submission No. 30 from Western Australian Trotting Association, 15 January 2010, p12.

⁵³³ Submission No. 41 from Country Racing Association, 16 April 2010, p11.

⁵³⁴ Mr David Simonette, Chief Executive Officer, Western Australian Greyhound Racing Association, *Transcript of Evidence*, 30 April 2010, p7.

- RWWA has demonstrated sound financial performance since establishment and has delivered consistent distributions to the industry;
- Stake levels have been maintained across all codes but evidence suggests that infrastructure has not been sustained to the same degree (discussed further below);
- RWWA is addressing certain disparities in its funding distribution model including that of meeting fees although some issues, such as the disparity between basic and feature stake funding remain unresolved;
- A discretionary funding approach provides incentives for the industry in line with the rationale underpinning the formation of RWWA, as well as sufficient flexibility for distributions to respond to shifts in the national racing industry;
- While it is recognised that the set percentage distribution model established under Section 105 was a stabilising influence for the industry, RWWA's focus should be on fostering the overall industry rather than adjudicating between the codes;
- While actual distributions to the codes more closely reflect wagering performance than historical formulae, radical departures have not been made from historical percentages;
- The funding distribution model cannot be fully performance based due to RWWA's statutory obligations under Section 35 of the RWWA Act which necessitate some degree of cross-subsidisation however it is important to strike the correct 'balance'; and
- For a discretionary funding distribution model to be completely effective, RWWA must have strong accountability, good governance, and consult with the industry.

Following consideration of the above factors, the Committee considers that a return to set percentage distributions in the RWW Act would be a retrograde step. In keeping with the original intent of the legislation it is important that the Western Australian industry has the means to continue to develop. This can best be achieved if RWWA retains the discretion to distribute funds as provided under Section 106.

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*.

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.

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.

(c) Improving the effectiveness of funding distribution - funding of infrastructure

RWWA is required to fund infrastructure (including training facilities) under Section 35(1)(e) and Section 92 of the RWWA Act. Nonetheless, RWWA has largely directed revenues towards increases in race stakes in order to achieve adequate returns to industry participants. RWWA is now faced with ageing club infrastructure and a large gap between required and actual infrastructure expenditure.⁵³⁵ RWWA estimates the infrastructure spend required across the industry over the next five years will be in the order of \$70 million. This estimate factors in a new metropolitan venue for the greyhound industry⁵³⁶ and other large-scale projects including redevelopment of the Bunbury Turf Club racing and training facilities.⁵³⁷ This estimate also relates solely to race related infrastructure⁵³⁸ and infrastructure needs relating to TAB agencies would be in addition to this. While some believe that a reduction in stake money might be acceptable to the industry in order to fund immediate infrastructure needs,⁵³⁹ RWWA's view is that this would not be popular among industry participants and that stake levels must be maintained.⁵⁴⁰

As detailed above, evidence suggests there is extensive need across the industry for infrastructure funding. Training facilities in particular were raised with the Committee and in this regard, RWWA has plans to address deficiencies.⁵⁴¹ In its strategic vision for the thoroughbred code, RWWA identifies training investment priorities for the purpose of targeting spending in metropolitan and provincial areas. The strategy also proposes a revised approach to funding training facilities including encouraging clubs to consider a user-pays system into the future.⁵⁴²

⁵³⁵ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p70.

⁵³⁶ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 30 April 2010, p37.

⁵³⁷ Submission No. 7C from Racing and Wagering Western Australia, 31 May 2010, Appendix D; Mr Craig Chadwick, Chairman, Bunbury Turf Club, *Transcript of Evidence*, 7 May 2010, p2.

⁵³⁸ Submission No. 7C from Racing and Wagering Western Australia, 31 May 2010, Appendix D.

⁵³⁹ Mr David Wrensted, Manager, Geraldton Turf Club, *Transcript of Evidence*, 29 March 2010, p4.

⁵⁴⁰ Mr Robert Pearson, Director, Racing and Wagering Western Australia, *Transcript of Evidence*, 30 April 2010, p44.

⁵⁴¹ *Ibid.*, p42.

⁵⁴² Racing and Wagering Western Australia, *Securing the Future: A Vision of Sustainability for the WA Thoroughbred Industry*, RWWA, March 2010, p14.

The concept of user-pays has some support from industry participants,⁵⁴³ although there are also some concerns from thoroughbred trainers about financial implications.⁵⁴⁴ RWWA recently advised code consultative groups that it is reviewing training costs at major training centres across all three codes with a view to moving towards a system of apportioning costs in an 80:20 ratio. The model, which RWWA aims to introduce over a 2 to 3 year timeframe, will fund 80% of costs and recover the remaining 20% from industry participants.⁵⁴⁵ Besides major training centres and areas of critical need it would appear that funding of training facilities will remain subject to the same competing demands as other capital expenditure requirements.

With regard to improving the effectiveness of RWWA's funding of infrastructure, possible mechanisms include public funding (comprising either sports funding and/or capital grants), or funds administered by RWWA from a dedicated infrastructure fund.

(i) Public funding

RWWA refers to past public funding of race related infrastructure and suggests that the Western Australian Government 'should provide funding to enable ongoing investment in racing infrastructure to ensure the welfare and sustainability of racing as a sport in Western Australia'.⁵⁴⁶ In this regard, RWWA has suggested that the state government should provide public funding for investment in the infrastructure of racing clubs in a manner similar to the provision of public funds for infrastructure of other major sports.⁵⁴⁷ The requirements for the public funding of sports infrastructure are often not aligned with the nature of racing⁵⁴⁸ so it is the Committee's belief that this would generally not be a suitable funding source.

Further to the matter of public funding, RWWA also refers to the Regional Racing Infrastructure Grants Program, which was introduced by the state government in 2005. The program initially committed \$20 million of government funding over two years to be spent on upgrading regional racetrack infrastructure in priority regional areas. RWWA contributed an additional \$5 million to the program enabling it to be extended for another year.⁵⁴⁹ The Department of Racing, Gaming

⁵⁴³ Mr Colin Bellchambers, General Manager, Pinjarra Race Club, *Transcript of Evidence*, 6 April 2010, pp10-11.

⁵⁴⁴ Submission No. 22B from WA Racing Trainers' Association, 6 August 2010, p1.

⁵⁴⁵ Greyhound Racing Consultative Group, Minutes, 18 August 2010, p2. Available at: www.rwwa.com.au/home/GRCG_Minutes_20100818.pdf and Thoroughbred Racing Consultative Group, Minutes, 31 August 2010, p2. Available at: www.rwwa.com.au/home/TRCG_Minutes_20100831.pdf Accessed on 10 September 2010.

⁵⁴⁶ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p81.

⁵⁴⁷ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p81.

⁵⁴⁸ Public funding of sports infrastructure aims to provide facilities that provide community benefit but a large emphasis is also placed on facilities that encourage physical activity, for example, the Community Sporting and Recreation Facilities Fund and State Sporting Facilities Plan (Department of Sport and Recreation, 'Funding Facilities', December 2009. Available at: www.dsr.wa.gov.au/facilitiesfunding Accessed on 8 February 2010).

⁵⁴⁹ Hon. M. McGowan, MLA, Minister for Racing and Gaming, 'Racing industry to share in additional infrastructure funding', *Media Statement*, 1 September 2005.

and Liquor administered the grants, which were targeted at racing infrastructure renewal in Geraldton, Northam, Kalgoorlie, Peel, Pinjarra, Bunbury and Albany.^{550 551}

In February 2009 the Minister for Racing and Gaming, Hon. Terry Waldron, MLA announced that the economic climate precluded the state government from establishing a dedicated grants program for regional racecourse infrastructure, however regional clubs would be eligible for Regional Development Commission funding. The latter comprised \$40 million of Royalties for Regions funding made available as contestable grants.⁵⁵²

Evidence to the Committee indicates that RWWA has referred non-metropolitan clubs to Royalties for Regions in the first instance and will not consider requests for infrastructure funding unless clubs have tried Royalties for Regions first.⁵⁵³ The Committee heard from various clubs which had made application for Royalties for Regions funding including but not limited to: Golden Mile Trotting Club;⁵⁵⁴ Bunbury Trotting Club;⁵⁵⁵ Mt Barker Turf Club;⁵⁵⁶ Collie Race Club;⁵⁵⁷ and Narrogin Racing.⁵⁵⁸ Six country thoroughbred, harness, and greyhound racing clubs received a total of \$830,000 of Royalties for Regions grants for infrastructure in the latest round of funding. To the end of June 2010, nine clubs had received funding through Royalties for Regions since the program began.⁵⁵⁹

Although it was acknowledged that Royalties for Regions had enabled smaller clubs to access funding for infrastructure which might not otherwise have been available to them,⁵⁶⁰ a commonly held view was that Royalties for Regions is not the most suitable means of funding the industry.⁵⁶¹

⁵⁵⁰ Hon. E.S. Ripper, MLA, Treasurer, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 20 May 2008, p42.

⁵⁵¹ A record of how the grant money was distributed and what projects were funded is contained within the RWWA document, *Making Tracks 2005-2008*, (2008) pp1-60.

⁵⁵² Hon. T.K. Waldron, MLA, Minister for Racing and Gaming, 'Regional racing clubs eligible for Regional Development Commission funding', *Media Statement*, 12 February 2009.

⁵⁵³ Ms Julie Caldwell, Manager, Bunbury Trotting Club, *Transcript of Evidence*, 6 April 2010, p6.

⁵⁵⁴ Mr Evan Spencer, President, Golden Mile Trotting Club, *Transcript of Evidence*, 19 March 2010, p13.

⁵⁵⁵ Mr Kenneth Godley, President, Bunbury Trotting Club, *Transcript of Evidence*, 6 April 2010, pp5-6.

⁵⁵⁶ Ms Lynn Heppell, Vice President, Mt Barker Turf Club, *Transcript of Evidence*, 12 March 2010, p4.

⁵⁵⁷ Mrs Rosanne Pimm, Treasurer, Collie Race Club, *Transcript of Evidence*, 6 April 2010, pp4-5.

⁵⁵⁸ Mr Nicholas Bosly-Pask, Acting Chair, Narrogin Racing, *Transcript of Evidence*, 3 May 2010, p12.

⁵⁵⁹ Hon. T.K. Waldron, MLA, (Minister for Racing and Gaming) and Hon. B.J. Grylls, MLA, (Minister for Regional Development), *Regional race clubs win with Royalties for Regions funding*, Media Statement, Government of Western Australia, Perth, 28 June 2010.

⁵⁶⁰ Mr Barry Mahood, Chairman, York Racing Inc, *Transcript of Evidence*, 26 March 2010, p12.

⁵⁶¹ Mr Geoff Fahl, Chairman/Treasurer, Carnarvon Race Club, *Transcript of Evidence*, 16 May 2010, p9; Mr Mark Roberts, President, WA Country Harness Racing Association, *Transcript of Evidence*, 26 February 2010, p13.

A number of clubs felt disadvantaged at having to compete against other community organisations for limited grant money.⁵⁶²

Significantly, the state government recently announced a funding package to benefit racecourse infrastructure across the state. In July 2010, the state government gave in-principle support for a \$350 million extension of the Burswood Entertainment Complex including an expansion of the Casino's gaming capacity.⁵⁶³ While the application is still subject to approval by the Gaming and Wagering Commission,⁵⁶⁴ the state government has committed to applying some of the proceeds from its agreement with Burswood for the proposed expansion to funding racecourse infrastructure. The racecourse infrastructure grants fund will comprise an initial \$5 million in the first year followed by \$2 million per year subject to review at the end of four years.⁵⁶⁵ RWWA understands that clubs will be invited by the Minister for Racing and Gaming to put forward various projects in writing to RWWA, which will then be responsible for prioritising bids consistent with its strategic planning and forwarding recommendations to the Minister who will approve the funds. Grants provided under the program will be expected to leverage funding from other sources including Royalties for Regions, local government and RWWA so that there will be a multiplier on the \$13 million.^{566 567}

Mr Richard Burt, CEO of RWWA advised that although the ideal situation would be for RWWA to have full discretion to allocate the infrastructure grants (rather than the Minister having the final say), the funding was welcome and RWWA would gladly work within the process. RWWA also advised that although the grants program would help to address some of the \$70 million infrastructure deficit, large infrastructure requirements such as redevelopment of the metropolitan greyhound racing venue were immediately precluded by scale⁵⁶⁸ and as such, the grants would most likely be applied to smaller projects of less than \$1 million in value.⁵⁶⁹ Acute infrastructure

⁵⁶² Mr Neville Sly, Committee Member, Golden Mile Trotting Club, *Transcript of Evidence*, 19 March 2010, p14; Mr Maxwell (Dixie) Solly, President, Country Racing Association, *Transcript of Evidence*, 7 May 2010, p3.

⁵⁶³ Hon. T.K. Waldron, MLA, (Minister for Racing and Gaming), *Burswood Entertainment Complex set to expand*, Media Statement, Government of Western Australia, Perth, 19 July 2010.

⁵⁶⁴ Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, *Transcript of Evidence*, 13 August 2010, pp10-11.

⁵⁶⁵ Hon. T.K. Waldron, MLA, (Minister for Racing and Gaming), *State Government's boost to WA racing*, Media Statement, Government of Western Australia, Perth, 19 July 2010.

⁵⁶⁶ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 20 August 2010, p42.

⁵⁶⁷ The state government has given in-principle support to an upgrade of the Pinjarra Race Club facilities to enable winter racing. Under the grants program, in-principle funding will be provided on a partnership basis with RWWA contributing approximately \$182,000, the club \$149,000 and the government \$331,000 (Hon. T.K. Waldron, MLA (Minister for Racing and Gaming), *Infrastructure upgrade to enable winter racing at Pinjarra*, Media Statement, Government of Western Australia, Perth, 17 September 2010).

⁵⁶⁸ This category would also include the Bunbury Turf Club redevelopment with an estimated total cost approaching \$14 million (Rooney, J., 'Bunbury unveils idea for synthetic tracks', *The West Australian*, 8 September 2010, p96).

⁵⁶⁹ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 20 August 2010, p43.

needs would also continue unresolved in the immediate term since public funding from the grants fund and the latest round of Royalties for Regions would likely not be available until mid-2011.⁵⁷⁰

Summary

With regard to public funding of racecourse infrastructure, the Committee considered the following points:

- Public funding for the infrastructure of racing clubs in a manner similar to the public funding of other major sports is generally not appropriate given that the requirements for sports funding do not align with the nature of racing;
- While Royalties for Regions funding helps to address infrastructure need among non-metropolitan clubs, it is insufficient for funding race-related infrastructure over the long-term;
- The state government's recent announcement of a \$13 million racecourse infrastructure grants fund will help to address some of the industry's estimated \$70 million requirement for infrastructure funding; and
- Government grants alone will not be sufficient to meet all the infrastructure needs of the racing industry. A mechanism is therefore required that will enable a more flexible and sustained approach to infrastructure funding.

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.

(ii) Infrastructure fund

Evidence to the Committee emphasised the importance of racecourse infrastructure and supported the idea of RWWA setting aside a dedicated amount for infrastructure every year⁵⁷¹ and/or a dedicated infrastructure fund to be established for all three codes.^{572 573} One particular criticism of RWWA's funding distribution model is that infrastructure funding is now less clearly defined:

⁵⁷⁰ Ibid.

⁵⁷¹ Mr David Wrensted, Manager, Geraldton Turf Club, *Transcript of Evidence*, 29 March 2010, p3.

⁵⁷² Mr Nicholas Bosly-Pask, Acting Chair, Narrogin Racing, *Transcript of Evidence*, 3 May 2010, p13.

⁵⁷³ It should be noted that further evidence received by the Committee in support of an infrastructure fund is cited in Chapter 2.7(c) in the context of methods to resource such a fund.

*We used to have unclaimed dividends put aside for facilities and services and whatever in the Racecourse Development Fund, but where has it gone? Obviously, it is running the industry but we do not know where it has gone.*⁵⁷⁴

Various stakeholders suggested that the (now defunct) Racecourse Development Trust (RDT) was a superior model⁵⁷⁵ and that an infrastructure fund should be administered along similar lines.⁵⁷⁶ Stakeholders such as the Geraldton Turf Club believed that although the Racecourse Development Trust lacked substantial funds at least it guaranteed a set amount was put towards infrastructure every year.⁵⁷⁷

The RDT was abolished and its funds transferred to RWWA in 2003. The RDT was a statutory body which provided grants and loans to thoroughbred and harness racing clubs for the purpose of establishing or maintaining facilities. Funding was predominantly derived from unclaimed dividends.⁵⁷⁸ According to Hon. Tom McNeil, past Chairman of the RDT, funding was distributed on a priority basis to clubs and even then, there were many more applications than funds available.⁵⁷⁹ RWWA advised that it derived approximately \$7 million in unclaimed dividends in 2008-09⁵⁸⁰ and that since inception RWWA had collected \$34.34 million in unclaimed dividends. Unclaimed dividends now go into RWWA's general revenue and are distributed to the industry in the form of stakes, club funding, participant payments and direct capital grants.⁵⁸¹

RWWA confirmed that it would not be a viable proposition to quarantine unclaimed dividends solely for the purpose of funding infrastructure as it would impact on stakes.⁵⁸² The same would apply for revenues derived from fractions⁵⁸³ and even if revenues derived annually from unclaimed dividends and fractions were combined, if this was to be applied solely to infrastructure it would impact significantly on stake money levels as this money is currently distributed.⁵⁸⁴

⁵⁷⁴ Mrs Lesley Solly, President, Albany Racing Club, *Transcript of Evidence*, 12 March 2010, p5.

⁵⁷⁵ Mr Rob Deadman, Secretary, York Harness Racing Club, *Transcript of Evidence*, 26 March 2010, pp10-11.

⁵⁷⁶ Mr David Prance, Immediate Past Chairman, Kalgoorlie Boulder Race Club, *Transcript of Evidence*, 19 March 2010, p12.

⁵⁷⁷ Mr David Wrensted, Manager, Geraldton Turf Club, *Transcript of Evidence*, 29 March 2010, p3.

⁵⁷⁸ Western Australian Racing Industry Review Committee, *Future Governance of the Western Australian Racing Industry. A Report to the Minister for Racing and Gaming*, Western Australia, October 2001, pp8-9.

⁵⁷⁹ Hon. Tom McNeil, Past Chairman, Racecourse Development Trust, *Transcript of Evidence*, 13 August 2010, p2.

⁵⁸⁰ Under Section 104 of the RWWA Act, any moneys payable by way of dividends, fixed odds winnings or refunds in respect of wagers that are unclaimed for 7 months, become part of the funds of RWWA.

⁵⁸¹ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, p19.

⁵⁸² *Ibid.*, p20.

⁵⁸³ Under Regulation 30 of the *Racing and Wagering Western Australia Regulations 2003* RWWA may round dividends down to the nearest five cents. Revenues derived from these roundings or 'fractions' go into general revenue and are returned to the industry via distributions (as per Submission No. 7D from Racing and Wagering Western Australia, 2 August 2010, p22).

⁵⁸⁴ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 20 August 2010, p43.

Summary

In summary, the Committee considered the following factors in relation to the effectiveness of RWWA's funding distribution for infrastructure:

- There is evidently an acute need across the industry for infrastructure funding including but not limited to a critical need to provide new facilities and/or upgrade ageing racecourse infrastructure, and to provide adequate training facilities for all codes;
- The Committee acknowledges that RWWA is taking steps to address funding of training infrastructure. However, it appears that RWWA's capacity to fund training infrastructure will continue to be exceeded under current returns from wagering;
- It is unlikely that a method such as that employed by the RDT could meet the present day infrastructure needs of the industry, not least because of the difference between unclaimed dividends available and the magnitude of infrastructure expenditure required across the industry;
- It is not desirable to reduce stake money levels as this will compromise the ongoing development of the industry;
- It is critical that the industry receives a guaranteed stream of infrastructure funding, however as stated above, government grants alone will not be sufficient to cover immediate, let alone long-term infrastructure needs.

In relation to the final point, there is support among industry participants for a dedicated source of infrastructure funding. The Committee supports the principle of a long-term infrastructure fund as this is the most suitable mechanism to achieve a sustained funding stream for infrastructure rather than the ad-hoc nature of government funding to date. A fund administered by RWWA would also be in keeping with RWWA's statutory obligation to fund infrastructure. Mechanisms for resourcing an infrastructure fund are explored further in the next section.

Finding 43

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

Recommendation 26

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

2.8 Taxation

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. The rate of tax for totalisator wagers is defined by Section 4 of the RWWA Tax Act as follows:⁵⁸⁵

Off-course totalisator tax rate - racing	Off-course totalisator tax rate - sport	On-course totalisator tax rate
11.91% of gross revenue ⁵⁸⁶ plus GST	5% of gross revenue ⁵⁸⁷ plus GST 25% of gross revenue (after tax) to Sports Wagering Account ⁵⁸⁸	Zero plus GST

The rate of tax for fixed odds wagers is defined by Section 5 of the RWWA Tax Act as follows:⁵⁸⁹

Racing	Sport
TAB: 2% of turnover ⁵⁹⁰ , equating to 20% of gross revenue (GST reimbursed) Bookmakers: zero (GST reimbursed)	TAB: 0.5% of turnover ⁵⁹¹ , equating to 5% of gross revenue (GST reimbursed); 25% of gross revenue (after tax) to Sports Wagering Account ⁵⁹² Bookmakers: racing club levy of 0.5% or 1.5% of turnover ⁵⁹³ equating to approximately 30% of gross revenue (GST reimbursed) ⁵⁹⁴

⁵⁸⁵ Extract (modified) from Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p65.

⁵⁸⁶ Section 4(2) *Racing and Wagering Western Australia Tax Act 2003*.

⁵⁸⁷ Section 4(1) *Racing and Wagering Western Australia Tax Act 2003*.

⁵⁸⁸ Section 107(1)(b) *Racing and Wagering Western Australia Act 2003*.

⁵⁸⁹ Extract (modified) from Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p67.

⁵⁹⁰ Section 5(a) *Racing and Wagering Western Australia Tax Act 2003*.

⁵⁹¹ Section 5(b) *Racing and Wagering Western Australia Tax Act 2003*.

⁵⁹² Section 107(1)(b) *Racing and Wagering Western Australia Act 2003*.

⁵⁹³ Bookmakers are subject to a levy as per Section 2(1) of the *Bookmakers Betting Levy Act 1954*.

⁵⁹⁴ All collections from the Bookmakers' Betting Levy are retained by the industry except for sports betting, where the state government receives 50% of the collections (DTF Overview of State Taxes 2009-10 p45).

The Australian Government charges Goods and Services Tax (GST) across all forms of gambling at the rate equivalent to other goods and services.⁵⁹⁵ According to the Department of Treasury and Finance (DTF), as a consequence of the intergovernmental agreement on the GST, states agreed to adjust gambling taxes to accommodate the GST. Until 2006-07 GST was separately reimbursed by the state. From 1 July 2007, the method of taxation for off-course racing totalisator wagering was changed.⁵⁹⁶ The purpose was firstly to bring taxation methodology in line with that of Burswood Casino such that off-course racing totalisator wagering would be taxed on the basis of gross profit rather than turnover. Secondly, setting the rate of taxation at 11.91% net of GST (which represented an equivalent rate reduction from 5% of turnover (as it was immediately prior to the change) to 3.5%) would remove the need to rebate GST paid on wagering revenue.⁵⁹⁷

GST is also payable on bookmakers' margins being the difference between the amount of bets received and the amount of winnings paid to punters. GST in this regard is reimbursed by the state government.⁵⁹⁸

In terms of revenues derived from 'betting taxes' (defined by DTF as comprising RWWA wagering tax and the Bookmakers' Betting Levy), the state government collected \$32m in 2008-09 and \$33.9m (estimate) in 2009-10.⁵⁹⁹ The estimated state government betting tax revenue for 2010-11 is approximately \$36 million.⁶⁰⁰ According to RWWA the betting tax revenue figure is not representative of the true tax burden as it does not take into account the GST:

*...the government withholds our GST—a minor matter of \$25 million a year. The amount of tax we pay is \$56 million, not \$31 million.*⁶⁰¹

RWWA claims that in real terms, its taxation contribution has increased marginally since its establishment in 2003 despite the reduction in the tax rate in 2007.⁶⁰²

It should be noted that RWWA separately deducts a commission from the off-course wagers it receives.^{603 604} Whereas the commission for a bet is deducted by RWWA and goes into RWWA's

⁵⁹⁵ Government of Australia, *Australia's Future Tax System* Final Report Part 2, 2 May 2010, p460.

⁵⁹⁶ Department of Treasury and Finance, *Overview of State Taxes Western Australia 2009-10*, Government of Western Australia, Perth, December 2009, p46.

⁵⁹⁷ *Racing and Wagering Western Australia Tax Amendment Bill 2006* Explanatory Memorandum and Hon. M. McGowan, MLA, Minister for Racing and Gaming, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 18 October 2006, p7207.

⁵⁹⁸ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p26.

⁵⁹⁹ Department of Treasury and Finance, *Overview of State Taxes Western Australia 2009-10*, Government of Western Australia, Perth, December 2009, p2.

⁶⁰⁰ Government of Western Australia, *2010-11 Budget - Budget Paper No. 2*, 20 May 2010, p144. Available at: www.dtf.wa.gov.au/cms/uploadedFiles/State_Budget/Budget_2010_11/bp2_vol1.pdf. Accessed on 6 September 2010.

⁶⁰¹ Mr Richard Burt, CEO, Racing and Wagering Western Australia, *Transcript of Evidence*, 30 April 2010, p22.

⁶⁰² Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p30.

⁶⁰³ Section 17E(1) *Betting Control Act 1954*.

general funds, wagering tax is deducted by the state government and goes into consolidated revenue.

(a) Views on taxation

In its submission, RWWA makes a number of recommendations regarding wagering tax, as follows:

- Rates of wagering tax under the RWWA Tax Act should be reviewed to ensure that total taxation burdens on totalisator and fixed odds betting are maintained at levels comparable to RWWA's major competitors;
- The Western Australian government should pursue a nationally coordinated approach to taxation of wagering in Australia;
- The RWWA Tax Act should be amended to allow the basis and rates for wagering taxation to be set in regulation;
- The RWWA Tax Act should be amended to place fixed odds betting conducted on-course by clubs as agents of RWWA on the same taxation basis as totalisator betting. Section 17F of the *Betting Control Act* should be amended to allow for the fixed odds betting on-course margin to be retained by the race club; and
- The RWWA Act and RWWA Tax Act should be amended to combine RWWA's payments of wagering tax on sporting events and the payments to the Sports Wagering Account into a single payment to Western Australian sporting organisations.⁶⁰⁵

The critical need for infrastructure across the industry and potential for an ongoing RWWA administered infrastructure fund have already been discussed in some detail in the previous section. Means of resourcing an infrastructure fund are also explored here in the broader context of taxation and its impacts.

(b) Analysis of taxation matters

The following analysis has been structured to reflect the main issues listed above.

(i) *Rates of taxation should be maintained at levels comparable to RWWA's major competitors*

To avoid losing market share to interstate totalisator competitors or operate at unfeasible margins as part of pooling arrangements, RWWA has argued that taxation on totalisator products should be at rates no greater than its major competitors.⁶⁰⁶ RWWA supports this argument as follows:

⁶⁰⁴ The rates of commission that apply to RWWA on different types of bet are defined by Regulation 17C of the *Betting Control Regulations 1978*.

⁶⁰⁵ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, pp81, 85-87.

⁶⁰⁶ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p80.

- The totalisator tax rate in WA is higher than states such as Victoria (which will reduce its rate in 2010) and South Australia (no taxation from 2013)⁶⁰⁷ - RWWA's comparison of totalisator taxation rates by jurisdiction is reproduced at Appendix Six;
- It is inappropriate for the tax rate to be tied to that of Burswood Casino since RWWA is not a public company and does not fund shareholders;⁶⁰⁸
- The rate of tax for fixed odds wagers on racing is significantly higher than that applied to fixed odds products of totalisator businesses in all other jurisdictions except Queensland⁶⁰⁹ - RWWA's comparison of fixed odds betting taxation rates by jurisdiction is reproduced at Appendix Six;
- Further to the last point, parimutuel betting is fairly mature whereas fixed odds betting is a growth product. The comparatively high tax rate in WA means that RWWA is disadvantaged with respect to its fixed odds racing product;⁶¹⁰ and
- Laws pertaining to fixed odds were not considered at the time of RWWA's establishment and rates are historical.⁶¹¹

Similarly, there was support from other industry participants for a lowering of taxation rates.⁶¹² A number of stakeholders identified taxation relief as necessary to bring Western Australia in line with other states,⁶¹³ and/or as a means of providing more money for RWWA to fund the industry.⁶¹⁴ Wagering operators emphasised that all betting agents should be subject to the same rate of tax and WA needed to remain competitive with other jurisdictions.⁶¹⁵ While Best Bookies Price Pty Ltd considered that a tax reduction might reduce the incentive for RWWA to maximise returns to the industry,⁶¹⁶ this was a minority view. The Committee also heard that the industry

⁶⁰⁷ Ibid.

⁶⁰⁸ Mr Richard Burt, CEO, Racing and Wagering Western Australia, *Transcript of Evidence*, 30 April 2010, p30.

⁶⁰⁹ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p80.

⁶¹⁰ Mr Richard Burt, CEO, Racing and Wagering Western Australia, *Transcript of Evidence*, 30 April 2010, p31.

⁶¹¹ Mr Richard Burt, CEO, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, p12.

⁶¹² Mr Alan Smith, Secretary/Treasurer, Pingrup Race Club, *Transcript of Evidence*, 3 May 2010, p14.

⁶¹³ Submission No. 30 from Western Australian Trotting Association, 15 January 2010, p18; Submission No. 31 from Fremantle Harness Racing Club, 15 January 2010, p3.

⁶¹⁴ Mr Brett Smith, Committee Member, Junction Race Club, *Transcript of Evidence*, 16 May 2010, p10; Mr Edward (Ted) van Heemst, Chairman, Perth Racing, *Transcript of Evidence*, 26 February 2010, p4; Submission No. 24 from WA Provincial Thoroughbred Racing Association, 24 December 2009, p2; Submission No. 23 from Bunbury Turf Club, 18 December 2009, p2.

⁶¹⁵ Submission No. 8 from Western Australian TAB Agents' Association, 30 November 2009, p2; Submission No. 16 from Morley TAB Agents, 27 November 2009, p6.

⁶¹⁶ Mr Dino Di Cianno, Director, Best Bookies Price Pty Ltd, *Transcript of Evidence*, 8 March 2010, p8.

should not be ‘taxed at the same rate as the Burswood Casino’⁶¹⁷ and there was a clear case for the tax to be lowered given the GST.⁶¹⁸

The Committee considered each of these arguments in turn, firstly the question of whether the racing industry should be taxed at all. The Committee acknowledges that both the Henry Tax Review and Productivity Commission Report on Gambling identify that the growth of internet wagering will reduce the capacity of states to raise tax revenues as gambling markets become more competitive and mobile providers have the option of simply migrating to jurisdictions with lower tax rates.⁶¹⁹ Even so, to the extent that it is possible the Committee considers taxation to be warranted. In 1994 the Public Accounts and Expenditure Review Committee of the WA Parliament found that monies raised by the (then) TAB were public funds as these could only be raised under the legislative mandate of the TAB even if they were the result of the racing industry’s ‘product’.⁶²⁰ RWWA, like its predecessor the TAB, effectively holds money in trust for the industry and has inherited the legislative mandate to raise a significant amount of money. In effect, as stated by Mr Barry Sargeant, Department of Racing, Gaming and Liquor, RWWA has a ‘permanent appropriation to use those moneys, so it makes a contribution back’.⁶²¹ The Committee concurs with this view.

Claims that the rate of wagering tax is tied to casino tax are incorrect. While the methodology used to calculate the off-course totalisator tax rate (based on gross revenue) is comparable to that of Burswood Casino, there is no direct relationship between the rate or basis for charging casino taxes and wagering taxes.⁶²² The scale of contribution is also very different with the casino tax constituting 1.5% of overall state tax revenue in 2009-10 while betting tax constituted 0.6%.⁶²³ Otherwise, DTF advised that there is a conceptual similarity between wagering tax and casino tax in relation to a recently introduced wagering tax rebate for professional punters, which is similar to an existing casino tax concession for interstate and international premium players (‘junket’ business).⁶²⁴ A rebate to RWWA on gross margin will apply from 2010-11 (for an initial three year period) with respect to professional punters on contract with RWWA with an annual betting

⁶¹⁷ Submission No. 24 from WAPTRA, 29 December 2009, p2.

⁶¹⁸ Hon. Nick Griffiths, *Transcript of Evidence*, 19 February 2010, p12.

⁶¹⁹ Government of Australia, *Australia’s Future Tax System - Final Report Part 2 Detailed Analysis*, 2 May 2010, p463 and Productivity Commission, *Gambling*, Report No. 50, Commonwealth of Australia, Canberra, 26 February 2010, p16.50.

⁶²⁰ Public Accounts and Expenditure Review Committee, *Report on the Totalisator Agency Board (Report No. 28)*, Legislative Assembly, Western Australia, 15 June 1994, p52.

⁶²¹ Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, *Transcript of Evidence*, 19 February 2010, p6.

⁶²² Mr Timothy Marney, Under Treasurer, Department of Treasury and Finance, letter, 26 August 2010, p2.

⁶²³ Department of Treasury and Finance, *Overview of State Taxes Western Australia 2009-10*, Government of Western Australia, Perth, December 2009, p2.

⁶²⁴ *Ibid.*

outlay of at least \$500,000.⁶²⁵ According to DTF, the rebate for this category of betting will be equivalent to a reduction in the betting tax rate from 11.91% to 1.91%.⁶²⁶

Other than the reduction in the rate of tax afforded to professional punters, the rates of totalisator and fixed odds betting remain unchanged. In its consideration more broadly of whether rates of wagering tax require revision, the Committee considered a number of issues. RWWA's argument that fixed odds wagering rates are largely historical is correct. The TAB was only authorised to conduct fixed odds betting with the passage of the *Acts Amendment (Fixed Odds Betting) Act 1999*. The rate of tax payable on fixed odds betting was established by the *Totalisator Agency Board Betting Tax Amendment Act 1999* at the rate of 2% on horse and greyhound racing and 0.5% on all other bets including sports betting.⁶²⁷ This rate was carried through without review in 2003 when RWWA was established. The wagering landscape has undoubtedly changed since 1999 with respect to fixed odds wagering, which RWWA indicates is a growth area.⁶²⁸

In relation to the argument that Western Australian tax rates should be reduced to levels comparable to other states, it is important to note the context in which interstate jurisdictions are lowering taxation rates. Victoria for instance is reducing its tax rate to offset the loss of gaming revenues when the gaming and wagering licence in that state expires in 2012. This is to ensure that funding to the racing industry is 'no less favourable' under new funding arrangements.⁶²⁹

Even so, the recent Henry Tax Review acknowledged that tax competition between the states can be unproductive, however also found that 'diversity can result in healthy tax competition between the states, in which the states face competitive pressure to adopt best practice in the design of their tax systems'. The Review also states that 'if tax policies are driven by a desire to match other states, rather than the need to raise revenue, this may compromise the sustainability of the states' own source tax revenues'.⁶³⁰ The Committee concurs that it is poor policy for change to occur purely on the basis of matching taxes in other states. That said, the Committee also recognises that unless taxation rates in Western Australia are more comparable to those in other states, RWWA will not be able to compete effectively with its major wagering competitors. A more comprehensive solution is required and ideally one that adopts a nationally coordinated approach.

RWWA has argued for a nationally coordinated approach to the taxation of wagering in order to address the competitive imbalance between jurisdictions.⁶³¹ According to RWWA, the federal

⁶²⁵ Hon. T.K. Waldron, MLA, (Minister for Racing and Gaming), *Media response - RWWA tax rebate*, Media Statement, Government of Western Australia, Perth, 19 December 2009.

⁶²⁶ Department of Treasury and Finance, *Overview of State Taxes Western Australia 2009-10*, Government of Western Australia, Perth, December 2009, p46.

⁶²⁷ Hon. H.J. Cowan, MLA, Deputy Premier, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 19 August 1999, p505.

⁶²⁸ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 30 April 2010, p31.

⁶²⁹ Ms Kerri Hereward, Principal Policy Officer, Department of Justice, Office of Gaming and Racing, *Briefing*, 16 April 2010.

⁶³⁰ Government of Australia, *Australia's Future Tax System - Final Report (Overview)*, 2 May 2010, section 10.3.

⁶³¹ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p81.

government needs to get involved with regard to a common wagering tax.⁶³² The concept of a national approach to taxation accords with a finding of the Productivity Commission Report on Gambling, which states that ‘there are grounds for state and territory governments to cooperate when setting taxes on wagering revenue, in order to avoid destructive tax competition’. The Report suggests a binding agreement between all jurisdictions for a harmonised tax regime.⁶³³ DTF highlights the difficulties that would be involved in reaching consensus on a national approach to wagering taxation given the disparity between tax rates across the country and the way in which taxes are applied. Wagering tax also could not be considered in isolation as it underpins critical issues such as the competitiveness and ongoing sustainability of state racing industries. As such, DTF suggests that taxation might best be considered as part of a broader discussion of racing industry issues and that the Ministerial Council of Racing Ministers⁶³⁴ would be the most appropriate forum for this.⁶³⁵

In terms of a more immediate solution, the Henry Tax Review provides some guidance with respect to how an appropriate fixed odds (and/or totalisator) wagering rate should be calculated. The Review recommends that gambling taxes (including wagering taxes) should be reviewed to ensure they are focused on recouping economic rent. Gambling providers earn economic rent because state government restrictions on the supply of gambling services in Australia allow the limited number of providers to make more profit than they would in a competitive market. As such, the Review suggests that capturing economic rent is the most compelling reason for imposing taxes on gambling services.⁶³⁶ DTF advised that betting taxes are currently based on either the turnover or gross margin of a wagering operator (net of GST) and are not specifically designed to capture economic rent. Detailed analysis has not been undertaken but would be required in order to determine the extent of economic rent being earned by gambling service providers in WA.⁶³⁷

Another factor that requires consideration in setting an appropriate rate of taxation concerns the need for infrastructure across the industry and whether a reduction in the taxation rate could assist RWWA to offset some of the costs. This matter is discussed in greater detail below.

DTF advised that there is always scope to review the rates of tax applicable to fixed odds and totalisator betting as part of the State Budget process and that ‘any such review would normally have regard to many factors, including the tax rates in other States and their impact on the

⁶³² Mr Richard Burt, CEO, Racing and Wagering Western Australia, *Transcript of Evidence*, 30 April 2010, p8.

⁶³³ Productivity Commission, *Gambling*, Report No. 50, Commonwealth of Australia, Canberra, 26 February 2010, p16.50.

⁶³⁴ This presumably refers to the Ministerial Council on Gambling, membership of which includes the WA Minister for Racing and Gaming. Commonwealth-state Ministerial Councils are forums for sharing information between Australian jurisdictions and develop policy reforms for consideration by the Council of Australian Governments (COAG, ‘Ministerial Councils’, 21 July 2010. Available at: www.coag.gov.au/ministerial_councils/index.cfm Accessed on 7 September 2010).

⁶³⁵ Mr Timothy Marney, Under Treasurer, Department of Treasury and Finance, letter, 26 August 2010, p2.

⁶³⁶ Government of Australia, *Australia’s Future Tax System - Final Report Part 2 Detailed Analysis*, 2 May 2010, pp457-467.

⁶³⁷ Mr Timothy Marney, Under Treasurer, Department of Treasury and Finance, letter, 26 August 2010, p2.

interstate competitiveness of the Western Australian racing industry'. In this regard, the government would have to decide whether it chooses to review tax rates.⁶³⁸

Summary

In summary, the conclusions reached by the Committee in its consideration of wagering taxation are as follows:

- It is appropriate for wagering activities to be taxed;
- When determining appropriate rates of wagering taxation the state government must consider RWWA's ability to meet its operational costs and funding obligations to the industry;
- The Henry Tax Review suggests that taxation rates should not be formulated simply on the basis of matching other jurisdictions. That said, the Committee believes that the rate of wagering tax should be struck at a level to enable RWWA to remain viable against increasing competition in the wagering market;
- The rate of fixed odds and totalisator taxation could be reviewed as part of the State Budget process, which would take into account various factors;
- A review of the rates of fixed odds taxation is warranted due to the lapse of time and change in wagering conditions since the rate was initially set however such a review would need to occur in the context of overall rates of wagering tax (i.e. including totalisator tax); and
- In the long-term, a cooperative national approach to wagering taxation would help to address destructive tax competition between the states and is supported.

Finding 44

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

Finding 45

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

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.

⁶³⁸ Mr Timothy Marney, Under Treasurer, Department of Treasury and Finance, letter, 26 August 2010, p2.

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.

Finding 47

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

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.

(ii) Basis and rates for wagering taxation to be set in regulation

RWWA has recommended that rates of taxation for totalisator and fixed odds betting should be set in regulation rather than legislation for greater flexibility and administrative ease. Due to the length of time required to amend legislation, RWWA has suggested that the state government currently has limited ability to respond to changes in taxation rates by competing jurisdictions or other changes in the market. RWWA cites recent product fee legislation as an example (and its preferred scenario) whereby the Minister may set product fees by regulation.^{639 640}

Broadly defined, a tax exists when there is no direct link between the payment of the tax and benefits to the taxpayer. Funds raised through taxes may be used by the government to provide benefits to the community overall. Fees on the other hand exist when an agency recovers the costs of supplying a particular product or service.⁶⁴¹ By this definition, the revenues to state government arising from totalisator and fixed odds wagering are undoubtedly *taxes* as these sums go towards consolidated revenue.

⁶³⁹ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p85.

⁶⁴⁰ Mr Richard Burt, CEO, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, p8.

⁶⁴¹ Government of Australia, *Australia's Future Tax System - Final Report (Overview)*, 2 May 2010, section 8.5.

In its 32nd Report (May 2009), the WA Delegated Legislation Committee notes significant evidence to reinforce the point that taxes must be imposed by an Act of Parliament and cannot lawfully be imposed via regulation. The Report also cites a comment by the Auditor General from the *Second Public Sector Report 2006*, which states:

*Legislative authority conferred on agencies to raise fees and charges does not permit the imposition of a tax. A tax must be specifically imposed under an Act of Parliament.*⁶⁴²

The Office of the Auditor General further qualified this statement by advising that the statement was based on advice received from the State Solicitor in July 2004 to the effect that:

*...legislative powers conferred on government agencies to impose “fees” or “charges” do not permit the imposition, either in whole or in part, of a tax. Agencies should be referred to s.45 and 45A of the Interpretation Act 1984 in particular. If a tax is to be levied by an agency, then it must be specifically imposed under an Act of Parliament as a tax.*⁶⁴³

The Committee recognises that imposing rates of wagering taxation by regulation rather than through the RWWA Tax Act would provide RWWA with more flexibility to remain competitive in a changing wagering market. However, under current state law all taxes must be imposed by an Act of Parliament.

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*.

(iii) Fixed odds betting conducted on-course should be taxed the same as totalisator betting

Racing clubs do not have the ability under legislation to conduct fixed odds betting on-course and may do so only as an agent of RWWA. RWWA argues that while clubs are not required to pay tax on on-course totalisator wagering, tax still applies to fixed odds betting and is a disincentive to clubs wishing to pursue this option. Given that demand for fixed odds betting is increasing, this is disadvantageous for clubs.⁶⁴⁴ RWWA indicates that there is no clear case for the differential taxation of on-course totalisator and fixed odds betting and suggests that clubs acting as agents of

⁶⁴² As cited within Parliament of Western Australia, Joint Standing Committee on Delegated Legislation, *Supreme Court (Fees) Amendment Regulations (No.2) 2008, Children’s Court (Fees) Amendment Regulations (No. 2) 2008, District Court (Fees) Amendment Regulations 2008, Magistrates Court (Fees) Amendment Regulations (No. 2) 2008, Fines, Penalties and Infringement Notices Enforcement Amendment Regulations (No. 2) 2007 and other court fee instruments - Report 32*, May 2009, p33.

⁶⁴³ Mr Glen Clarke, Acting Auditor General, letter, 9 July 2010, p2.

⁶⁴⁴ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, pp12-13.

RWWA should receive a similar exemption for fixed odds betting conducted on-course.⁶⁴⁵ The Committee concurs that there is no clear rationale for the differential rate of taxation for on-course totalisator and fixed odds betting and supports in principle the idea of a more equitable rate of taxation for on-course wagering conducted by clubs.

Finding 49

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

Significantly, DTF highlighted that increased on-course fixed odds betting by clubs could have consequences for the ongoing viability of licensed bookmakers. As such, it would be appropriate for licensed bookmakers and racing clubs to receive equitable taxation treatment.⁶⁴⁶ This is a pertinent point and while the Committee supports a more equitable approach to tax rates for on-course wagering conducted by racing clubs, the Committee also recognises that this cannot be considered in isolation. In the previous section the Committee identified that a review of the taxation rate applicable to fixed odds betting is warranted. It would be appropriate for such a review to also take into account the appropriate rate of taxation for on-course fixed odds betting with a view to reducing the tax burden on clubs without impacting on bookmakers.

(iv) *RWWA's payments of wagering tax on sporting events and the payments to the Sports Wagering Account should be combined into a single payment*

Payments to the Sports Wagering Account (SWA) by RWWA are required for unclaimed dividends in respect of wagers made on sporting events.⁶⁴⁷ Following payment of dividends and tax on totalisator and fixed odds wagering in relation to sporting events, RWWA is also required to pay 25% of the remaining balance into the SWA.⁶⁴⁸ The SWA is administered by the Gaming and Wagering Commission for the purpose of distribution to sporting organisations at the direction of the Minister for Sport and Recreation.⁶⁴⁹ The Gaming and Wagering Commission also deposits monies into the SWA in relation to payments of the bookmakers' betting levy made under Section 15 of the *Betting Control Act 1954*. In 2008-09, payments totalling \$2.7m were made from the SWA leaving a balance of approximately \$2.5m.⁶⁵⁰

⁶⁴⁵ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p85.

⁶⁴⁶ Mr Timothy Marney, Under Treasurer, Department of Treasury and Finance, letter, 26 August 2010, p3.

⁶⁴⁷ Section 104 *Racing and Wagering Western Australia Act 2003*.

⁶⁴⁸ Section 107(1)(b) *Racing and Wagering Western Australia Act 2003*.

⁶⁴⁹ Section 110A *Gaming and Wagering Commission Act 1987*.

⁶⁵⁰ Gaming and Wagering Commission of Western Australia, *2008-2009 Annual Report*, p49, 2009. Available at: www.rgl.wa.gov.au/ResourceFiles/Publications/Reports/2009/GWCWA.pdf. Accessed on 30 June 2010.

RWWA has suggested that its system of payments should be simplified by rolling the payments to the SWA and payments of wagering tax on sporting events⁶⁵¹ into a single payment to sporting organisations.⁶⁵² RWWA claims that this would be for administrative ease and did not have a position on whether tax should still be payable on this combined amount.⁶⁵³

In its submission to the Inquiry, the Department of Sport and Recreation (DSR) also raised the issue of the SWA and how it is currently administratively cumbersome. DSR has undertaken preliminary consultation with the Department of Racing, Gaming and Liquor (DRGL) (on behalf of the Gaming and Wagering Commission) and RWWA with respect to streamlining the process and has obtained in principle support from these parties. Under the DSR streamlining proposal, the requirements for RWWA to pay moneys into the SWA would be unchanged⁶⁵⁴ but the Gaming and Wagering Commission would be removed from the administration process to be replaced by DSR. If streamlining proceeded, minor amendments would be required to the wording of Sections 104 and 107 of the RWWA Act to reflect changes in the administration of the account from the Gaming and Wagering Commission to DSR.⁶⁵⁵

In its analysis, the Committee recognised that there are two parts to the SWA argument: the first concerns streamlining the SWA process, which is administratively cumbersome; and the second involves combining RWWA's payments into the SWA. With regard to the first issue, the Committee recognises that the current administrative arrangements are cumbersome as multiple agencies are involved. It appears that the rationale behind the Gaming and Wagering Commission's involvement in the administration of the SWA was largely historical due to its responsibility for levying bookmakers prior to the TAB (and then RWWA) having the ability to conduct sports betting. It was then logical for sports betting payments, when these came into being, to operate through the existing account structures of the Commission.⁶⁵⁶ While the same community sporting benefits would be realised regardless of whether DSR or the Gaming and Wagering Commission administered the SWA,⁶⁵⁷ Mr Barry Sargeant, Director General of the Department of Racing, Gaming and Liquor raised an important point:

From the view of the Department of Sport and Recreation, as I understand, there is a bureaucracy they have to go through. But I repeat the point that we are actually more involved now in moneys that Racing and Wagering Western Australia is generating, and

⁶⁵¹ As previously stated, this equates to 0.5% of turnover for wagers on sporting events.

⁶⁵² Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p86.

⁶⁵³ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 14 June 2010, p14.

⁶⁵⁴ The Gaming and Wagering Commission would still remit the betting levy payable on sporting events under the *Bookmakers Betting Levy Act 1954* to the SWA (as advised by Mr Timothy Marney, Under Treasurer, Department of Treasury and Finance, letter, 26 August 2010, p4).

⁶⁵⁵ Submission No. 43 from Department of Sport and Recreation, 1 June 2010, pp1-6.

⁶⁵⁶ Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, *Transcript of Evidence*, 13 August 2010, p5.

⁶⁵⁷ DRGL's comment as cited by Mr Timothy Marney, Under Treasurer, Department of Treasury and Finance, letter, 26 August 2010, p4.

*the clubs are generating through betting et cetera through the product fee, than we were before.*⁶⁵⁸

Following the passage of racefields legislation in 2009, the Gaming and Wagering Commission assumed responsibility for administering the racing bets levy account, which involves the collection and disbursement of product fees (the latter being to RWWA or directly to racing clubs).⁶⁵⁹ The Commission's involvement with RWWA has therefore increased via the product fee regime and according to DRGL, the Gaming and Wagering Commission will likely remain the mechanism for the collection of product fees for the foreseeable future unless national product fee legislation is introduced.⁶⁶⁰ The Committee considers it is a valid argument to maintain the status quo given the Commission's history and ongoing involvement in the administration of payments relating to RWWA. No amendment to the RWWA Act is therefore required with respect to administration of the SWA.

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*.

The second aspect of the argument regarding RWWA combining its wagering tax and 25% payment into the SWA has much more significant ramifications. Moneys in the SWA are distributed to sports organisations whereas wagering tax goes towards the state government's consolidated revenue. Assuming that all sports wagering monies directed into the SWA by RWWA would go towards sporting organisations, combining the two payments would in effect be hypothecating the tax. For reasons elaborated below this is not supported.

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.

⁶⁵⁸ Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, *Transcript of Evidence*, 13 August 2010, p6.

⁶⁵⁹ Section 110B *Gaming and Wagering Commission Act 1987*.

⁶⁶⁰ Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, *Transcript of Evidence*, 13 August 2010, p6.

(v) Wagering taxes and the funding of infrastructure

In Chapter 2.7, the Committee identified a critical need for infrastructure across the industry. The Committee found that government grants alone are insufficient to meet the infrastructure shortfall and that an additional mechanism is required that will provide a more flexible and sustained approach to the funding of infrastructure. In supporting the establishment of a RWWA-administered infrastructure fund, the Committee has ascertained that RWWA currently lacks the means to meet these needs without negatively impacting on stake money distributions.

In acknowledging its difficulty in funding infrastructure, RWWA has suggested taxation as a possible method of addressing this situation:

*We also have a very large stakeholder base of ageing assets. To maintain those assets—we do not have the financial capacity to do that—we are recommending that there should be some recognition of that from the public purse either through reduced taxation on a sustainable basis, or through grants.*⁶⁶¹

Evidence to the Inquiry highlighted the potential for a reduction in wagering taxation to be applied to infrastructure funding. The main argument from industry can be summarised as follows:

- A reduction in wagering tax will provide RWWA with more funding for the industry;⁶⁶²
- The rate of wagering tax should be lowered and the resulting money should be directed towards the funding of race related infrastructure;⁶⁶³
- The rate of wagering tax should be reduced and the resulting funds used by RWWA to fund infrastructure;⁶⁶⁴
- A future fund/ capital fund should be established by setting aside a fixed percentage of taxes annually which can then only be applied to infrastructure projects;⁶⁶⁵
- Infrastructure funding arising from a reduction in wagering tax should be directed towards infrastructure for country and regional race clubs;⁶⁶⁶ and
- Funding set aside for infrastructure would need to make specific reference to country racing.⁶⁶⁷

⁶⁶¹ Mr Richard Burt, CEO, Racing and Wagering Western Australia, *Transcript of Evidence*, 30 April 2010, p37.

⁶⁶² Mr Colin Bellchambers, General Manager, Pinjarra Race Club, *Transcript of Evidence*, 6 April 2010, p7.

⁶⁶³ Submission No. 29 from HROAWA, BOTRA and WASBA, 15 January 2010, p3; Submission No. 23 from Bunbury Turf Club, 18 December 2009, p2; Submission No. 24 from Western Australian Provincial Thoroughbred Racing Association, 24 December 2009, p2; Submission No. 22 from WA Racing Trainers' Association, 14 December 2009, pp3-4; Mr Alan Smith, Secretary/Treasurer, Pingrup Race Club, *Transcript of Evidence*, 3 May 2010, p14; Mr Maxwell (Dixie) Solly, President, Country Racing Association, *Transcript of Evidence*, 7 May 2010, p3.

⁶⁶⁴ Mr Nicholas Bosly-Pask, Acting Chair, Narrogin Racing, *Transcript of Evidence*, 3 May 2010, p12; Mr David Prance, Immediate Past Chairman, Kalgoorlie Boulder Race Club, *Transcript of Evidence*, 19 March 2010, p5.

⁶⁶⁵ Submission No. 28 from Western Australian Racehorse Owners' Association, 30 December 2009, p4; Mr Geoff Fahl, Chairman/Treasurer, Carnarvon Race Club, *Transcript of Evidence*, 16 May 2010, p9.

⁶⁶⁶ Mr John Biggs, Representative, North Eastern Goldfields Racing Clubs, *Transcript of Evidence*, 19 March 2010, p3.

⁶⁶⁷ Submission No. 21 from Broome Turf Club (Inc), 14 December 2009, p4.

On the basis of comments received, the Committee identified two possible methods for establishing an infrastructure fund.

Method 1: A set percentage of wagering taxes is put towards an infrastructure fund

The first option pertains to hypothecating⁶⁶⁸ wagering tax for the purpose of funding infrastructure. In the past DTF has not supported the hypothecation of revenues for the purposes of building infrastructure for the reason that:

*...it reduces the flexibility of the Government to respond to changes in its environment and narrows the revenue base for other expenditures (which may provide more benefits than economic infrastructure). It also gives these projects a privileged position in a State budget context by removing them from the scrutiny of the annual budget process, potentially distorting priorities and misallocating public sector resources.*⁶⁶⁹

DTF continues to recommend against the hypothecation of revenues for specific expenditure programs 'on the basis that it circumvents the Government's decision making processes that determine the relative priority that should be given to competing expenditure programs'.⁶⁷⁰

Method 2: The rate of wagering tax is reduced thus assisting RWWA to provide for infrastructure

Earlier in this report the Committee recommended that the rate of wagering tax should be lowered to enable RWWA to compete more effectively against wagering operators in other jurisdictions. Reducing the rate of wagering tax would ultimately be reflected in RWWA having more funds available for distribution to the industry. The second method for establishing an infrastructure fund, and the Committee's preferred option, utilises RWWA's existing funding distribution framework, however is contingent on a reduction in the rate of wagering tax.

As identified previously by the Committee, a RWWA administered fund is preferable given RWWA's existing charter under the RWWA Act, and would also allow for capital to be allocated on a needs basis in accordance with strategic plans for the industry.⁶⁷¹ A fund to be administered by RWWA needs protections in place however to ensure that monies are specifically allocated to infrastructure. The Committee considers this necessary given that RWWA's funding distribution model is heavily weighted towards stakes.

The Committee is of the view that, provided there is a reduction in wagering tax, a percentage of RWWA's wagering profits after taxes and expenses should be set aside annually in a fund for

⁶⁶⁸ Hypothecation is where money obtained, or part of the money obtained through tax is used for a particular purpose, rather than spent on a number of things (as defined by Financial Times Ltd, 'Financial Times Lexicon', 2009. Available at: <http://lexicon.ft.com/term.asp?t=hypothecated-tax> Accessed on 18 June 2010).

⁶⁶⁹ Department of Treasury and Finance, *Framework for the State Infrastructure Strategy: Green Paper*, September 2006, p45. Available at: www.dtf.wa.gov.au/cms/uploadedFiles/sis_greenpaper_sept2006.pdf Accessed on 18 June 2010.

⁶⁷⁰ Mr Timothy Marney, Under Treasurer, Department of Treasury and Finance, letter, 26 August 2010, p1.

⁶⁷¹ Mr Ross Bowe, Chairman and Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 30 April 2010, p39.

infrastructure projects. Evidence to the Committee demonstrated that a funding stream of at least \$15 million a year⁶⁷² for the next 5 years would be required to meet urgent infrastructure needs.⁶⁷³ By mandating that a percentage of RWWA's profit margin⁶⁷⁴ (at a rate sufficient to address critical infrastructure needs) is set aside each year for infrastructure, this would ensure a regular funding stream. On current estimates based on RWWA's approximate margin figures for 2009-10,⁶⁷⁵ a mandated figure of between 8% and 9% would yield between \$13 million and \$15 million a year. As already established however, it is important to reinforce that 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.

In terms of the quantum of change that would be needed to the taxation rate, it was suggested by some industry participants that the tax should be reduced initially by one per cent.⁶⁷⁶ The Committee recognises that a detailed economic analysis is required to identify an actual figure and as indicated earlier in this Report, has recommended that tax rates should be reviewed by the state government. Factors that would need to be considered include:

- how taxation might best be modified to achieve the desired outcomes for the racing industry i.e. whether this should be spread across rates of taxation for totalisator and/or fixed odds betting;
- how taxation relief will enable RWWA to compete more effectively in the wagering market (as discussed in Chapter 2.9);
- in relation to equipping RWWA to meet infrastructure funding challenges:
 - the extent to which state government funding under the recently announced racecourse infrastructure grants program will address infrastructure shortfalls;
 - the extent to which other committed funds such as Royalties for Regions will address infrastructure shortfalls; and
 - the extent to which RWWA might contribute to addressing infrastructure shortfalls.

In terms of how an infrastructure fund could actually be established, Section 88 of the RWWA Act provides for RWWA to maintain one or more special purpose accounts as defined under the *Financial Management Act 2006*. A special purpose account administered by RWWA could be used to ensure that funds sourced from wagering profits are applied to infrastructure. DTF has advised that with appropriate changes to the RWWA Act and RWWA Tax Act this would be possible. The Committee believes that the potential benefits to the industry to be derived from a source of dedicated infrastructure funding justify the establishment of a special purpose account

⁶⁷² This is also supported by Submission No. 21 from Broome Turf Club, 14 December 2009, p4.

⁶⁷³ Mr Richard Burt, (Racing and Wagering Western Australia), 2010, pers. comm., 21 September 2010.

⁶⁷⁴ This refers to the margin after paying pooling fees, product fees, rebates and tax.

⁶⁷⁵ Mr Richard Burt, (Racing and Wagering Western Australia), 2010, pers. comm., 21 September 2010.

⁶⁷⁶ Mr John Biggs, Representative, North Eastern Goldfields Racing Clubs, *Transcript of Evidence*, 19 March 2010, p3; Submission No. 21 from Broome Turf Club, 14 December 2009, p4. This presumably referred to a reduction in the rate of off-course totalisator tax equivalent to 1% of turnover as calculated using the previously applied method.

for infrastructure, not least the potential to address priority infrastructure needs including those in country and regional areas. In terms of mandating for a set percentage of RWWA's distribution to be put towards infrastructure, it is important to understand that the allocation to the fund may need to be revised as infrastructure needs change. The mandated percentage should therefore be specified in regulations in order to provide this flexibility.

The Committee also recognises the need for transparency (in addition to normal annual reporting requirements) and considers that an infrastructure plan and increased reporting requirements would be appropriate in the context of an infrastructure fund. The Committee is aware that in May 2009, Racing Victoria Limited in conjunction with Country Racing Victoria released a five-year Racecourse and Training Facilities Infrastructure Plan. The plan provides all country clubs in the state with a five-year plan which includes but is not limited to: race dates; capital funding strategy; optimum wagering schedule; and training track maintenance funding. The result of extensive industry consultation, the plan will be updated annually following a review of club performance and is intended to provide direction to clubs and assistance to achieve greater sustainability.⁶⁷⁷

Should a RWWA administered infrastructure fund be established, it must be reinforced by a forward looking infrastructure plan which clearly identifies infrastructure priorities and the proposed schedule and quantity of funding allocations across the state. Although current accountability provisions in the RWWA Act require capital expenditure to be included in RWWA's Strategic Development Plan,⁶⁷⁸ a similar requirement is lacking in the Statement of Corporate Intent which once tabled in Parliament becomes a public document. A requirement to report infrastructure expenditure for the coming financial year in an SCI would strengthen accountability and legislatively reinforce the need for RWWA to undertake sound planning for the allocation of infrastructure funds. The task of preparing such documentation could be the responsibility of a risk management board committee (as discussed in Chapter 2.2(e)).

Summary

The main conclusions reached by the Committee in relation to funding infrastructure can be summarised as follows:

- A RWWA administered infrastructure fund has already been identified to be a suitable mechanism for providing more flexible and sustained infrastructure funding to the industry;
- For RWWA to compete on more favourable terms with its wagering competitors and in order to fund major infrastructure, the preferred mechanism is for the wagering tax rate to be reduced and for a percentage of RWWA's wagering profits to be set aside each year for infrastructure;
- The magnitude of tax reduction needs to be subject to a detailed analysis; and

⁶⁷⁷ Racing Victoria Limited, 'Victorian Racecourse and Training Facilities Infrastructure Plan Overview', May 2009. Available at: <https://admin.racingvictoria.net.au/asset/cms/Race%20Programs%20PDF/Infrastructure%20Plan%20Summary.pdf> Accessed on 1 February 2010.

⁶⁷⁸ Section 68(2) *Racing and Wagering Western Australia Act 2003*.

- The anticipated benefits to the industry justify this approach, especially if sufficient transparency measures can simultaneously be put in place. In this regard, 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 will be necessary.

Finding 52

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

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.

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.

Recommendation 29

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

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.

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.

2.9 Wagering revenues

(a) Challenges

Section 50 of the RWWA Act authorises RWWA to carry on a wagering business.⁶⁷⁹ Wagering services in WA are also provided by on-course parimutuel totalisators operated by racing clubs at race courses (or by RWWA on behalf of a racing club where contracted to do so⁶⁸⁰), and on-course bookmakers.⁶⁸¹ Only RWWA may conduct off-course wagering as there is no provision under the *Betting Control Act 1954* for additional providers of off-course wagering services to be licensed by the Gaming and Wagering Commission.⁶⁸²

The importance of RWWA's wagering operations stem from the application of profits to the industry in the form of distributions (as detailed in Chapter 2.7). RWWA continues to emphasise the importance of wagering revenues in terms of its purpose:

*Our singular focus is to run the TAB to make a profit for distributable funds for the racing industry.*⁶⁸³

and ongoing significance:

*I would like the committee to note that the three codes in Western Australia are ridden on the back of the wagering dollar, and they will continue to do so...*⁶⁸⁴

RWWA has provided figures to indicate that between establishment in 2003 and 2008-2009, wagering income and distributions to clubs increased annually.⁶⁸⁵ That said, a reversal in the total

⁶⁷⁹ For a definition of 'wagering' refer to the Glossary.

⁶⁸⁰ Section 50(1)(b)(ii) *Racing and Wagering Western Australia Act 2003* (WA).

⁶⁸¹ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p18.

⁶⁸² *Ibid.*, p24.

⁶⁸³ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 30 April 2010, p13.

⁶⁸⁴ Mr Ross Bowe, Chairman, Racing and Wagering Western Australia, *Transcript of Evidence*, 30 April 2010, p3.

⁶⁸⁵ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p37.

annual distribution by RWWA has become apparent in recent times. As at February 2010, RWWA noted that financial performance to date in 2009-10 was below expectations as a result of a significant reduction in totalisator betting. Further, the distribution to the racing industry in 2009-10 was \$4.19 million less than for 2008-09.

RWWA has highlighted a number of factors that are placing downward pressure on wagering revenues. These can be summarised as follows:

- **Increasing competition for wagering services** - in particular from corporate bookmakers, betting exchanges, and eastern states wagering businesses. The development of internet based wagering is transforming the wagering landscape. Increased competition in the broader gambling market as a result of: the expansion of Burswood Casino; growing popularity of sports betting; and interstate and international gaming and wagering are all contributing to a decline in racing wagering as a proportion of the wagering market, and of wagering in the overall gambling market;
- **Changes in rates of wagering taxation in other Australian jurisdictions** - more competitive rates of taxation in other jurisdictions risk possible migration of Western Australian customers to interstate wagering operators and further diminution of WA product; and
- **Increasing costs associated with providing RWWA's core wagering services** - a significant increase to pooling fees⁶⁸⁶ has resulted in an \$11 million annual increase in costs required for Western Australia to stay within the SuperTAB betting pool. The introduction of product fees⁶⁸⁷ has resulted in a recurring \$4 million increase in costs to RWWA.⁶⁸⁸

The Committee received extensive comments from industry stakeholders regarding the challenges confronting RWWA. Many industry participants highlighted that RWWA had been established during an economic 'boom' time and the industry had benefited from this. The coming years however would present particular challenges given the rise of corporate bookmakers, betting exchanges and product fees, and this would be a real test of the RWWA model.⁶⁸⁹ The Committee heard that competition from corporate bookmakers had been particularly damaging for RWWA's

⁶⁸⁶ Until 2009, RWWA operated totalisator and fixed odds wagering on sports and racing events through an agreement with Tabcorp (Victoria's privatised TAB operator). RWWA was required to negotiate a new pooling agreement with Tabcorp so that Western Australian customers could continue accessing a combined betting pool with Victoria, Tasmania and the ACT (SuperTAB) but the agreement came at a higher cost. RWWA negotiated a new agreement with a different wagering partner (Centrebet) with respect to fixed odds betting resulting in the re-branding of the fixed odds betting business to 'Player'.

⁶⁸⁷ More Western Australians bet on eastern states' racing than interstate customers bet on WA events to the extent that 75% of RWWA's wagering turnover is derived from interstate racing events. The introduction of product fees in other states has meant that fees paid by RWWA to eastern states racing bodies exceed the value of product fees paid by eastern states wagering businesses to the WA racing industry. Although the state government passed racefields legislation in 2009 to enable the WA racing industry to recover product fees, as a net 'importer' of racing product RWWA is still left with a shortfall.

⁶⁸⁸ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, pp61-70.

⁶⁸⁹ Submission No. 26 from Northam Race Club, 23 December 2009, p3; Submission No. 25 from Geraldton Turf Club, 25 November 2009, p4; Submission No.14 from WA Greyhound Racing Association, 30 November 2009, p5; Mr Bruce Jones, Vice President, Harvey District Trotting Club, *Transcript of Evidence*, 6 April 2010, p4; Mr Maxwell (Dixie) Solly, President, Country Racing Association, *Transcript of Evidence*, 7 May 2010, p3; Mr Robert Bovell, Chief Executive, Western Australian Trotting Association, *Transcript of Evidence*, 26 February 2010, p11.

wagering revenues and this pressure would continue to intensify.⁶⁹⁰ That said, Mr Robert Howat of the WA Bookmakers' Association sees corporate bookmakers as just another part of the economic chain in which money circulates and therefore downplayed their perceived threat to Western Australian wagering revenues.⁶⁹¹

Other views concerning factors impacting negatively on RWWA's wagering revenues include poor odds being offered to WA punters which works to the advantage of RWWA's interstate wagering competitors,⁶⁹² and the ability of big punters to bet on credit with corporate bookmakers but not with RWWA which again takes business away from WA.⁶⁹³ The Committee also heard that the expanding wagering market is a particular challenge and that limiting the scope of wagering to a statewide focus is no longer appropriate.⁶⁹⁴

The main consequence for the industry if RWWA fails to address these challenges was best summarised by Mr Colin Bellchambers, Pinjarra Race Club:

*There is a limit to how far RWWA is able to prune its operating costs. I guess they have done nearly as much as they can now. Ultimately, if things continue to go on a downward track rather than upwards, there will be only one place from which it can come, and that is distribution to clubs.*⁶⁹⁵

If diminishing distributions led to a reduction in stake levels, this would drive people out of the industry and continue the downward spiral.⁶⁹⁶

In recognition of these consequences, evidence to the Inquiry suggested that RWWA needs to increase its revenues.⁶⁹⁷ The Western Australian Racehorse Owners' Association suggested that while RWWA needs to generate more revenue, holding more races is not the answer as the horse population has remained relatively constant over the last five years and more meetings would mean smaller fields and lower wagering returns.⁶⁹⁸ Other stakeholders emphasised that increasing the race program would need to be supported by sufficient stake money to stay competitive.⁶⁹⁹ This is a self-defeating argument if an expanded race program is needed to increase wagering

⁶⁹⁰ Submission No. 7A from Racing and Wagering Western Australia, 30 November 2009, p3; Submission No. 28 from WA Racehorse Owners' Association, 30 December 2009, p3.

⁶⁹¹ Mr Robert Howat, President, WA Bookmakers' Association, *Transcript of Evidence*, 8 March 2010, p5.

⁶⁹² Submission No. 16 from Morley TAB Agents, 27 November 2009, p6.

⁶⁹³ Mr Geoffrey Warwick, Vice President, Fremantle Harness Racing Club, *Transcript of Evidence*, 4 June 2010, p14.

⁶⁹⁴ Mr Dino Di Cianno, President, Best Bookies Price Pty Ltd, *Transcript of Evidence*, 8 March 2010, p7.

⁶⁹⁵ Mr Colin Bellchambers, General Manager, Pinjarra Race Club, *Transcript of Evidence*, 6 April 2010, p6.

⁶⁹⁶ Mr David Prance, Immediate Past Chairman, Kalgoorlie-Boulder Racing Club, *Transcript of Evidence*, 19 March 2010, p5.

⁶⁹⁷ Mr Allen Kinnish, Committee Member, Western Australian Greyhound Breeders Owners and Trainers' Association, *Transcript of Evidence*, 30 April 2010, p5; Mr Edward (Ted) van Heemst, Chairman, Perth Racing, *Transcript of Evidence*, 26 February 2010, p11; Submission No. 38 from Mr J Spasich, 23 March 2010, p1.

⁶⁹⁸ Submission No. 28 from Western Australian Racehorse Owners' Association, 30 December 2009, p3.

⁶⁹⁹ Mr Nicholas Bosly-Pask, Acting Chair, Narrogin Racing, *Transcript of Evidence*, 3 May 2010, p7.

revenues but is itself dependent on an increase in stakes (and therefore wagering revenues). RWWA also confirmed that conducting more racing is not the answer:

*Meetings held in the country, provincial and metropolitan areas, across all three codes, are largely loss making. When you allocate the cost of running this industry from distributions, the direct costs of stewards, race meeting costs, nominations et cetera, the numbers that we have been communicating to the industry extensively over the past couple of months through the rollout of the strategic plans is that for every dollar we invest in harness racing, we lose 94c; for every dollar we invest in thoroughbreds, across the range, from country to metropolitan, we lose 65c; and we lose 85c for the greyhounds. To hold more meetings, be they at Lark Hill or Pemberton, would be a loss-making venture.*⁷⁰⁰

RWWA qualified this statement by indicating that it did not mean abandoning local product. Although racing is not profitable from a business venture perspective, RWWA acknowledged that profitability alone does not determine race programming. Other factors taken into consideration include: venues that can sustain more racing from the perspective of existing track and other infrastructure; vision coverage; and presence of a local horse population to minimise fuel/transport costs. Even so, RWWA indicated that current levels of local racing are adequate.⁷⁰¹ It is therefore clear that an expanded race program is not the answer for boosting RWWA's wagering revenues.

Alternative mechanisms suggested in evidence to the Committee to assist RWWA to increase revenues are explored in greater detail below.

(b) Mechanisms to enhance revenues

(i) Taxation

Various submissions to the Inquiry argued for a review of wagering taxation to enhance RWWA's ability to compete more effectively with the providers of wagering services in other jurisdictions and therefore maximise returns to the industry. This matter has been discussed separately in Chapter 2.8.

(ii) Increasing product range and accessibility

RWWA has made a number of suggestions to enhance its wagering revenues as follows:

- RWWA should be allowed to expand the range of wagering and gambling products to include products already available to competing wagering businesses;
- The RWWA Act should be amended to expand the ability of RWWA to offer wagering services through electronic agents without RWWA having the direct relationship with the end-customer;

⁷⁰⁰ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, p40.

⁷⁰¹ *Ibid.*

- RWWA should be allowed to expand the range of outlets through which RWWA may distribute wagering products.⁷⁰²

Numerous other submissions to the Inquiry have supported the concept of RWWA broadening its product range in order to increase wagering income.⁷⁰³ This includes support for the introduction of alternative forms of wagering⁷⁰⁴ like Keno⁷⁰⁵ and Trackside (virtual racing),⁷⁰⁶ and/or an expansion of outlets for conducting wagering.⁷⁰⁷

In support RWWA reasoned that the product range offered by the TAB had not changed in 10 years and this limited the capacity of the wagering business to grow. RWWA has specifically identified Trackside (a fixed odds simulated racing product) and Keno (a bingo-style product) as being suitable components of an expanded product offering through the TAB. Both are currently restricted to Burswood Casino.⁷⁰⁸ According to RWWA, simulated virtual racing is by its nature closely aligned to racing so there are obvious synergies whereas Keno is attractive due to its revenue generating capacity.⁷⁰⁹

With regard to virtual racing, RWWA cited recent plans by the New South Wales government to establish a racing development fund.⁷¹⁰ The fund will deliver an estimated \$150 million to the racing industry in that state at the rate of \$12 million a year. Funding is dependent on a merger of Sydney's two main racing clubs and will be derived from the introduction of Trackside into TABs.⁷¹¹ In Western Australia, RWWA sees Trackside as being a suitable product for TAB retail agencies and licensed premises and to a limited extent clubs, whereas Keno if available would predominantly be a club and pub product.⁷¹² RWWA stressed however that if introduced, these

⁷⁰² Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, pp78-79.

⁷⁰³ Submission No. 22 from WA Racing Trainers' Association, 14 December 2009, p3; Submission No. 16 from Western Australian TAB Agents' Association, 27 November 2009, p2; Submission No. 42 from Wagin Trotting Club, 26 May 2010, p1; Mr Gino Monaco, President, Fremantle Harness Racing Club, *Transcript of Evidence*, 4 June 2010, p12; Submission No. 37 from Western Australian Bookmakers' Association (Inc), 25 February 2010, p2; Mr Robert Tomlinson, President, Breeders', Owners', Trainers and Reinspersons' Association, *Transcript of Evidence*, 7 May 2010, p9; Submission No. 35 from Perth Racing, 22 December 2009, p1; Submission No. 29 from HROAWA/WASBA/BOTRA, 15 January 2010, p2.

⁷⁰⁴ Submission No. 28 from Western Australian Racehorse Owners' Association, 30 December 2009, p3.

⁷⁰⁵ Submission No. 16 from Morley TAB Agents, 27 November 2009, p4.

⁷⁰⁶ Mr Kenneth Trainer, Advisor, WA TAB Agents' Association, and Mr Robert Morgan, President, WA TAB Agents' Association, *Transcript of Evidence*, 8 March 2010, pp1, 11; Submission No. 31 from Fremantle Harness Racing Club, 15 January 2010, p4.

⁷⁰⁷ Mr Robert Bovell, Chief Executive, Western Australian Trotting Association, *Transcript of Evidence*, 26 February 2010, p11; Submission No. 31 from Fremantle Harness Racing Club, 15 January 2010, p5.

⁷⁰⁸ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, 30 April 2010, pp22-23.

⁷⁰⁹ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, 20 August 2010, p46.

⁷¹⁰ Mr Robert Pearson, Director, Racing and Wagering Western Australia, 20 August 2010, p46.

⁷¹¹ AAP, 'Racing club merger delivers windfall', *Australian Financial Review*, 23 July 2010, p8.

⁷¹² *Ibid.*, p23.

products should go no further than licensed TAB venues, which comprises retail TAB agencies, PubTABs and ClubTABs.⁷¹³

The Australian Hotels Association (AHA)⁷¹⁴ cites other jurisdictions (Victoria and New South Wales) where Trackside is classified as a wagering product and states that there is evidence to suggest that it 'should be offered as a wagering product in TAB locations as a supplement to wagering on real life animals'.⁷¹⁵ The AHA recognises however that state government policy to date has considered Trackside a casino game and as such, urges 'an appropriate mechanism to independently review and consider the determination of Trackside as a wagering product and for it to be available in hotels [sic] TAB venues'.⁷¹⁶

RWWA considers that it already has the legislative capacity to allow for the introduction of Trackside and in order to progress the proposal, it would require Ministerial approval and the concurrence of Burswood Casino to introduce the product.⁷¹⁷ From a regulatory perspective, Mr Barry Sargeant of DRGL confirmed that the RWWA Act had sufficient flexibility built-in to accommodate some form of gambling in TAB outlets, however he stressed that:

*Fundamentally ... it has to have government approval. No agreement has been struck on tax rates et cetera, and then there is just the fundamental approval of a government, as a matter of policy, on whether it wants that. The technical side is not the issue; it is a matter of government policy, and the government policy to date has been that there be no development of gambling per se outside the current structures.*⁷¹⁸

The *Casino (Burswood Island) Agreement Act 1985* gives Burswood Casino exclusive rights to certain games.⁷¹⁹ Mr Sargeant explained that Burswood currently has exclusive rights to Trackside and that if there was a proposal to expand the product beyond the casino, under the terms of the agreement it could only be done with the agreement of Burswood. Any proposal to introduce Trackside to TABs therefore would require the state government to firstly agree to a change in policy⁷²⁰ and secondly it would be necessary to secure the agreement of Burswood.⁷²¹

⁷¹³ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, 20 August 2010, p46.

⁷¹⁴ The Australian Hotels Association Western Australia represents members which operate PubTABs (SL2) or self-service kiosks (SL3).

⁷¹⁵ Submission No. 45 from Australian Hotels Association Western Australia, 3 August 2010, p4.

⁷¹⁶ Ibid.

⁷¹⁷ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 30 April 2010, p23.

⁷¹⁸ Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, *Transcript of Evidence*, 13 August 2010, p12.

⁷¹⁹ Department of Racing, Gaming and Liquor, 'The Western Australian Gaming Legislation', June 2008. Available at: www.rgl.wa.gov.au/ResourceFiles/Gaming/wa_gaming_bground.pdf. Accessed on 10 August 2010.

⁷²⁰ Recent indications are that the state government remains opposed to electronic gaming machines outside of the casino. Hon. T.K. Waldron, MLA (Minister for Racing and Gaming) was quoted in the media as stating that while the government gave in principle support to the proposed expansion of Burswood Casino, gaming machines are restricted to the casino and there is no intention for machines to be approved in pubs or clubs (Emerson, D., 'State to get bigger take as Burswood raises stake', *The West Australian*, 20 July 2010, p9).

Mr Sargeant raised a further point that any proposal to introduce Trackside would need to be supported by a strong business case:

*I would question whether it is going to be viable. I cannot release figures and I do not know what the network is, but do not forget, we have got a pretty big network in Australia. On the one hand it is quite easy to say we would like it, but you have to question whether it is financially viable.*⁷²²

With respect to Keno, similar restrictions apply in terms of Burswood's current exclusivity. ClubsWA, which represents some racing clubs, has made a submission to the Minister for Racing and Gaming with respect to extending Keno to clubs as a means of increasing club revenues and boosting social exchange. ClubsWA had previously negotiated with Burswood in this regard and received favourable indications at the time that Burswood supported the concept. While the proposal progressed no further at the time, ClubsWA has no reason to believe that Burswood's position has changed.⁷²³

RWWA's other suggestions are mechanisms for increasing accessibility to its wagering network. In the first instance, RWWA has suggested that the RWWA Act should be amended to allow wagering services to be offered through electronic agents. Currently the RWWA Act prohibits wagers from being accepted unless the customer's account is held by RWWA.⁷²⁴ An internet agent, possibly based in another state and with a large customer base, could potentially offer RWWA's wagering products to its customers while retaining its customers' accounts.⁷²⁵ According to RWWA, this will assist the TAB to compete more effectively in a national gambling market.⁷²⁶ RWWA recognises that retail TAB agents have some concerns about competition from internet wagering and in this respect alluded to a new agreement currently under development which will be offered to existing agents.⁷²⁷ With respect to the overall concept of electronic agents, the Committee acknowledges that online wagering is an established part of the national gambling landscape⁷²⁸ and that removing restrictions from the RWWA Act to allow for electronic agents would enable RWWA to compete more effectively in a national market.

⁷²¹ Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, *Transcript of Evidence*, 13 August 2010, pp12-13.

⁷²² Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, *Transcript of Evidence*, 13 August 2010, p13.

⁷²³ Submission No. 44B from Clubs WA, 7 September 2010, p1.

⁷²⁴ Section 63 *Racing and Wagering Western Australia Act 2003*.

⁷²⁵ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 30 April 2010, p25.

⁷²⁶ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p78.

⁷²⁷ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 30 April 2010, pp15-16.

⁷²⁸ Government of Australia, *Australia's Future Tax System - Final Report Part 2 Detailed Analysis*, 2 May 2010, p463 and Productivity Commission, *Gambling*, Report No. 50, Commonwealth of Australia, Canberra, 26 February 2010, Overview p35.

RWWA's remaining suggestion pertains to expanding the range of outlets through which it may distribute wagering products. Currently RWWA may establish totalisator agencies⁷²⁹ and the Gaming and Wagering Commission may direct RWWA to close or not establish an agency where in the opinion of the Commission, this may be 'detrimental to the public interest'.⁷³⁰ Betting kiosks are currently limited to TAB outlets and licensed premises however RWWA argues that a broader range of outlets will provide for a more convenient and attractive wagering product.⁷³¹ RWWA has identified newsagencies and service stations as potential locations however stressed that only a limited range of products might be offered and would only be made available under supervision in a limited way to consumers.⁷³² As stated previously, RWWA excludes virtual racing and Keno from consideration in this context.

While there is some support for RWWA to expand its sales network into alternative locations such as newsagencies and popular retail areas,⁷³³ the WA TAB Agents' Association considers that access to products should remain restricted to TAB agencies and licensed premises.⁷³⁴ Similarly, the Director of the Morley TAB agency supports a greater product offering at TAB agencies.⁷³⁵ The Committee notes that TAB agents already feel under pressure by the expansion of the SL3⁷³⁶ network in licensed premises (this matter is discussed in more detail in Chapter 3.8) and that expansion of wagering products into alternative locations would compound this issue.

Summary

The Committee reached the following conclusions following analysis of RWWA's suggestions to increase product range and accessibility:

- The Committee acknowledges that RWWA's wagering revenues are coming under increasing pressure and that an expanded product range and/or greater accessibility to wagering products are potential mechanisms for addressing the decline;
- The Committee has already identified that a review of wagering taxation rates is warranted to enable RWWA to compete more effectively with wagering competitors in other states (see Chapter 2.8). The Committee is also mindful of statements made by RWWA to the effect that an expanded product range would be part of the suite of possible options to assist it to meet

⁷²⁹ Section 51 *Racing and Wagering Western Australia Act 2003*.

⁷³⁰ Section 52(3) *Racing and Wagering Western Australia Act 2003*.

⁷³¹ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p79.

⁷³² Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 30 April 2010, p26.

⁷³³ Submission No. 30 from Western Australian Trotting Association, 15 January 2010, p19; Submission No. 31 from Fremantle Harness Racing Club, 15 January 2010, p5.

⁷³⁴ Mr Robert Morgan, President, WA TAB Agents' Association, *Transcript of Evidence*, 8 March 2010, p15.

⁷³⁵ Mr Timothy Barnes, Director, Morley TAB Agency, *Transcript of Evidence*, 8 March 2010, p15.

⁷³⁶ This refers to wagering Service Level as follows: SL1 (full service agency); SL2 (PubTAB/ClubTAB); and SL3 (self-service). As defined in RWWA Annual Report 2008, p32. Available at: www.rwwa.com.au/home/annual-report-2008.pdf Accessed on 14 September 2010.

industry funding shortfalls and should not be considered in addition to other mechanisms if these are granted;⁷³⁷

- After careful consideration, the Committee has found no case for the expansion of virtual racing and/or Keno into TAB venues.

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.

Recommendation 32

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

- With respect to expanding the wagering sales network the Committee considers that a sufficiently compelling business argument would be needed to inform a review of government policy in this regard. Of particular concern is the impact that such an expansion might have on the viability of existing TAB agencies. As such it would be appropriate for RWWA to mount a business case in this respect for consideration by government.

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.

- The Committee has not undertaken any investigation into the matter of electronic agents however agrees in principle with the notion of RWWA being able to offer its wagering services through this means. The Committee recognises that online wagering is an established part of the national gambling landscape and that removing restrictions from the RWWA Act to allow for electronic agents would certainly enable RWWA to compete more effectively in a national market.

⁷³⁷ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 30 April 2010, p38.

Finding 57

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

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.

(iii) Betting Exchange

In 2008, the betting agency Betfair won a High Court challenge against the state of Western Australia. The state government had earlier amended the *Betting Control Act 1954* (WA) to prohibit the establishment and operation of a betting exchange⁷³⁸ in WA and also prohibit any person in WA from making a bet through a betting exchange.⁷³⁹ Betfair successfully challenged this position on the basis that it was unconstitutional. The High Court found that the WA legislation did indeed contravene s92 of the Constitution because it discriminated against interstate trade in a protectionist sense.⁷⁴⁰ In 2009, the state government duly repealed provisions prohibiting betting through betting exchanges.⁷⁴¹

In July 2010, Victoria's Gaming Minister announced that the successful licensee for the Victorian wagering licence (to be awarded in late 2010) will be permitted to establish and operate the only betting exchange based in Victoria.⁷⁴² Given that the legislative barrier to establishing a betting exchange in Western Australia has now been removed, RWWA has a similar option to establish a betting exchange should it wish to do so.⁷⁴³ The sole existing betting exchange operator saw the possibility for a betting exchange and parimutuel betting to coexist and identified a need for

⁷³⁸ A betting exchange (which Betfair operates from its base in Tasmania) allows customers to bet on opposing outcomes of racing or other events. In other words, unlike traditional forms of wagering (totalisator or bookmaker) it permits customers to 'back the loser'.

⁷³⁹ Hon. M. McGowan, MLA, Minister for Racing and Gaming, Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 21 June 2006, p4066.

⁷⁴⁰ *Betfair Pty Limited v Western Australia* [2008] HCA 11 (27 March 2008).

⁷⁴¹ *Racing and Wagering Legislation Amendment Act 2009*.

⁷⁴² Hon. T. Robinson, MP, (Minister for Gaming (Victoria)), *Successful applicants invited to apply for wagering licence*, Media Statement, Government of Victoria, Melbourne, 29 July 2010.

⁷⁴³ Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, *Transcript of Evidence*, 13 August 2010, p15.

RWWA to diversify its wagering income.⁷⁴⁴ Even so, RWWA identified only marginal benefit in having a licence for a betting exchange in the foreseeable future given that it requires great scale and the market for betting exchanges is still ‘niche’. According to RWWA, the totalisator market is dominant although there is increasing growth in the area of fixed odds betting. While RWWA considered that betting exchanges might become more relevant in the future, it is not currently a priority.⁷⁴⁵

(iv) Credit betting

RWWA has suggested that the RWWA Act⁷⁴⁶ and *Betting Control Act 1954* should be amended to give RWWA the discretion to extend credit to account customers in the form of allowing settlement of wagering accounts for bets after the relevant racing or sporting events are finalised. RWWA argues that it should be given the same opportunity to match the level of service already offered by its competitors including corporate bookmakers.⁷⁴⁷ RWWA makes the point however that credit betting would only be available on strict terms, for example for large and established clients who hold an account with RWWA. Further, RWWA would put in place the necessary due diligence and assume the commercial risk if bets are not repaid.⁷⁴⁸

Evidence received by the Committee was mixed with regard to whether credit betting should be permitted in Western Australia. Industry stakeholders such as WAROA supported the concept.⁷⁴⁹ Similarly, HROAWA indicated that Western Australia is at a disadvantage because credit betting is not permitted.⁷⁵⁰ The President of the WA TAB Agents’ Association was not personally in favour of introducing credit betting, and while he did not see a problem with very low amounts of credit, he considered credit betting too great a business risk for large sums as punters could easily move onto another agency without paying.⁷⁵¹ That said, as the operator of a TAB agency, Mr Timothy Barnes of the Morley TAB considered credit betting to be a risk that each individual TAB business operator should bear.⁷⁵² This view was shared by his co-proprietor who believed that having built a rapport with customers over many years, TAB agents would be in a good position to assess the risks and extend credit where appropriate.⁷⁵³

⁷⁴⁴ Mr Greg Nichols, Managing Director Sporting Affairs, Betfair, *Briefing*, 16 April 2010.

⁷⁴⁵ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 20 August 2010, p46.

⁷⁴⁶ Section 63(2)(b)(ii) of the RWWA Act currently prohibits the provision of credit by RWWA when accepting a wager.

⁷⁴⁷ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, pp79-80.

⁷⁴⁸ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 30 April 2010, pp26-27.

⁷⁴⁹ Submission No. 28 from Western Australian Racehorse Owners’ Association, 30 December 2009, p3.

⁷⁵⁰ Mr Kevin Jeavons, President, Western Australian Harness Racing Owners’ Association, *Transcript of Evidence*, 7 May 2010, p21.

⁷⁵¹ Mr Robert Morgan, President, WA TAB Agents’ Association, *Transcript of Evidence*, 8 March 2010, p13.

⁷⁵² Mr Timothy Barnes, Director, Morley TAB Agency, *Transcript of Evidence*, 8 March 2010, p7.

⁷⁵³ Mr Wayne Barnes, TAB Assistant, Morley TAB Agency, *Transcript of Evidence*, 8 March 2010, p7.

The Productivity Commission recently found that despite the commercial benefits associated with credit betting, the potential harms involved (specifically the ability for problem gamblers to inflict financial stress on themselves and their families) warranted strict regulation and monitoring. The Commission had particular concerns regarding the off-course provision of credit betting as benefits were less clearly defined than for on-course credit betting. While the Commission did not consider that the evidence of harm was great enough to require immediate prohibition, it recommended further investigation at a national level of the risks associated with credit betting and that:

*In the interim, advertising credit betting facilities should be prohibited, and credit betting should not be extended to TABs.*⁷⁵⁴

In response, the Commonwealth Government recognised that national leadership is required and has undertaken to work with State and Territory governments through the new Select Council on Gambling Reform to consider the Productivity Commission's final report.⁷⁵⁵

The Committee has not investigated the merits of credit betting in Western Australia but given the potential risks associated with credit betting, it believes that it is appropriate for this issue to be progressed through COAG and that in the interim, credit betting should not be offered by RWWA.

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.

Further to the credit argument, RWWA has also suggested that the RWWA Act be amended to permit the use of debit and credit cards. Currently customers can only 'top-up' wagering accounts using credit cards but cannot use cards to transact. RWWA again advised that it would assume the commercial risk and responsible wagering measures would apply. The latter refers to RWWA's self-regulatory mechanisms for managing problem gambling across its business.⁷⁵⁶

With respect to credit card gambling, the Productivity Commission report notes that the restrictions that exist on the use of credit cards or access to credit accounts through EFTPOS in gambling venues for gambling are deliberate. While most gamblers do not use credit to gamble, this is not true of problem gamblers.⁷⁵⁷ As such, the Committee recognises the potential implications that allowing the use of credit cards for wagering may have for problem gambling in

⁷⁵⁴ Productivity Commission, *Gambling*, Report No. 50, Australian Government, Canberra, 26 February 2010, pp16.54-16.58.

⁷⁵⁵ Senator the Hon. N. Sherry, (Assistant Treasurer), *Productivity Commission Report into Gambling*, Media Statement, Government of Australia, Canberra, 23 June 2010.

⁷⁵⁶ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 30 April 2010, pp27-28.

⁷⁵⁷ Productivity Commission, *Gambling*, Report No. 50, Australian Government, Canberra, 26 February 2010, ppG.23-G.24.

WA. While RWWA has developed and implements a Responsible Wagering Code of Practice,⁷⁵⁸ the Committee has not evaluated the strength of this device in relation to proposed credit card gambling. At a time when tougher measures are being advocated nationally to minimise the harm caused by problem gambling, the Committee is not convinced that existing mechanisms are sufficiently capable of mitigating the potential risks of credit card gambling.

Finding 59

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

(v) Other mechanisms

In terms of other mechanisms that might be available to RWWA to boost its wagering revenues, Mr Robert Howat of the WA Bookmakers' Association highlighted the important contribution made by bookmakers:

*A huge amount of the money they get is, obviously, from the TAB business. We are very conscious of that and supportive of the TAB, because on course we are their biggest client. We trap money coming from everywhere, but we are limited to what we can do so we repatriate a lot of that money onto on-course tote. The more money that can come through us gets back onto the on-course tote.*⁷⁵⁹

Although only a minor component of RWWA's revenues, the interrelationship between bookmakers and the on-course tote⁷⁶⁰ led Mr Howat to emphasise the importance of fostering on-course wagering. In this regard, it was suggested that facilities for on-course customers need to be improved⁷⁶¹ as without on-course patrons, 'the gambling cycle that makes the entire industry exist would falter'.⁷⁶²

From a racing club's perspective, the Bunbury Trotting Club also recognised the importance of improving the on-course experience since the club also benefits from returns.⁷⁶³ The club indicated however that financial assistance from RWWA to improve on-course facilities was not forthcoming due to financial constraints.⁷⁶⁴ The Committee acknowledges the important contribution made to overall wagering revenues by on-course activities and believes it is

⁷⁵⁸ Submission No. 7C from Racing and Wagering Western Australia, 31 May 2010, p2.

⁷⁵⁹ Mr Robert Howat, President, WA Bookmakers' Association, *Transcript of Evidence*, 8 March 2010, p3.

⁷⁶⁰ According to RWWA, most racing clubs partner with the TAB to provide on-course betting services and in return for using betting services and pools, clubs pay a fee to the TAB which is determined by commercial negotiation between the club and the TAB (Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p25).

⁷⁶¹ Mr Robert Howat, President, WA Bookmakers' Association, *Transcript of Evidence*, 8 March 2010, pp3-4.

⁷⁶² Submission No. 37 from Western Australian Bookmakers' Association (Inc), 25 February 2010, p2.

⁷⁶³ Mr Kenneth Godley, President, Bunbury Trotting Club, *Transcript of Evidence*, 6 April 2010, p5.

⁷⁶⁴ Ms Julie Caldwell, Manager, Bunbury Trotting Club, *Transcript of Evidence*, 6 April 2010, p6.

appropriate for this sector to be fostered. Investment in on-course facilities speaks to the larger issue of infrastructure funding however, which has been examined in detail in Chapter 2.7(c).

Another factor critical to maintaining and growing wagering revenues relates to the existing wagering sales network. As at 31 July 2009 RWWA's retail TAB network comprised 92 dedicated full-time shops, 188 PubTABs and 31 self-service outlets.⁷⁶⁵ Mechanisms for optimising the effectiveness of the retail wagering network are explored separately in Chapter 3.8.

2.10 Structure and ownership of RWWA

RWWA was established as an integrated statutory authority. Its formation in 2003 represented a restructuring of the racing industry to merge the principal club functions of the WA Turf Club, WATA and WAGRA with the off-course betting activities of the TAB to create a single controlling entity.⁷⁶⁶ The structure of RWWA is unique in Australia and while states like Queensland have recently adopted a single control body for all three racing codes,⁷⁶⁷ most states have privatised their TAB businesses. Tasmania and WA remain the only jurisdictions in Australia where the major totalisator operator is government owned.⁷⁶⁸

(a) Views on the structure and ownership of RWWA

The Committee received opposing views from industry participants regarding the structure of RWWA. Several stakeholders supported splitting RWWA into its racing and wagering components, with some going further to suggest that the TAB should be privatised. The main comments received by the Committee in this regard can be summarised as follows:

- RWWA's wagering operation should be established as a separate entity;⁷⁶⁹
- RWWA's focus is skewed towards wagering at the expense of racing and a study should be done to see if there is any benefit to be derived from separating racing and wagering;⁷⁷⁰
- RWWA could be disbanded and the TAB sold in order to raise funds for the industry;⁷⁷¹ and

⁷⁶⁵ Racing and Wagering Western Australia, *Annual Report 2009*, 12 October 2009, p25. Available at: www.rwwa.com.au/home/rwwa-annual-report-2009.pdf Accessed on 16 September 2010.

⁷⁶⁶ Hon. Nick Griffiths, MLC, Minister for Racing and Gaming, Western Australia, Legislative Council, *Parliamentary Debates* (Hansard), 9 May 2003, p7412.

⁷⁶⁷ Racing Queensland Limited commenced on 1 July 2010 (Racing Queensland Limited, 'About RQL', 2010. Available at: www.racingqueensland.com.au/about-rql.aspx Accessed on 28 September 2010.

⁷⁶⁸ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p99.

⁷⁶⁹ Submission No. 11 from Best Bookies Price Pty Ltd, 30 November 2009, p11.

⁷⁷⁰ Mr David Wrensted, Manager, Geraldton Turf Club, *Transcript of Evidence*, 29 March 2010, p10.

⁷⁷¹ Submission No. 16 from Morley TAB Agents, 27 November 2009, p5.

- It would be appropriate for the industry to be restructured to remove government involvement.⁷⁷²

The majority view however supported the retention of wagering operations by RWWA as summarised in the following comments put to the Committee:

- The TAB should remain a part of RWWA and should not be privatised.⁷⁷³ In South Australia privatisation has not been successful;⁷⁷⁴
- To safeguard the source of racing industry funding, it is essential that the TAB is not privatised;⁷⁷⁵
- The continuation of RWWA's retail licence exclusivity is critical to retail TAB agents. A vibrant retail wagering business underpins the prosperity of the racing industry;⁷⁷⁶
- Having the state government involved brings accountability back to RWWA. This accountability will be lost with privatisation;⁷⁷⁷
- The Western Australian model where RWWA has responsibility for administering the three racing codes and the TAB is the envy of other states;⁷⁷⁸
- The Western Australia model which has maintained ownership of the wagering arm has kept the racing industry quite strong and set WA apart from the other states;⁷⁷⁹
- For RWWA to retain ownership of the off-course wagering vehicle is even more fundamental to the future of the industry today than it was before;⁷⁸⁰
- The racing industry is funded by returns from the TAB. If the TAB is ever privatised it will be responsible to shareholders and the racing industry will no longer get the same returns from RWWA.⁷⁸¹

A number of other comments reinforced the notion that privatisation of the TAB would not benefit the racing industry. Mr Barry Sargeant of DRGL supported retention of the current model:

The other thing is, once you introduce a private sector model—if I were a CEO or a managing director of a company, I would know full well where my loyalties lie; that is,

⁷⁷² Hon. Nick Griffiths, Former Minister for Racing and Gaming, *Transcript of Evidence*, 19 February 2010, pp10-11.

⁷⁷³ Submission No. 14 from WA Greyhound Racing Association, 30 November 2009, p5.

⁷⁷⁴ Submission No. 10 from Community and Public Sector Union Civil Service Association of WA, 30 November 2009, p3.

⁷⁷⁵ Submission No. 30 from WA Trotting Association, 15 January 2010, p26.

⁷⁷⁶ Submission No. 8 from WA TAB Agents' Association, 30 November 2009, p2.

⁷⁷⁷ Mr Jonathan Menzel, Manager, Narrogin Racing, *Transcript of Evidence*, 3 May 2010, p13.

⁷⁷⁸ Submission No. 28 from Western Australian Racehorse Owners' Association, 30 December 2009, p2.

⁷⁷⁹ Mr David Prance, Immediate Past Chairman, Kalgoorlie-Boulder Racing Club, *Transcript of Evidence*, 19 March 2010, p2.

⁷⁸⁰ Submission No. 35 from Perth Racing, 22 December 2010, p2.

⁷⁸¹ Mr Bruce Hyde, President, WA Racing Trainers' Association, *Transcript of Evidence*, 26 February 2010, p6.

*with the shareholders. I think that is what creates some of the tension. I believe that model has served us well.*⁷⁸²

Mr Gray Williamson of WABBA conveyed an industry perspective:

*At the end of the day, in the concept of RWWA and the TAB as an integrated body, I would hate to see the TAB privatised. I think that would be the start of the death knell of racing for us. I think the way it is structured now is really good.*⁷⁸³

RWWA's own view is that it should continue operating under its current model,⁷⁸⁴ that of a statutory authority with roles of governance for all three racing codes and ownership of the principal off-course TAB business in Western Australia.⁷⁸⁵

(b) The structure and ownership of RWWA going forward

From the Committee's observations of systems of racing administration in Queensland and Victoria, it was evident that industry stakeholders in these states had equally divergent views concerning the merits of privatising the TAB.

In 1994 the Victorian state government privatised the TAB via a public float and granted a wagering licence and gaming licence to Tabcorp for a period of 18 years.⁷⁸⁶ The public float yielded approximately \$700m for consolidated revenue.⁷⁸⁷ In order to meet the condition for the licences, Tabcorp formed an unincorporated joint venture with the Victorian racing industry. The funding arrangement agreed at the time requires allocation of joint venture profits, marketing fees and 25 per cent of the product supply fees to the three racing codes based on off-course wagering market share; and racing program fees and 75 per cent of the product supply fees allocated on a fixed percentage basis to the racing codes.⁷⁸⁸ The Queensland TAB was privatised in 1999 and in a similar situation to Victoria, UniTAB as the holder of the wagering licences entered into an agreement with the Queensland racing industry setting out the allocation of profits to the racing codes.

⁷⁸² Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, *Transcript of Evidence*, 19 February 2010, pp3-4.

⁷⁸³ Mr Gray Williamson, President, WA Bloodhorse Breeders' Association, *Transcript of Evidence*, 26 February 2010, p12.

⁷⁸⁴ Mr Ross Bowe, Chairman, Racing and Wagering Western Australia, *Transcript of Evidence*, 30 April 2010, p2.

⁷⁸⁵ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p56.

⁷⁸⁶ Victoria Department of Justice, Office of Gaming and Racing, *Wagering Licence Arrangements Post-2012 Issues Paper*, March 2006, p7 and *Funding Arrangements for the Racing Industry Post-2012 Issues Paper*, March 2006, p7. Available at: www.gamblinglicences.vic.gov.au/gambling-licences-review/discussion-papers-and-submissions/2006-Gambling-Licences-Review-Issues-Papers.html Accessed on 28 January 2010.

⁷⁸⁷ Ms Kerri Hereward, Principal Policy Officer, Victoria Department of Justice, Office of Gaming and Racing, *Briefing*, 16 April 2010.

⁷⁸⁸ Victoria Department of Justice, Office of Gaming and Racing, *Funding Arrangements for the Racing Industry Post-2012 Issues Paper*, March 2006, p8. Available at: www.gamblinglicences.vic.gov.au/gambling-licences-review/discussion-papers-and-submissions/2006-Gambling-Licences-Review-Issues-Papers.html Accessed on 28 January 2010.

Interstate stakeholders pointed to independence from government as the major advantage of privatising the TAB. Some of the main themes raised during briefings were as follows:

- Privatisation has worked well for Victoria and it is better for governments not to be involved in wagering operations;⁷⁸⁹ and
- It is appropriate for the government and wagering operator to operate at arm's length as it enables the wagering operator to get on with its business.⁷⁹⁰

Conversely, critics of privatisation highlighted the commercial interests of the privatised wagering operator as being unfavourable for the racing industry as reflected in these general discussions:

- A privatised model means that the wagering operator needs to take care of its shareholders so perhaps a government owned model is better where there is greater responsibility for the industry;⁷⁹¹
- Overall, privatisation of the Victorian TAB has not benefited the industry. Under the joint venture agreement, 75% of revenues goes into private hands (Tabcorp shareholders) and not enough is going back to owners to sustain the industry;⁷⁹² and
- Privatisation of the TAB was inevitable in Victoria⁷⁹³ and occurred because the state government needed the funds.⁷⁹⁴

An interesting point was raised by (then) Queensland Racing Limited, which suggested that when the Queensland TAB was privatised there was not much competition in the wagering market. The situation has obviously changed and it is unlikely that a new exclusive wagering license would cost as much now as it did in 1998.⁷⁹⁵

The Committee recognises that the integrated structure of RWWA (in terms of a single control body for the three codes and ownership of the TAB) is largely supported by industry participants. Most comments however relate to ownership of the TAB and whether this should remain government owned or whether wagering operations should be privatised. A compelling argument, either among industry participants in WA or interstate, is generally absent with respect to the benefits of privatisation. Furthermore, the Committee has already established the public nature of

⁷⁸⁹ Mr John Anderson, Chief Executive, Harness Racing Victoria, *Briefing*, 14 April 2010.

⁷⁹⁰ Mr David Ford, Deputy Director General, Department of Employment, Economic Development and Innovation Queensland, *Briefing*, 12 April 2010.

⁷⁹¹ Mr Darren Beavis, General Manager, Greyhounds Queensland Limited, *Briefing*, 13 April 2010.

⁷⁹² Mr Rob Hines, Chief Executive Officer, Racing Victoria Limited, *Briefing*, 16 April 2010.

⁷⁹³ Mr Roger Joseph, Manager Racing Administration, Australian Trainers' Association (Victoria), *Briefing*, 14 April 2010.

⁷⁹⁴ Mr John Stephens, Chief Executive Officer, Greyhound Racing Victoria, *Briefing*, 14 April 2010.

⁷⁹⁵ Mr Bob Bentley, Chairman, and Mr Malcolm Tuttle, Chief Operations Manager, Queensland Racing Limited, *Briefing*, 21 June 2010.

funds raised by RWWA⁷⁹⁶ and consequently, the widespread support among industry participants for the government to retain an involvement for accountability purposes.⁷⁹⁷

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.

In terms of different ownership models, RWWA commissioned a study in 2009 which benchmarked its performance against various alternative models. The study examined various structure and ownership scenarios including:

- maintaining the status quo;
- an alternative industry ownership model which would involve transferring the wagering business and ownership of racing governance functions to the racing industry with wagering governance functions transferred to the state government; and
- an alternative private ownership model which would involve selling the wagering business, transferring racing governance functions to the racing industry and wagering governance functions to the state government.

The study also considered variations of the private ownership scenario comprising different taxation arrangements and funding arrangements for the racing industry. Significantly, the study concluded that the current structure of RWWA as an integrated statutory authority performed at least as well as the other models. Financial outcomes for the racing industry and the state government under the existing RWWA structure were found to be ‘comparable with the outcomes that might be expected under industry ownership or private ownership’.⁷⁹⁸ RWWA went further to demonstrate that under the existing structure and ownership model, the Western Australian racing industry has outperformed other jurisdictions with privatised wagering businesses in the context of racing activity and rates of increase in stake monies.⁷⁹⁹

The Committee is mindful that the structure and ownership of RWWA may be examined as part of a broader review into governance arrangements of GTEs. As indicated in Chapter 2.2, the state government’s Economic Audit Committee Final Report recommended a review of GTEs to ensure that the governance and ownership of each business is appropriate for the delivery of

⁷⁹⁶ Refer to Chapter 2.8 (Taxation).

⁷⁹⁷ Refer to Chapter 2.4 (Accountability).

⁷⁹⁸ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, pp56-57.

⁷⁹⁹ Ibid., pp58-59.

government's policy objectives.⁸⁰⁰ This is particularly significant for RWWA given that the EAC identified that the existing model arose from a historical policy need to fund the development of the state's racing industry but challenges to wagering operations (i.e. corporate bookmakers and the expansion of online wagering) impact on the commercial viability of the business in the long term. The EAC report states that a change in the 'extent and nature of competition in markets over time, and to Government policy objectives, can alter the capacity or need for a business to operate independently' thus making it important for government to revisit the issue as to whether its ownership of an entity and associated governance model is still appropriate.⁸⁰¹

Although the governance and ownership of RWWA may be examined as part of a broader state government review in the future, the Committee is persuaded by the weight of evidence supporting the existing structure and ownership of RWWA under which the one body operates both the wagering arm and racing administration. As such the Committee recommends that RWWA continues to operate in its present form.

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.

2.11 Conclusions

This chapter has examined the effectiveness of various operations of RWWA. As detailed above, it is evident that the majority of industry participants support the whole-of-industry governance model that RWWA represents and believe that RWWA's establishment has overall benefited the industry and is an improvement on the principal clubs model that existed before 2003. In terms of the question posed at the start of this chapter as to whether RWWA has achieved the desired outcomes, overall it is fair to say that it has. While industry participants consider the continuation of the operations of RWWA to be necessary, many highlighted the need for refinements as encapsulated in the following statement:

*In assessing the achievements of RWWA to date, one would have to say that whilst there have been some disappointments there is an overwhelming argument to suggest that the model is superior to our eastern states counterparts and from a broad industry perspective it needs fine tuning not surgery.*⁸⁰²

⁸⁰⁰ Refer to Recommendation 30 of the Economic Audit Committee Final Report.

⁸⁰¹ Economic Audit Committee, Final Report October 2009, Government of Western Australia, Perth, 2009, pp119,121-122.

⁸⁰² Submission No. 35 from Perth Racing, 28 January 2010, p2.

From its investigations, the Committee identified mechanisms to improve the effectiveness of RWWA's operations including: changes to governance practices; accountability and transparency; consultation and appeals practices; a recommended reduction in the rates of wagering tax to assist RWWA to compete more effectively; and the establishment of a RWWA-administered racing industry infrastructure fund. The Committee notes a number of positive developments that commenced during the course of this Inquiry, which will also contribute to the greater effectiveness of RWWA's operations in the form of government grant funding to assist with racing industry infrastructure provision, and commitments by RWWA to improve consultation processes.

Finding 61

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

Finding 62

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

The Committee is mindful that some industry participants suggested another review of the RWWA Act in the future.⁸⁰³ Section 122 of the RWWA Act provides only for the present review of the Act by a Parliamentary Joint Standing Committee appointed for that purpose. The Committee considers that the timing of any future review should be determined by the Minister.

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.

⁸⁰³ Submission No. 33 from Albany Racing Club, 18 January 2010, p4 (suggested a review after 3 years); Submission No. 21 from Broome Turf Club, 14 December 2009, p4 (suggested a review after 5 years); Submission No. 41 from Country Racing Association, 16 April 2010, p11 (suggested a review after 5 years).

CHAPTER 3 OTHER MATTERS RELEVANT TO THE OPERATION AND EFFECTIVENESS OF THE ACTS

3.1 Introduction

This Chapter focuses on the Inquiry's third term of reference and examines miscellaneous issues and suggested mechanisms for enhancing the operation and effectiveness of the Acts.

3.2 Ratings/handicapping system for horse racing codes

The prescribed responsibility within RWWA for handicapping rests with the Integrity Assurance Committee.⁸⁰⁴ Through various hearings and submissions, the Committee has become aware that a number of industry participants have concerns over the ratings/handicapping systems being used in Western Australia by both the thoroughbred and harness racing codes. These views are summarised here.

(a) Stakeholder views on ratings/handicapping

It is noteworthy that despite the variance of concerns, and the different issues experienced by each horse racing code, a general consensus exists amongst industry participants that the ratings/handicapping systems should be reviewed.⁸⁰⁵

The main criticisms in relation to the thoroughbred code can be summarised as follows:

1. The national template adopted by RWWA does not serve Western Australia well. It reduces the size of the fields and requires an unnecessary handicapping department to run it. WA should have a stand alone system that is a pure ratings-based system. It would suit the state better and would only require one person to run it.⁸⁰⁶
2. The system discriminates against country races:
 - a. It does not account for the differences in the grade of a field between country and metropolitan races of the same class. A class *x* race in Perth is invariably going to be of a higher grade than the same class race in the country—yet a win in the country can be given the same rating penalty as a win in the city despite the lower grade field. As such, a provincial win can essentially become a penalty if that horse next races in the city and is given top weight.⁸⁰⁷

⁸⁰⁴ Section 49 *Racing and Wagering Western Australia Act 2003*.

⁸⁰⁵ Mr Geoffrey Fahl, Chairman, Carnarvon Race Club, *Transcript of Evidence*, 16 May 2010, p12.

⁸⁰⁶ Mr Edward (Ted) van Heemst, Chairman, Perth Racing, *Transcript of Evidence*, 26 February 2010, p3.

⁸⁰⁷ Mr David Wrensted, Manager, Geraldton Turf Club, *Transcript of Evidence*, 29 March 2010, p9.

- b. The lack of high rating races in the country forces horses of a certain quality to race in Perth, which (unless it is a major race) is a heavy financial impost on owners and is detrimental to fostering a racing industry because local spectators and future participants never get to see the best local horses race.⁸⁰⁸
 - c. The Ratings Based Handicapping (RBH) system is being misused between different geographical regions without adequate recognition from RWWA as to why this is occurring.⁸⁰⁹
3. The system is too complicated—and only benefits those who understand it properly.⁸¹⁰

The main criticisms with respect to the harness racing code can be summarised as follows:

1. Country races are disadvantaged because the stake money varies dramatically regardless of the penalty received to the owner and the trainer of the horse—in some cases a horse can be racing for more than double the stake money for the same penalty in the city compared to the country. Stakeholders argue that the only fair solution is to make it even across the board, where, regardless of where the horse is racing, if it is going to lose a penalty worth x amount, the reward from losing that penalty by winning the race is the same amount.⁸¹¹
2. Currently, a horse does not have to qualify to run in some races—reducing the overall quality of the fields. If a system was introduced whereby a horse had to qualify before it was able to race at Gloucester Park, the quality of the fields would become more consistent, more competitive and would produce a better quality racing product.⁸¹²
3. The handicapping system allows higher class horses to be able to drop back into lower class fields, which, because there is not necessarily any hierarchical stake money, there is no incentive for horses to go into a better class race.⁸¹³

(b) Mechanisms to improve ratings/handicapping in WA

RWWA contends that handicapping is a very complex issue and different approaches have pluses and minuses.⁸¹⁴ With regard to thoroughbred handicapping, RWWA agreed that there is a disparity in how the handicapping system applies to a country race versus a city race. Mr Robert Pearson of RWWA noted that it is currently investigating the possibility of a separate system for the country whereby a horse will receive an outer metropolitan rating for those races in the country—and a metropolitan rating for when that same horse races in the city. RWWA has

⁸⁰⁸ Ibid.

⁸⁰⁹ Mr David Prance, Immediate Past Chairman, Kalgoorlie-Boulder Racing Club, *Transcript of Evidence*, 19 March 2010, p13.

⁸¹⁰ Mr Bruce Hyde, Trainer, Western Australian Racing Trainers Association, *Transcript of Evidence*, 26 February 2010, p10.

⁸¹¹ Mr Brett Snell, Owner-Breeder-Trainer-Reinsman, Golden Mile Turf Club, *Transcript of Evidence*, 12 March 2010, p2; Mr Victor Jury, Trainer, Albany Harness Racing Club, 12 March 2010, p2.

⁸¹² Mr Mark Roberts, Vice President, Northam Harness Racing Club, *Transcript of Evidence*, 26 March 2010, p12.

⁸¹³ Ibid., p12.

⁸¹⁴ Mr Robert Pearson, Director, Racing and Wagering Western Australia, *Transcript of Evidence*, 20 August 2010, p40.

suggested that it will raise the issue with the Thoroughbred Racing Consultative Group (TRGC) for comment and to explore what improvements can be made.

The Committee concurs that RWWA should engage in consultation about ratings/handicapping with both the TRCG and the Harness Racing Consultative Group (HRCG) but acknowledges that this is a multifaceted issue and one that falls largely outside the scope of this Inquiry.⁸¹⁵ Nonetheless it notes that the perceived inequities between city and country racing, and the difficulties that some clubs like Perth Racing experience in filling competitive fields, is indicative of failings within the handicapping systems in use and as such, these systems should be reviewed.

The Committee is satisfied with RWWA's recognition of the handicapping issues that exist in the industry—and its current efforts to examine means by which some of these issues may be resolved. The Committee recommends that further review into these handicapping systems is carried out in consultation with the Thoroughbred and Harness Racing Consultative Groups, 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.

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.

⁸¹⁵ During the course of this Inquiry the Committee reviewed the system that is currently being used in NSW as an example of a stand alone thoroughbred handicapping model that emerged as a result of an intensive industry review conducted by the Board of Racing NSW. The model, called the Benchmark Programming and Handicapping (BPpH) system, was launched in 2009. The Committee has since learned that this system is presently under review by the Board of Racing NSW and, as a consequence, acknowledges that it would be inappropriate to make a finding on the suitability of the NSW system.

3.3 Liquor licensing

Although liquor licensing is outside the operations of the RWWA Act, the Committee received evidence of the impact that it is having on the racing industry. Indirectly therefore, the matter is impacting on the functioning and viability of race clubs, with the major issues summarised as follows:

- Most race clubs believed they had been subjected to unreasonable and in most cases, unnecessary requirements for security;⁸¹⁶
- Employing security personnel represents a major cost impost on clubs⁸¹⁷ and uses up limited funds that could be better applied to funding infrastructure and/or stakes;⁸¹⁸
- Clubs must sometimes reduce the number of patrons attending events or turn people away at the gate;⁸¹⁹
- Enforcement of liquor licensing needs to be improved as there is anecdotal evidence of on-course staff feeling intimidated or the victims of perceived entrapment;⁸²⁰
- Relationships with regional police are generally positive⁸²¹ and clubs receive support with regard to liquor licensing applications and/or attendance of police officers on race days;⁸²² and
- Metropolitan clubs reported that liquor licensing restrictions had impacted significantly on events such as the Perth Cup and New Year's Eve at Gloucester Park.⁸²³

⁸¹⁶ Mr Tony Crowhurst, Chairman, Dongara-Irwin Race Club, *Transcript of Evidence*, 29 March 2010, pp8-9; Mr Alan Smith, Secretary/Treasurer, Pingrup Race Club, *Transcript of Evidence*, 3 May 2010, p7; Mr Geoff Fahl, Chairman/Treasurer, Carnarvon Race Club, *Transcript of Evidence*, 16 May 2010, p3; Mr Robert Pimm, Committee Member, Collie Race Club, *Transcript of Evidence*, 6 April 2010, p10; Mr Edward (Ted) van Heemst, Chairman, Perth Racing, *Transcript of Evidence*, 26 February 2010, pp17-18.

⁸¹⁷ Mrs Jan Glasson, Racing Manager, Kalgoorlie-Boulder Racing Club, *Transcript of Evidence*, 19 March 2010, p7; Mr Tony Crowhurst, Chairman, Dongara-Irwin Race Club, *Transcript of Evidence*, 29 March 2010, p9 (the club spends \$15,000-\$20,000 on security); Mr Maxwell (Dixie) Solly, President, Country Racing Association, *Transcript of Evidence*, 7 May 2010, p2 (Port Hedland Turf Club paid \$60,000 for security in 2009); Mr Paul Rossiter, Manager, Bunbury Turf Club, *Transcript of Evidence*, 7 May 2010, p9 (Bunbury Turf Club paid \$60,000 for security for the 2010 Bunbury Cup); Mr Brett Smith, Committee Member, Junction Race Club, *Transcript of Evidence*, 16 May 2010, p8 (\$4,800 security costs in 2009).

⁸¹⁸ Mr Robert Pimm, Committee Member, Collie Race Club, *Transcript of Evidence*, 6 April 2010, p10.

⁸¹⁹ Mr Edward (Ted) van Heemst, Chairman, Perth Racing, *Transcript of Evidence*, 26 February 2010, p18; Mr Paul Rossiter, Manager, Bunbury Turf Club, *Transcript of Evidence*, 7 May 2010, p11.

⁸²⁰ Mr Edward (Ted) van Heemst, Chairman, Perth Racing, *Transcript of Evidence*, 26 February 2010, p18; Mr Maxwell (Dixie) Solly, President, Country Racing Association, *Transcript of Evidence*, 7 May 2010, p3; Mr Brett Smith, Committee Member, Junction Race Club, *Transcript of Evidence*, 16 May 2010, p9.

⁸²¹ Although it should be noted that the WA Trotting Association and Kalgoorlie Boulder Racing Club indicated that it was police from the liquor enforcement unit who were unnecessarily strict (Mr Rob Bovell, Chief Executive, WA Trotting Association, *Transcript of Evidence*, 26 February 2010, p17; Mrs Jan Glasson, Racing Manager, Kalgoorlie-Boulder Racing Club, *Transcript of Evidence*, 19 March 2010, p8).

⁸²² Mr Robert Pimm, Committee Member, Collie Race Club, *Transcript of Evidence*, 6 April 2010, p9; Mr Tony Crowhurst, Chairman, Dongara-Irwin Race Club, *Transcript of Evidence*, 29 March 2010, p9; Mr Robert Newton, Vice President, Mingenew Turf Club, *Transcript of Evidence*, 29 March 2010, p9; Mr Paul Rossiter, Manager, Bunbury Turf Club, *Transcript of Evidence*, 7 May 2010, p11.

The cost impost on clubs with respect to the provision of security is not the only issue as evidenced by media reports which indicate that liquor infringements also constitute a significant spend for clubs:

- WA Trotting Association fined \$46,000 in 2007 and \$26,000 in 2008;⁸²⁴
- Port Hedland Turf Club fined \$30,000 following the Port Hedland Cup 2009;
- Broome Turf Club required to pay 4 x \$2,000 fines following the Broome Cup 2009;⁸²⁵
- Kalgoorlie Boulder Race Club required to pay 5 x \$1,000 fines in 2009 for underage drinking at event.⁸²⁶

The sale, supply and consumption of alcohol in Western Australia is regulated by the *Liquor Control Act 1988* and administered by the Department of Racing, Gaming and Liquor (DRGL). Under the Act, a licence must be sought with respect to the sale and supply of liquor, the terms of which must be followed⁸²⁷ or penalties apply. The Act provides discretion to the 'licensing authority' (DRGL) to impose conditions in relation to any licence or permit, including conditions 'which it considers to be in the public interest or which it considers desirable' in order to, for example, 'ensure public order and safety, particularly where circumstances or events are expected to attract large numbers of persons to the premises or to an area adjacent to the premises'.⁸²⁸

DRGL has issued a number of policies to provide information on liquor licensing, including matters considered as part of the licensing process. In evidence received by the Committee, numerous clubs cited a ratio, specifically that two security personnel are required for the first 100 patrons with a further requirement for one security guard for each additional 100 patrons. This ratio does indeed appear in a DRGL policy,⁸²⁹ however, according to Mr Barry Sargeant, Director General of DRGL, the ratio is incorrectly cited:

Under the act, the police, health department et cetera have the right to intervene and comment on liquor licence applications. Frankly, for any event that involves a big number of people, I am guided very much by the police ... In relation to late night trading venues in Northbridge we have a policy saying that for the first 100 we need two security people and we need one per 100 after that. We did have some referencing some time ago to the ratio, saying you might want two per 100 for casual licences. But I took that out because the police were saying, "That's it; that's law." It is not law. The issue is: a policy is a policy; it is not in the Liquor Control Act; it is not in a regulation ... There is no carte

⁸²³ Mr John Burt, President, Western Australian Trotting Association, *Transcript of Evidence*, 26 February 2010, p17; Mr Edward (Ted) van Heemst, Chairman, Perth Racing, *Transcript of Evidence*, 26 February 2010, p18.

⁸²⁴ B. Thomas, 'Costs, liquor curbs snuff out Gloucester Park year-end fireworks', *The West Australian*, 24 February 2009, p9.

⁸²⁵ B. Spencer, 'Liquor fines threaten to topple bush racing clubs', *The West Australian*, 21 November 2009, p9.

⁸²⁶ Mrs Jan Glasson, Racing Manager, Kalgoorlie-Boulder Racing Club, *Transcript of Evidence*, 19 March 2010, p9.

⁸²⁷ Section 31(3) *Liquor Control Act 1988*.

⁸²⁸ Section 64(1) and Section 64(3)(d) *Liquor Control Act 1988*.

⁸²⁹ Department of Racing, Gaming and Liquor, *Policy: Security at licensed premises*, as amended 28 July 2009, p1. Available at: www.rgl.wa.gov.au/ResourceFiles/Policies/Security_At_Licensed_Premises.pdf Accessed on 27 May 2010.

*blanche policy among security policies that are to be involved. The police come in and negotiate with individuals. It is a matter of the relationship those clubs have with their police office.*⁸³⁰

Mr Sargeant acknowledged that confusion exists in the racing industry regarding security requirements and undertook to issue a notice to clarify the situation.⁸³¹ A notice was indeed sent to race clubs in August 2010 confirming that the DRGL occasional licence policy⁸³² does not specify a set requirement for numbers of security personnel and that each occasional licence application is considered on its merits. Events considered high risk will generally be required to provide greater security and the WA Police will ‘generally determine the level of security it believes is necessary to effectively manage events’. As such, clubs were reminded to consult with local police and local government prior to lodging an application for a liquor licence in order to negotiate security requirements.⁸³³ The Kalgoorlie-Boulder Racing Club is an example of a successfully negotiated outcome whereby the club (although in a different licensing category to country/community clubs) successfully negotiated a reduction in the number of required security personnel in 2009.⁸³⁴

It is the Committee’s opinion that while race courses are considered to be licensed premises, they do not function in the same way as licensed premises such as nightclubs or hotels and therefore should not be subject to the same policy requirements. Most clubs promote their race days as social/family events and for many of the people attending race courses this does not involve alcohol consumption. For this reason it is not appropriate for DRGL to have a fixed policy on numbers of security personnel in relation to requirements for race days and the Committee is satisfied that the Department has sought to clarify this issue with race clubs. It is clear however that the WA Police need to disseminate the same information to its officers. It is also important for race clubs to negotiate with local police regarding security requirements prior to lodging a liquor licensing application for events.

In another positive development, the Committee understands that Clubs WA has approached RWWA with a view to assisting race clubs with their preparation of plans by using an Events Management Template Plan, which has been approved in principle by the WA Police and DRGL.⁸³⁵ This is a worthwhile initiative and is supported.

⁸³⁰ Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, *Transcript of Evidence*, 13 August 2010, p16.

⁸³¹ *Ibid.*, p17.

⁸³² This category of licence would in the most part apply to country and community racing clubs.

⁸³³ Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, letter, 24 August 2010.

⁸³⁴ According to the Kalgoorlie Boulder Racing Club, the ratio of security personnel to patrons was increased from 1 per 100 to 1 per 120 for the tentland area in 2009 (Mrs Jan Glasson, Racing Manager, Kalgoorlie-Boulder Racing Club, *Transcript of Evidence*, 19 March 2010, p8).

⁸³⁵ Thoroughbred Racing Consultative Group, Minutes, 31 August 2010, p4. Available at: www.rwwa.com.au/home/TRCG_Minutes_20100831.pdf Accessed on 10 September 2010.

Finding 64

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

Finding 65

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

While the Committee recognises the importance of clubs negotiating with local authorities with respect to licence conditions, a more common-sense approach to liquor enforcement activities is also supported. This is critical given the significant economic and social benefits that race days, particularly in country areas, generate for their communities.

Finding 66

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

Finding 67

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

The other major issue that arose in evidence to the Committee concerned enforcement of liquor licences. Under the *Liquor Control Act 1988*, 'authorised officers' have significant powers including the power at any reasonable time to enter and inspect licensed premises, and require the licensee to provide any information and/or records.⁸³⁶ According to legislation, 'authorised officers' include DRGL inspectors, a person specifically authorised by the Director General under a delegated authority, or a member of the police force.⁸³⁷ With regard to the latter, WA Police have a liquor enforcement unit tasked with managing compliance and enforcement of the *Liquor Control Act 1988* as well as developing statewide strategies to address alcohol consumption in

⁸³⁶ Section 154 *Liquor Control Act 1988*.

⁸³⁷ Section 3(1) *Liquor Control Act 1988*.

licensed premises.⁸³⁸ Comments to the Committee from various racing clubs indicate some confusion as to whether enforcement officers at race meetings were from DRGL or the police.

With respect to DRGL inspectors, Mr Barry Sargeant indicated that the Department issued permits and it was the responsibility of inspectors to enforce the conditions of the licence:

*Ultimately, my department issues the permits...whenever there is an application it goes to the local authority and it goes to the police to find out what their concerns are. The local authority quite often gives us the advice on numbers and so forth. Once you have put them on a licence condition, then they are in force. I cannot control every minute of the day how my officers deal with it. We train them and tell them and try to have some understanding, but that is something which I just cannot control.*⁸³⁹

Mr Sargeant emphasised the need for clubs to negotiate with local authorities regarding licensing conditions as it underpins later enforcement. Although comment from the WA Police was not sought during this Inquiry, in a public hearing with the Education and Health Standing Committee of the WA Parliament, the Commissioner of Police referred to the challenges faced by the liquor enforcement unit with respect to large-scale race events. The Commissioner also highlighted that a more common-sense approach would be trialled during the coming race season:

*I think what we saw was the licensing enforcement division going out and trying to recover something that has probably got out of control in the past few years. One of our most significant events for drunkenness, disorderly conduct and assaults is the Perth Cup every year, for argument's sake. It is a huge problem for us, but it had been going under the radar for so long. I have spoken to the assistant commissioner for regional Western Australia about this, and he thinks probably we do not need to go in so hard on that; we can warn them a couple of times, and if they then do not comply, we can move to issue infringements. I understand that the infringements that were issued to some of the race meets last year were quite substantial and actually eroded most of the profits they wanted to make. So I have asked him to have a look at that to see whether there is a more consultative approach we could take in that regard. Certainly, with the next round of race meets, as they come up this year, we will trial that and see what sort of response we get from those groups.*⁸⁴⁰

The Committee is encouraged by the comments of the Commissioner but believes there is still evidence of unnecessary compliance demands being placed on race clubs in relation to security at race meetings. It is the Committee's view that the level of security required is best established by discussions with local police giving due regard to historical requirements.

⁸³⁸ Western Australia Police, 'About the Licensing Enforcement Division', nd. Available at: www.police.wa.gov.au/Crime/Licensing/enforcement/tabid/1593/Default.aspx Accessed on 31 May 2010.

⁸³⁹ Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, *Transcript of Evidence*, 13 August 2010, p19.

⁸⁴⁰ Dr Karl O'Callaghan, Commissioner of Police, WA Police, *Transcript of Evidence*, 26 May 2010, p7, Education and Health Standing Committee, Inquiry into the adequacy and appropriateness of prevention and treatment services for alcohol and illicit drug problems in Western Australia.

Recommendation 36

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

3.4 The power to direct race clubs and conduct racing in extraordinary circumstances

RWWA has suggested amendments to the RWWA Act so that it may:

- direct clubs and allied bodies where there is a severe threat to the welfare of racing. This power should include the power to dissolve a committee and appoint an administrator or to remove a licence to operate; and
- conduct race meetings in extraordinary circumstances.⁸⁴¹

In relation to the first point, under Section 35(1) of the Act, RWWA can currently ‘supervise racing’ but has limited ability to direct a club. Under Section 43 of the RWWA Act, directions to a racing club are limited to works to improve safety at a racecourse or training track. Otherwise, Section 46 of the RWWA Act provides for RWWA to direct clubs to produce club records. RWWA has argued that while existing provisions enable it to, for example, provide staff to assist a club in financial difficulty, RWWA cannot require resolution of underlying problems. RWWA indicated that the ability to direct racing clubs is held by all other principal racing authorities in Australia and was also a power held by the principal clubs in WA prior to the establishment of RWWA.⁸⁴² The reason this power was not carried over to RWWA at the time of its establishment was perceived by RWWA to be a ‘hangover from the old...days’ when stakeholders did not want RWWA to become like the old principal clubs so it was forced to remain at arm’s length.⁸⁴³

RWWA clarified its existing powers in terms of what it can do now if a club is unable to conduct its affairs (e.g. due to mismanagement or financial duress) thereby posing a threat to the sustainability of racing:

- RWWA may licence an alternative venue to carry race meetings to ‘ensure the continuity of racing’;⁸⁴⁴ and

⁸⁴¹ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p84.

⁸⁴² Ibid.

⁸⁴³ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 30 April 2010, p10.

⁸⁴⁴ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, p3.

- RWWA may provide a grant or a loan to assist a club, although loans are not considered ideal as clubs are then encumbered.⁸⁴⁵

A recent example of where a grant has been used by RWWA relates to the provision of a non-refundable grant to the Golden Mile Trotting Club. The club was experiencing severe financial difficulty but the new president and committee of the club approached RWWA with a business plan for taking the club forward. RWWA indicated that the grant was an effective means in that circumstance as it provided the club with ‘working capital to be able to run the club, convince sponsors and other providers of services—breweries and other people—to provide services to them, and they got back up and running, and now they are a very functioning group. So that injection of capital allowed a fairly creative group of people to be able to run their business’.⁸⁴⁶ The Golden Mile Trotting Club reported that it had received definite support from within RWWA for its approach⁸⁴⁷ although qualified this by suggesting that RWWA could have done more to prevent the club’s financial management situation from deteriorating to such a severe extent.⁸⁴⁸

Mr Evan Spencer of the Golden Mile Trotting Club supported ‘a greater role [for] RWWA in managing and organising clubs in general’.⁸⁴⁹ Rather than endorsing additional powers for RWWA however, the implication was more that fostering effective club management might prevent RWWA from having to actively take control at a later stage if things go wrong. Recognising that volunteer-run clubs struggle with complex management requirements such as accounts and insurances and trying to navigate the complexity of RWWA’s funding distribution, Mr Spencer saw potential for RWWA to play a greater role in assisting clubs with their management functions.⁸⁵⁰

In terms of steps that RWWA can take to prevent a club from reaching the stage where it cannot conduct racing, RWWA currently has the power to audit club records. If a problem is detected, RWWA will work with the club to address the issues and will ask the club to ‘show cause how they are able to run a proper, functioning club, and [...] ask them to rectify the issues’.⁸⁵¹

The Committee recognises that RWWA is limited to requesting that a club rectifies any issues and to providing support in this regard. In other jurisdictions such as South Australia and Queensland, racing control bodies have the legislative power to issue directions to a club in relation to that club’s operations and also require some form of action from a club to rectify issues.⁸⁵² Directions

⁸⁴⁵ Ibid., p4.

⁸⁴⁶ Ibid.

⁸⁴⁷ Mr Evan Spencer, President, Golden Mile Trotting Club, *Transcript of Evidence*, 19 March 2010, p3.

⁸⁴⁸ Mr Neville Sly, Committee Member, Golden Mile Trotting Club, *Transcript of Evidence*, 19 March 2010, p3.

⁸⁴⁹ Mr Evan Spencer, President, Golden Mile Trotting Club, *Transcript of Evidence*, 19 March 2010, p4.

⁸⁵⁰ Ibid.

⁸⁵¹ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, p4.

⁸⁵² Section 34(2) and 34(3) *Racing Act 2002* (Qld) and Section 106 *Racing (Proprietary Business Licensing) Act 2000* (SA).

issued to clubs are reinforced with sanctions for non-compliance ranging from public admonishment⁸⁵³ to cancellation of a licence.

Finding 68

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

To overcome current legislative restrictions, the Committee supports an amendment to the RWWA Act to allow RWWA to direct the operations and management of a racing club where there is a severe threat to the welfare of racing. RWWA makes the point, and the Committee concurs, that the power should apply also to ‘allied bodies’ since the operation of training facilities is equally important to racing operations.⁸⁵⁴ That said, it is important for clubs and allied bodies to have some form of recourse should sanctions apply in instances of non-compliance with a direction. In NSW for example, a sanction cannot be imposed on a club without first giving the club written notice of the proposed sanction and reasonable opportunity to make submissions about the matter.⁸⁵⁵ Given the previous discussion on Appeals (Chapter 2.5) and the fact that this matter would be subject to RWWA’s internal conflict resolution processes, a similar requirement should apply to any sanctions imposed on clubs with respect to non-compliance with RWWA’s directions.

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.

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.

⁸⁵³ Section 29C(2) *Thoroughbred Racing Act 1996* (NSW).

⁸⁵⁴ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p84.

⁸⁵⁵ Section 29C(3) *Thoroughbred Racing Act 1996* (NSW).

The Committee believes that RWWA should continue its current practice where club audits indicate potential problems at a club. In these instances it is imperative that, wherever possible, RWWA supports the management efforts of race clubs to sustain their own ability to effectively exercise their functions.

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.

RWWA suggested that its powers under the RWWA Act should be extended to enable it to dissolve a committee and appoint an administrator or to remove a club's licence to operate. Regarding the latter, RWWA already has the power under Section 40 of the RWWA Act to refuse to register a racing club, or, in accordance with the rules of racing and the regulations, suspend or cancel the registration of a racing club.⁸⁵⁶ With respect to dissolving a committee and appointing an administrator, RWWA explained its rationale as follows:

*RWWA would have the ability to come in, appoint an administrator, run the club and get the club back on its feet, and then find volunteers to come back in; not to assume the responsibility of running the club on a permanent basis.*⁸⁵⁷

RWWA indicated that it is not always practicable to licence an alternative venue for a race meeting should a club be unable to conduct its functions. This might be because of the distances involved between the club and its nearest neighbour, or for continuity reasons. Staying at the advertised venue has greater benefits for the continuity of Sky coverage, sponsors and spectators. In these instances, an administrator appointed by RWWA could run the race meeting however sufficient powers would need to be introduced into the Act to enable RWWA to enter onto a club's premises, hold a meeting and 'carry out all of the functions of a club for the purpose of that race meeting'.⁸⁵⁸

If RWWA is given the power to intervene in the operation of a club to appoint an administrator, Section 35(2) of the RWWA Act would require amendment to allow RWWA to conduct race meetings. RWWA is currently precluded under Section 35(2) from conducting race meetings on its own behalf. Similarly an amendment would be required to realise RWWA's suggestion for it to be able to conduct race meetings in 'extraordinary circumstances'. RWWA cited a Queensland example whereby during the 2007 equine influenza outbreak, the racing control body in that state

⁸⁵⁶ Section 40(1) and Section 40(4) *Racing and Wagering Western Australia Act 2003*.

⁸⁵⁷ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 30 April 2010, p10.

⁸⁵⁸ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, p6.

conducted a race meeting at a training facility. RWWA would be precluded from doing the same in WA in a similar circumstance.⁸⁵⁹

While the Committee acknowledges that there would be advantages to expanding RWWA's powers in relation to conducting race meetings, enabling it to dissolve club committees and appoint administrators and conduct meetings on its own behalf represents a significant expansion of powers. RWWA advised that it is not the intent for these powers to be applied in the long-term or in anything other than extraordinary circumstances:

*...we are talking about in extreme circumstances simply wanting to be able to continue racing, not at any stage getting involved in the running of a club. The very nature of RWWA from 2003 was that it was to address that conflict of interest of the PRA being the club. I can assure you from a personal point of view and from what I have learned from this board and operations committees et cetera that the last thing we want to do is run clubs.*⁸⁶⁰

RWWA also considered it appropriate for a head of power to be established in the RWWA Act but for conditions under which RWWA may exercise these additional powers to be stipulated through regulations.⁸⁶¹

The Committee is cognisant however of the intent underpinning the introduction of Section 35(2) of the RWWA Act, that of overcoming the conflicts of interest characteristic of the principal club model where principal clubs could both control, and yet also be participants in, the industry. It is critical that the separation instituted under Section 35(2) is maintained. RWWA has a clear control function in relation to racing, which will be enhanced should it acquire additional powers to direct clubs (see above). This control function will be compromised if RWWA is able to conduct race meetings on its own behalf. As such the Committee considers it appropriate for the existing provisions of Section 35(2) to remain. Evidence to date has indicated that the existing powers under the RWWA Act are sufficient to cover most contingencies and from a race continuity perspective, new powers enabling RWWA to direct a race club will help to avoid a situation where a club reaches the stage where it cannot conduct race meetings. An expansion of powers to enable RWWA to dissolve club committees, appoint administrators, and conduct race meetings in extraordinary circumstances is therefore not supported.

Finding 70

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

⁸⁵⁹ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p84.

⁸⁶⁰ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, p5.

⁸⁶¹ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, p5.

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.

3.5 Meeting allocations, race programming and Vision

Extensive industry comment was received by the Committee in relation to meeting allocations, race programming and Sky Vision, a sample of which is reproduced below. The interrelated nature of meeting allocation, programming and Vision coverage is conveyed in many of the comments. For clubs with Vision coverage, programming is dictated to a large degree by Sky Channel demands and the need to generate off-course wagering revenue:

*A lot of the programming is dictated by Sky Racing, and Sky Racing is Australia-wide, as you know, so we cannot all race on our preferred days, and they try to program it so that Sky Racing has a book of product throughout the week. That is really where it is driven from, so we have midweek racing because the offcourse, which really drives the industry, relies on Sky Racing, and Sky Racing together with RWWA set the program. So I guess that is a factor in relation to why we have midweek racing.*⁸⁶²

RWWA does not own any vision rights and is responsible for negotiating vision rights agreements with Sky⁸⁶³ on behalf of the majority of clubs. With the exception of Perth Racing which has its own agreement with Sky, RWWA has ‘in-principle support...from the other clubs that are on Sky to delegate their authority to us to negotiate, and those agreements—it depends on which code—are largely expiring around 2014’.⁸⁶⁴

(i) Long-term continuity of country race clubs

A common theme conveyed to the Committee by race clubs was the need for RWWA to allocate more race meetings.⁸⁶⁵ The Committee heard that while RWWA might be fairly accommodating when it came to swapping race dates around, this was certainly not the case where clubs believed

⁸⁶² Mr Tony Marwick, President, Northam Race Club, *Transcript of Evidence*, 26 March 2010, p4.

⁸⁶³ Sky Racing is owned by Tabcorp and is responsible for transmitting live thoroughbred, harness and greyhound racing coverage around Australia and internationally via satellite, cable, mobile TV and the internet. A new channel, Sky Racing 2 was launched in 2010 to complement the existing Sky Racing 1 (Sky Racing, ‘About Sky Racing’, nd. Available at: www.skychannel.com.au/company/company_profile.php Accessed on 7 October 2010).

⁸⁶⁴ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 20 August 2010, p37.

⁸⁶⁵ Including comments from: Mr Craig Chadwick, Chairman, Bunbury Turf Club, *Transcript of Evidence*, 7 May 2010, p2; Mr Colin Park, General Manager, Albany Harness Racing Club, *Transcript of Evidence*, 12 March 2010, p3; Mrs Lesley Solly, President, Albany Racing Club, *Transcript of Evidence*, 12 March 2010, p3.

they should get more dates.⁸⁶⁶ RWWA's reasons for not expanding its racing product were discussed previously.⁸⁶⁷

Nonetheless, the Committee received evidence to suggest that smaller clubs struggle to get ahead without sufficient meeting allocations as there are insufficient resources to fund advancement.⁸⁶⁸ The Williams Harness Racing Club highlighted the implications of a low meeting allocation:

*...as a matter of fact, most of the fill to do the track is already in place; we just need the green light. But it is very hard to justify doing that track if we are going to have only two meetings a year or one meeting a year; it is just not worth it.*⁸⁶⁹

The uncertainty experienced by country clubs at the prospect of having meeting allocations reduced by RWWA to the point of club closure has been discussed earlier in this Report.⁸⁷⁰ This uncertainty is perhaps most acute among harness racing clubs, particularly in the wake of RWWA's decision not to award any meetings to the Geraldton Harness Racing Club and that club's closure. The Bridgetown Harness Racing Club indicated that they 'do not have...any guarantees for the future. Each year you have got your fingers crossed, waiting for the race dates to come out to see if you have been wiped off the map or not',⁸⁷¹. The Northam Harness Racing Club suggested that country harness clubs are losing out to the city in terms of meeting allocations:

*The thing that worries me again is the three meetings a week at Gloucester Park where we are devastated. We are left at the end of the line and our fields are down; there is not the quality in the fields; our turnover goes down. It is very good for people who live in the metropolitan area but in the long term it will be very, very detrimental to harness racing.*⁸⁷²

The Golden Mile Trotting Club also drew attention to the consequences of fewer meetings:

*Our turnover is purely driven by the amount of Sky access that you have in the first place, so if you keep taking races away from me and my Sky Channel and my turnover decreases, and that is just the functionality of race programming and scheduling.*⁸⁷³

A number of harness racing stakeholders emphasised the importance of Sky coverage to the future of the code. Mr Kevin Jeavons of HROAWA indicated that poor programming combined with

⁸⁶⁶ Mr Jonathan Menzel, Manager, Narrogin Racing, *Transcript of Evidence*, 3 May 2010, p2.

⁸⁶⁷ Refer to Chapter 2.9 (Wagering Revenues).

⁸⁶⁸ Mr Shane O'Loughlin, Committee Member, Albany Racing Club, *Transcript of Evidence*, 12 March 2010, p16.

⁸⁶⁹ Mr John Cowcher, Committee Member, Williams Harness Racing Club, *Transcript of Evidence*, 3 May 2010, p2.

⁸⁷⁰ Refer to Chapter 2.5 (Appealing decisions by RWWA).

⁸⁷¹ Mr Brendon Gardiner, Secretary/Treasurer, Bridgetown Harness Racing Club, *Transcript of Evidence*, 6 April 2010, p3

⁸⁷² Mr Peter Dempster, President, Northam Harness Racing Club, *Transcript of Evidence*, 26 March 2010, p3.

⁸⁷³ Mr Evan Spencer, President, Golden Mile Trotting Club, *Transcript of Evidence*, 19 March 2010, p8.

bad times on Sky would have an adverse impact on turnover.⁸⁷⁴ WACHRA similarly emphasised the importance of Sky coverage to the future of the harness code:

*For the Harness Racing Industry to grow, RWWA needs to extend the Sky Vision service more widely. Increased promotion is vital and the opportunity to have a Sky Channel Race Program at all Clubs (for major race programmes) will grow the industry.*⁸⁷⁵

The Wagin Trotting Club stated that RWWA was not doing enough to assist the club to secure Sky coverage and more meeting dates within its existing location.⁸⁷⁶ The Albany Harness Racing Club suggested that meeting allocations⁸⁷⁷ and Sky coverage⁸⁷⁸ should be offered by RWWA as incentives for clubs which perform well.

Earlier in this Report,⁸⁷⁹ the Committee established the important role that country racing plays in local communities. While country harness racing clubs in particular emphasised the need for greater surety of long-term survival in the form of meeting allocations and securing Sky coverage, it is fair to say that the same principle applies to country and outer country thoroughbred racing clubs also. The Committee believes it is essential for country racing to survive and recognises that meeting allocations, race programming and Sky Vision coverage all have a bearing on the long-term continuity of country race clubs.

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.

RWWA indicated that it is not possible for all clubs to be on Sky so in some respects industry participants need to adjust their expectations:

What is happening is that people in recent years have cottoned on to the idea if they are not on Sky Channel and they do not have X number of meetings then they are doomed. We are not saying that. We are saying that there is a role for the economic-generating clubs and a role for the social community clubs. But not everyone can be on Sky because of

⁸⁷⁴ Mr Kevin Jeavons, President, Western Australian Harness Racing Owners' Association, *Transcript of Evidence*, 7 May 2010, p4.

⁸⁷⁵ Submission No. 32 from Western Australian Country Harness Racing Association, 14 January 2010, p3.

⁸⁷⁶ Mr Matthew Spurr, President, Wagin Trotting Club, *Transcript of Evidence*, 3 May 2010, pp3-4.

⁸⁷⁷ Mr Colin Park, General Manager, Albany Harness Racing Club, *Transcript of Evidence*, 12 March 2010, p7.

⁸⁷⁸ Submission No. 36 from Albany Harness Racing Club, 2 February 2010, p1.

⁸⁷⁹ Refer to Chapter 2.2 (Governance).

*availability of time slots, and the infrastructure or the quality of the tracks cannot be the same ... This is where we are having problems with expectations.*⁸⁸⁰

Even so, RWWA indicated its commitment to community and regional racing,⁸⁸¹ and (addressing the concerns raised here) to the continuity of country harness racing. RWWA alludes to its strategy for the harness code⁸⁸² in terms of contracting harness racing to the south west and stabilising the volume of product:

*... we see that the country base of harness is very much secure going forward. We see that provided it gets onto Sky and generates an acceptable return, the country roots of harness are good, because that is where the product is best; that is where the horse population is ... Our long-term strategy in terms of number of meetings is to bring down slightly—not completely—the volume of harness racing in some of these regional areas where we race at the moment, because they are relatively inexpensive to run; they do not need turf maintenance and things, and the committees draw funds typically from the local areas. Yes, we would like to see a bit more utilisation of the venues in a concentrated way, but to keep the harness product alive and well, we want to centre it in the south west and keep its current base ... We are centring racing in the south west; we are going to put a bit of pressure on the number of meetings; and we are very much seeing it keep its country base, because that is what harness grew from—the country base.*⁸⁸³

In relation to Vision in particular, RWWA advised:

*The harness product is sustainable at a level and we have to bring change to it, whether it is on Vision or not. There is more that can go onto Vision that can help make it more sustainable. We, as a business, need to put forward subtle change to our programming that generates more income so that we can spread it across the three codes as we see fit.*⁸⁸⁴

While RWWA has indicated scope for greater Vision coverage and subtle changes to programming, a number of concerns were raised in this regard in evidence to the Committee.

(ii) Impediments to race programming and Vision access

Some of the comments received by the Committee in relation to race programming were as follows:

- If race programming is done well and supported by the correct stake money, outer country clubs can attract good fields. Over the past four or five years, many clubs have had meetings

⁸⁸⁰ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 30 April 2010, p13.

⁸⁸¹ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 20 August 2010, p54.

⁸⁸² Racing and Wagering Western Australia, *Protecting our Product: A Vision of Sustainability for the WA Harness Industry*, 2010.

⁸⁸³ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 20 August 2010, p23.

⁸⁸⁴ *Ibid.*, p22.

scheduled at the same time creating more competition and resulting in fewer nominations and meetings;⁸⁸⁵

- RWWA's race programming appears arbitrary and does not take into account local conditions however there is a fear that pursuing the issue with RWWA will result in the club having dates withdrawn;⁸⁸⁶
- RWWA's programming needs to capitalise on areas of growth, for example, the north of the state where there is economic and financial growth.⁸⁸⁷

Comments appear to point to clubs not having sufficient input into the race programming process. This was reinforced by Narrogin Racing, which stated that 'scheduling carried out as an open and transparent process with provision for input, feedback and questions from the race clubs is essential'.⁸⁸⁸ This relates more broadly to deficiencies in RWWA's consultation process, which was explored in Chapter 2.6 (Consultation). The mechanisms identified to improve consultation outcomes and give clubs a more meaningful input into RWWA's decision-making encapsulated within Recommendation 22 will also assist in relation to race programming issues.

Finding 73

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

Finding 74

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

One particular criticism relating to programming is the lack of notice that clubs receive from RWWA with regard to the coming season's race dates. Mrs Nicole Bell of the Northam Race Club indicated in March that the club had only just received its dates for the racing period August to October and was heading into its race season in May. The short notice made it 'difficult programming sponsorship events, and you really do just sort of start heading forward, programming the days you think you are going to get and hope that you get them'.⁸⁸⁹ The Golden

⁸⁸⁵ Mr Brett Snell, Past President, Golden Mile Trotting Club, *Transcript of Evidence*, 19 March 2010, p12.

⁸⁸⁶ Mr Brett Taylor, President, Central Wheatbelt Harness Racing Club, *Transcript of Evidence*, 26 March 2010, p6.

⁸⁸⁷ Mr Maxwell (Dixie) Solly, President, Country Racing Association, *Transcript of Evidence*, 7 May 2010, p8.

⁸⁸⁸ Submission No. 12 from Narrogin Racing, 30 November 2009, p5.

⁸⁸⁹ Mrs Nicole Bell, Manager, Northam Race Club, *Transcript of Evidence*, 26 March 2010, p5.

Mile Trotting Club similarly indicated that not enough notice of dates was given by RWWA and that ideally clubs should be informed six or nine months in advance of the race program.⁸⁹⁰

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.

Mr Nicholas Bosly-Pask of Narrogin Racing indicated that something similar to Victoria's rolling five-year plan would be helpful.⁸⁹¹ As described in Chapter 2.8 (Taxation), Victoria's five-year Racecourse and Training Facilities Infrastructure Plan provides all country clubs in the state with a five-year plan which includes race dates. RWWA indicated, and the Committee accepts, that 'in fairness, Racing Victoria and others do not work five years in advance to the meeting on a day. They give out broad indications'.⁸⁹² Nonetheless, Racing Victoria Limited and Country Racing Victoria undertake a yearly review of clubs which provides the basis for future race date allocation and funding. The five year plans are guaranteed subject to clubs meeting certain financial and development benchmarks.⁸⁹³ Country Racing Victoria indicated that clubs can have some surety of ongoing survival provided they can demonstrate that they are financial and that their local communities support those race dates.⁸⁹⁴ The Committee believes that a similar forward looking document which provides some indication of meeting allocations and race dates would have two major benefits for the WA racing industry: firstly, it would assist clubs with their planning, and secondly, it would provide some surety to country racing clubs regarding their long-term continuity.

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.

⁸⁹⁰ Mr Evan Spencer, President, Golden Mile Trotting Club, *Transcript of Evidence*, 19 March 2010, p11.

⁸⁹¹ Mr Nicholas Bosly-Pask, Acting Chair, Narrogin Racing, *Transcript of Evidence*, 3 May 2010, p9.

⁸⁹² Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 20 August 2010, p7.

⁸⁹³ Racing Victoria Limited, 'Victorian Racecourse and Training Facilities Infrastructure Plan', May 2009. Available at: <https://admin.racingvictoria.net.au/asset/cms/Race%20Programs%20PDF/Infrastructure%20Plan%20Summary.pdf>. Accessed on 7 October 2010.

⁸⁹⁴ Mr Michael Caveny, Chairman, Country Racing Victoria Limited, *Briefing*, 16 April 2010.

With regard to securing greater Vision access, the Committee acknowledges that RWWA has committed to increasing Sky coverage across all codes and puts forward various strategies for doing so in its code vision statements:

*It is clear that the introduction of product fees results in the Western Australian racing industry being worse off by \$5m per annum. A key strategy to mitigate this new cost is to position more WA racing product on SKY, making the product visible to interstate wagering customers and reducing the product fee imbalance.*⁸⁹⁵

The Committee notes however that there are certain impediments to increasing Sky coverage, most of which are beyond RWWA's control. The most fundamental is that (as noted above) RWWA does not own vision rights and must negotiate with Sky. This has pitfalls as evidenced recently when RWWA was not provided with the opportunity to lock in race dates prior to the launch of Sky Channel 2 in April 2010.⁸⁹⁶

The actual infrastructure required to enable Vision coverage is also a factor beyond RWWA's control and presents a major impediment to many clubs. For clubs without permanent Vision, this requires the use of a mobile unit. RWWA covers the cost however this is still subject to availability:

*...for any Sky meeting to take place here, GlobeCast have to bring their SNG—satellite news gathering—equipment in here...and there is often only one van to go around, that is a part of it, so the access is restricted there ...*⁸⁹⁷

Securing permanent Vision for a club is more economical for RWWA in the long-term however it is costly to install the necessary infrastructure and maintain coverage:

*The technology firstly,..., is as simple as it gets. It is a piece of fibre going into a race club connected into their comms board, so it is nothing more or less than that in essence. The Globecast, who are the providers, SNG satellite dish arrives as the alternative to the fibre option. The cost of the SNG is about \$7 000 a trip. So if you go to Narrogin, where we do not have fibre, it is about \$7 000 to drive down, stay there for five hours, drive back. The benefit we have in putting fibre in is we drop a lot of the variable cost. But even though the fixed cost is \$150 000 up-front, there is still a variable cost of about \$30 000 a year for the broadband use, if you like, of the current broadband.*⁸⁹⁸

⁸⁹⁵ Racing and Wagering Western Australia, *Protecting our Product: A Vision of Sustainability for the WA Harness Industry*, 2010, p4; *Securing the Future: A Vision of Sustainability for the WA Thoroughbred Industry*, p5; *Towards Sustainability: A Vision for the WA Greyhound Industry* (the latter refers to optimising Sky coverage).

⁸⁹⁶ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 20 August 2010, p8.

⁸⁹⁷ Mr Nicholas Bosly-Pask, Acting Chair, Narrogin Racing, *Transcript of Evidence*, 3 May 2010, p3.

⁸⁹⁸ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 20 August 2010, p34.

RWWA contributes to funding but the cost of having permanent Vision installed can simply be cost prohibitive for smaller clubs with only a few meetings a year.⁸⁹⁹ RWWA acknowledged that there is trade-off but in the long-term is encouraging clubs to seek Royalties for Regions funding to assist with fibre installation:

*If you have got four meetings, five meetings, you are in the break-even sort of place. If you are greater than that, you are better off having fibre. Our intention is to work with royalties for regions through the local clubs to get the fixed costs of the fibre funded through royalties.*⁹⁰⁰

The Committee acknowledges that various factors relating to Sky Vision are beyond RWWA's control. These include the ownership of Sky Channel by a competitor in the wagering market (Tabcorp), the fierce competition for time slots and the cost of installing the necessary infrastructure required to broadcast race meetings. It is the Committee's opinion that the latter could be addressed to some extent by the roll-out of the federal government's National Broadband Network. Notwithstanding this, it is important for the racing industry in Western Australia, particularly in regional areas, that Sky Vision coverage is maximised. Wherever possible, RWWA should assist clubs to secure access to vision.

Finding 76

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

Recommendation 40

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

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.

⁸⁹⁹ Mr Nicholas Bosly-Pask, Acting Chair, Narrogin Racing, *Transcript of Evidence*, 3 May 2010, p4.

⁹⁰⁰ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 20 August 2010, p35.

3.6 Resolving conflicts of interest with respect to wagering

Some stakeholders have mentioned that there exists a conflict of interest in RWWA's role in relation to wagering.⁹⁰¹ This is a consequence of the following prescribed functions in the *Racing and Wagering Western Australia Act 2003*:

- Section 120 determines RWWA may make rules of wagering in respect to on-course wagering; off-course wagering and fixed odds wagering;
- Section 50(1) provides that RWWA must ensure that on-course wagering is conducted in accordance with the *Betting Control Act 1954* and the rules of wagering; yet
- Section 50(b) of the RWWA Act allows RWWA to carry on a wagering business.

In summary, the above functions result in RWWA being a rule maker in respect to some of the rules of wagering,⁹⁰² a rule regulator, and a competitor subject to rules it has set for itself. In contrast, other competitors in the wagering market are subject to the rules of wagering, yet have no input into the establishment or regulation of these rules.

Some stakeholder views have been critical of this circumstance. The Morley TAB Agency captured these views with the following comment:

*RWWA has an untenable position as being both our "Arbiter" and at the same time our "Competitor".*⁹⁰³

Best Bookies Price Pty Ltd submitted that RWWA's considerable influence in the establishment of the rules of wagering provide it with the very rare circumstance whereby it is able to dictate the operating conditions for its competitors.⁹⁰⁴

Mr Kenneth Trainer of the WA TAB Agents' Association noted that these prescribed functions of RWWA put it in a unique position as a competitor in the wagering market. He suggested that the situation could 'potentially have a significant impact on the capacity of the agents to achieve the objectives set by RWWA, which is to increase growth'.⁹⁰⁵

RWWA recognises this conflict of interest and clearly stated a desire for the situation to be remedied, as detailed in the following passage submitted to the Committee:

Sections 50 and 120 of the RWWA Act provide for RWWA to have functions that affect the activities of direct competitors of RWWA in the wagering market. This is an obvious

⁹⁰¹ Submission No. 8 from WA TAB Agents' Association, 30 November 2009, p7; Mr Timothy Barnes, Director, Morley TAB Agents, *Transcript of Evidence*, 8 March 2010, p13; Mr Robert Howat, President, WA Bookmakers Association, *Transcript of Evidence*, 8 March 2010, p6; Submission No. 11 from Best Bookies Price Pty Ltd, 30 November 2009, p5.

⁹⁰² With the approval of the Gaming and Wagering Commission.

⁹⁰³ Submission No. 8 from Morley TAB Agency, 30 November 2009, p2.

⁹⁰⁴ Submission No. 11 from Best Bookies Price Pty Ltd, 30 November 2009, p5.

⁹⁰⁵ Mr Kenneth Trainer, Advisor, WA TAB Agents' Association, *Transcript of Evidence*, 8 March 2010, p2.

*conflict of interest for RWWA. These functions should be vested in an independent body such as the Gaming and Wagering Commission, with RWWA having equivalent powers to seek changes to the rules of wagering as its competitors.*⁹⁰⁶

As a result, RWWA suggested the following two amendments to the RWWA Act:

- 1 Section 50 of the RWWA Act should be amended to remove RWWA's supervisory powers over its competitors; and
- 2 Section 120 of the RWWA Act should remove RWWA's ability to make rules for wagering that apply to other providers of wagering services.

The Committee acknowledges the views received from racing industry stakeholders and RWWA, and concurs with the view that a conflict of interest resides within the prescribed wagering functions of RWWA in the *Racing and Wagering Act 2003*.

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*.

The Committee asked Mr Barry Sargeant, Director General of the Department of Racing, Gaming and Liquor⁹⁰⁷ to respond to the conflict of interest contained within the RWWA Act. He indicated that the reason these supervisory and rule making powers were originally vested with RWWA was largely historical—RWWA took them on from the relevant principal clubs for each code. He stated that this circumstance diminished the need for the functions to be placed with the government:

*Rather than taking that one step further across to the government, it stayed with Racing and Wagering Western Australia as an independent body.*⁹⁰⁸

When asked if RWWA should continue with these functions, or if it would now be appropriate for the Gaming and Wagering Commission to assume them, Mr Sargeant noted that as an issue it had not been raised by RWWA itself; further, to his knowledge, RWWA had been performing the role well. Nonetheless, he asserted if RWWA would prefer the role be transferred to the Commission, then, with government approval, it would be a suitable arrangement:

*Fundamentally, what RWWA has done since 2003 is no reason to justify moving it. But if they prefer to move it and the government is agreeable to it moving and with the appropriate funding arrangements sorted out, it is quite appropriate for my agency to take that on board—quite appropriate!*⁹⁰⁹

⁹⁰⁶ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p89.

⁹⁰⁷ Mr Barry Sargeant is also the Chairperson of the Gaming and Wagering Commission.

⁹⁰⁸ Mr Barry Sargeant, Director General, Department of Racing, Gaming and Liquor, *Transcript of Evidence*, 13 August 2010, p7.

⁹⁰⁹ *Ibid.*, p10.

Based on Mr Sargeant's comments, there is no evidence that RWWA has used any prescribed functions to furnish a commercial advantage for itself in its provision of wagering services.⁹¹⁰ Notwithstanding this fact, RWWA is of the view that these functions should be transferred to the Gaming and Wagering Commission. The Committee concurs with this view, as even a perceived conflict of interest may be harmful to the operational effectiveness of RWWA.⁹¹¹ The Committee has previously noted that it is essential to the industry that RWWA carries on a profitable wagering business.⁹¹² As such, it should not continue to operate with prescribed wagering functions that may impact on the long term viability of its wagering business. The Committee therefore finds that any function prescribed under Sections 50 or 120 of the RWWA Act that may jeopardise the ability of RWWA to effectively carry on a wagering business should be removed as a function of RWWA under the Act. Accordingly, the Committee finds that it is appropriate, with the approval of the Minister, that the Gaming and Wagering Commission assumes responsibility for performing these functions.

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*.

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.

Due to the limited evidence received, the Committee is unable to recommend in any prescriptive manner which parts of Section 50 and Section 120 of the *Racing and Wagering Act 2003* should be repealed. The Committee acknowledges it is a complex matter and requires examination that is beyond the scope of this Inquiry.

This is in part because Section 120 prescribes a number of functions dealing with operational aspects of wagering that seem appropriate to remain a function of RWWA—and too cumbersome to become a function of the Commission. Therefore, a detailed examination will be necessary to determine what rule making scope RWWA should retain. An issue that may require negotiation is

⁹¹⁰ Ibid., p8.

⁹¹¹ The importance of commercial neutrality was a primary goal behind RWWA being established under its current governance structure. Refer to Chapter 2.2 for more information.

⁹¹² Chapter 2.7 on distribution of funds and Chapter 2.9 on wagering revenue both highlight the importance that RWWA's wagering business and the distribution of its profits have to the industry.

the matter of funding for the operation of these functions, as raised earlier in this section by Mr Barry Sargeant. The funding arrangements should be examined as to how they would operate should the functions be assumed by the Commission, and what impact the arrangements might have on the financial operations of RWWA. The Committee would suggest that any operational change must at a minimum be revenue neutral for RWWA.

The Committee asserts that in these considerations, a balance must be struck between the operational effectiveness of RWWA and the appearance of commercial neutrality. It recommends that the Minister reviews and negotiates between RWWA and the Gaming and Wagering Commission as to which functions RWWA should retain, and which should be assumed by the Commission to most effectively promote the ability of RWWA to carry on a wagering business.

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.

3.7 Miscellaneous administrative amendments to the RWWA Act

RWWA has made several other suggestions regarding legislative amendments which it describes as being administrative.

(i) Freedom of Information

RWWA has sought additional protection from the requirement to reveal strategic and commercially sensitive documents under Freedom of Information (FOI) applications. While not suggesting that it should be afforded the position of an exempt agency under the *Freedom of Information Act 1992* (FOI Act), RWWA has argued for protection ‘so that commercial deliberations, even where apparently complete, are protected from FOI applications’.⁹¹³ In its argument, RWWA made reference to a particular incident where it had to release a document revealing board deliberations in relation to betting exchanges:

*The possibility of release of strategic considerations by the RWWA board to competitors places RWWA at a clear competitive disadvantage. It curtails the ability of the board to plan and places market strategies in the hands of competitors.*⁹¹⁴

⁹¹³ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p90.

⁹¹⁴ Ibid.

In this particular case, the Western Australian Information Commissioner found that ‘the accountability and transparency objectives of the FOI Act apply to the agency’ and that sufficient public interest existed for ‘the public being able to scrutinize the operations of the agency and make its own judgement as to whether it is discharging its functions effectively and according to its constituent legislation and published policies’.⁹¹⁵

The Committee is aware that certain protections already exist under the FOI Act, specifically Schedule 1, Clause 4 provides for exemptions on the grounds of commercial or business sensitivity. The Committee also understands that provision exists for internal review by the agency or external review by the Information Commissioner where an agency’s decision to refuse access to documents under FOI is appealed.⁹¹⁶

RWWA does not dispute the accountability intent underpinning FOI and the Committee acknowledges that RWWA ‘just do[es] not want it to be on commercially sensitive material and no different from a normal trading enterprise’.⁹¹⁷ The Committee believes however that sufficient protections already exist under FOI legislation in relation to commercially sensitive matters and where RWWA’s decision to grant access to documentation is appealed, provision exists for scrutiny on a case by case basis. Further to the discussion in Chapter 2.4 (Accountability), in the interests of promoting greater accountability, the Committee considers that existing FOI provisions are appropriate and that no additional protections are warranted.

Finding 80

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

(ii) Redundant sections of the RWWA Act

RWWA has made several suggestions for the RWWA Act to be amended in order to remove references to redundant provisions, specifically:

- Section 118 should be amended to remove the requirement for a common seal with alternative document execution the RWWA Act should be amended to remove references to wagers and payments by letter sent through the post (consequential amendments would also be required to the *Racing and Wagering Western Australia Regulations 2003*);
- Section 86 (pertaining to records) should be repealed;

⁹¹⁵ Addisons v Racing and Wagering Western Australia, Re [2008] WAICmr 3 (1 February 2008) para 27, 38.

⁹¹⁶ Office of the Information Commissioner, ‘About FOI’, nd. Available at: www.foi.wa.gov.au/dnn/AboutFOI/FAQs.aspx Accessed on 5 October 2010.

⁹¹⁷ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, p17.

- Section 22(3) should be amended to read ‘the remuneration of and other terms and conditions of employment of staff are not to be less favourable than is provided for in an applicable award, order or agreement’;
- Section 3 should be amended by replacing the words, ‘Australian and New Zealand Greyhound Association’ with ‘Greyhounds Australasia’; and
- Section 3 should be amended by replacing the words, ‘Australian Harness Racing Council’ with ‘Harness Racing Australia’.⁹¹⁸

In relation to requirements for a common seal, RWWA refers to Section 123 of the *Corporations Act 2001* (Cth) which makes such a seal optional.⁹¹⁹ The legal implications of repealing this requirement have not been examined but would need to be explored to ensure that alternative document execution methods can be applied to RWWA. The Committee supports the recommendation in principle provided it is legally valid for the common seal to be replaced by an alternative method for executing documents.

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.

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.

The Committee supports removal of references in the RWWA Act to wagers and payments by letter sent through the post as it accepts RWWA’s rationale that this method of wagering and payment is no longer used.⁹²⁰

⁹¹⁸ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, pp90-92.

⁹¹⁹ Ibid., pp90-91.

⁹²⁰ Ibid., p91.

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*.

Section 86 of the RWWA Act makes provision for record keeping. All records relating to the accounts and management of RWWA must be kept by RWWA in a place approved by the Gaming and Wagering Commission and RWWA must give the Commission access to these records on the provision of written notice.⁹²¹ Section 86 also makes provisions for the retention or destruction of records.⁹²² RWWA has recommended the repeal of Section 86 since it is already required to comply with the *State Records Act 2000* and there is duplication. RWWA confirmed that only the subsections of Section 86 which duplicate provisions of the *State Records Act 2000* (and not those relating to access to records by the Gaming and Wagering Commission) should be repealed.⁹²³ The Committee supports amendment of Section 86 along these lines.

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*.

Section 22(3) of the RWWA Act refers to the remuneration and other terms and conditions of employment of staff. RWWA has suggested that this section requires amendment since the relevant Western Australian legislation cited has changed and remuneration and conditions of employment of staff are now subject to the applicable federal industrial legislation.⁹²⁴ RWWA advised that its intention is for 'minimum standards to be made clear, and [RWWA] will pay people no less favourably than what the base rate is'.⁹²⁵ The Committee supports amendment of Section 22(3)(a) and (b) of the RWWA Act to reflect applicable legislative requirements defining the minimum remuneration and other terms and conditions of employment of staff.

⁹²¹ Section 86(1) and 86(2) *Racing and Wagering Western Australia Act 2003*.

⁹²² Section 86(d) *Racing and Wagering Western Australia Act 2003*.

⁹²³ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, p18.

⁹²⁴ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p91.

⁹²⁵ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, p18.

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.

Section 3(1) of the RWWA Act lists terms used in the Act. RWWA identified a number of references which require updating, specifically: changing ‘Australian and New Zealand Greyhound Association’ to ‘Greyhounds Australasia’; and changing ‘Australian Harness Racing Council’ to ‘Harness Racing Australia’.⁹²⁶ The Committee supports these amendments.

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’.

3.8 Future directions for the industry

The Committee became aware of a number of miscellaneous matters during the course of this Inquiry which have a bearing on the future of racing and wagering in this state. This section presents a summary of the issues raised in this regard by industry participants and stakeholders as well as matters the Committee wishes to highlight. Issues have been listed with minimal analysis since points tended to be raised in isolation and no further evidence could be obtained. By and large, the issues listed below are 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.

(a) Matters raised by industry participants and stakeholders

The following have been highlighted by industry participants and stakeholders as matters which will have a bearing on the future of the industry:

⁹²⁶ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, pp90-92.

(i) RWWA disciplinary powers

RWWA has made a number of recommendations to the Committee in regard to disciplinary powers prescribed under Part 4 of the RWWA Act that determine RWWA's specialised functions in relation to racing.⁹²⁷ In summary RWWA's main concerns comprise the following issues:

Section 34 of the RWWA Act provides a definition of 'a person associated with racing' to whom RWWA's disciplinary powers under Part 4 apply. RWWA argues that the definition is too narrow. It does not include family members or others that may not be directly related to racing, as prescribed in Section 34, but who may still render considerable influence over racing activities.⁹²⁸ As a result, RWWA stewards cannot apply any disciplinary action to these people—so they can continue to adversely affect racing activities. RWWA submitted therefore that the definition of 'a person associated with racing' be amended to include any person 'with influence on racing activities.'⁹²⁹

The Committee notes the logic behind RWWA's argument and contends that the ability of RWWA to maintain the integrity of racing activities is crucial for the ongoing viability of the industry.

Finding 82

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

Nonetheless, the Committee is of the view that the proposed amendment is too broad. In the interests of probity, the Committee considers it would be incumbent on RWWA to prove that a person has an influence on racing before any such definition can be applied. This may impose such an impost on the RWWA stewards as to make the amended definition ineffective.

The Committee is of the view that RWWA should develop a case for the Minister's consideration to demonstrate how the application of this proposed amendment by RWWA stewards would work. The Committee suggests that the plans of Racing Victoria to pursue legislative change to allow 'people who earn a living from racing to come under the rules of racing'⁹³⁰ might be an appropriate avenue for RWWA to explore when establishing its case for the Minister.

⁹²⁷ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, pp87-89.

⁹²⁸ Mr James Freemantle, Deputy Chairman, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, p14.

⁹²⁹ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p87.

⁹³⁰ Mr Evan Nunn, Manager Corporate Strategy, Racing and Wagering Western Australia, email, 31 August 2010.

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.

Another area of contention that exists for RWWA in relation to its disciplinary powers are those relating to Section 44(1)(e) of the RWWA Act. This section provides that RWWA is able to—in accordance with the rules of racing and the regulations, prohibit any person from attending or taking part in a race meeting, or entering or remaining on any licensed racecourse.

Subsequent to this Section being enacted, Regulation 72 of the RWWA Regulations was established to determine the procedures by which RWWA may exercise the powers conferred in Section 44(1)(e). Included in the Regulation are the following requirements:

1. RWWA must issue a ‘show cause notice’ in writing;
2. Any recipient has the right to be heard by RWWA as to why section 44(1)(e) should not be exercised against them; on condition they inform RWWA within 14 days of receiving the notice;
3. If a person requests it, RWWA must hear that person within 28 days of the request being made;
4. If RWWA still determines to exercise a power under section 44(1)(e); that person is issued a ‘warning off notice’, for a time determined by that notice; and
5. Failure to comply with a notice will result in a \$1000.00 fine.

RWWA argued that Regulation 72 has resulted in a number of shortfalls to enforcing Section 44(1)(e), specifically:

- The regulation has limited the power stewards previously had under this section to respond to one-off incidents;
- The regulation does not include any procedure for RWWA to lift a warning-off at its discretion; and
- It is currently inconsistent with Section 45(3)(a)(ii) which allows the rules of racing to empower the stewards to prohibit any person from entering upon and remaining on a racecourse or a trial track.⁹³¹

⁹³¹ Submission No. 7B from Racing and Wagering Western Australia, 3 February 2010, p88.

RWWA asserts that the ‘warning-off’ procedures contained in Regulation 72 are only appropriate for long term bans, on the condition that the regulation includes a process by which a warning off can be lifted.

In addition, it states that the power exercised under section 44(1)(e) is appropriate for short term or one-off offences, on the condition that it is not subject to the types of provisions contained in Regulation 72. Instead, it notes that a maximum time limit should apply for any power exercised under this section.

In summary, RWWA finds that the following actions would be required to amend Section 44 and Regulation 72:

1. That Section 44 be amended to include a subsection prescribing RWWA’s explicit power to warn off, and lift a warning off; and
 - (a) that this new section be carried out in accordance with Regulation 72; and
 - (b) Regulation 72 be amended to reflect this change.
2. That Section 44(1)(e) be amended to include a maximum time limit for this section to apply; and
 - (a) any requirement that this section be enacted in accordance with regulation 72 be repealed.

The Committee agrees in principle with these changes, however it has concerns over the transparency of the proposed amendments. As such, the Committee finds that, in addition to RWWA’s proposed changes, the following additions, noted in italics, should be included:

1. That Section 44 be amended to include a subsection prescribing RWWA’s explicit power to warn off, and lift a warning off; and
 - (a) that this new section be carried out in accordance with Regulation 72; and
 - (b) regulation 72 be amended to reflect this change; and
 - (c) *regulation 72 be amended to include:*
 - (i) *that any warning off notice must have a prescribed time limit;*
 - (ii) *the conditions by which RWWA can apply for an extension or impose additional notices; and*
 - (iii) *the process by which the recipient can apply to RWWA for the warning off notice to be lifted.*
2. That Section 44(1)(e) be amended to include a maximum time limit for this section to apply; and
 - (a) any requirement that this section be enacted in accordance with Regulation 72 be repealed, and;
 - (b) *new procedures be set out in RWWA’s regulations that transparently outline the ‘short term’ incidences to which this section should apply.*

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.

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*.

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.

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.

(ii) TAB agency agreements/ territorial rights

In 2005 the ACCC authorised the WA TAB Agents' Association to represent its members (these comprise holders of full time/full service retail licences; known as SL1 licence holders or agents)⁹³² in collective bargaining with RWWA. Subsequently, the Association negotiated the 2006 round of Assignable Business Licence Agreements; due to expire in 31 August 2016,⁹³³ and conducts operational and other contractual negotiations with RWWA on behalf of its members. The Association submitted that agents' rights under this License are limited—as is the general framework that SL1 agencies operate within.

Some of the issues raised by the Association are as follows:

- SL1 agents do not have rights over any designated geographical area. As such, RWWA can establish a competitor service within close proximity of an existing agency; thus jeopardising the short term viability, and long term investment opportunity, of agents. It is argued that this operates as a disincentive to SL1 License holders to develop and grow their businesses.⁹³⁴
- RWWA, as the Licensor and landlord, enjoys the additional advantage of being a direct competitor to the agents. It allows itself to offer wagering services that it does not make available at SL1 agencies—therefore RWWA could enjoy a commercial advantage over these retail outlets.⁹³⁵ On this point, the Committee received supporting evidence from Mr Timothy Barnes, Morley TAB Agency, who notes that RWWA has, in some cases, offered special promotions to internet and phone account holders, which, by definition, precludes the customers of the TAB agencies. He argued that this makes it harder for the agencies to retain those customers. Mr Barnes submits that this sort of unequal marketing spend is unjust—and does not appear to be working for the overall best interests of the wagering market.^{936 937}
- RWWA exercises such a powerful influence over agencies that licensees do not have any real way to develop their business. Agents maintain that they ought to be able to provide other services and products through their agencies that are not in conflict with, and do not derogate from, the primary purpose of the agency. Examples cited include the provision of dedicated facilities for important customers and the sale of sports memorabilia.⁹³⁸
- Other issues include the prescriptive nature of the License agreements whereby:
 - RWWA sets the hours of opening; the form and style of the displays and the products for sale;

⁹³² There are currently three categories of TAB outlets in RWWA's retail wagering operations. An SL1 is a full time / full service Agency; an SL2 is a PubTAB or a ClubTAB; and the SL3 is a self service site.

⁹³³ Submission No. 8 from WA TAB Agents' Association, 30 November 2009, p4.

⁹³⁴ Ibid., pp6-7.

⁹³⁵ Submission No. 8 from WA TAB Agents' Association, 30 November 2009, p7.

⁹³⁶ Mr Timothy Barnes, Director, Morley TAB Agents, *Transcript of Evidence*, 8 March 2010, p13.

⁹³⁷ Refer to Chapter 3.6 for a discussion on resolving the conflicts of interest of RWWA with respect to wagering.

⁹³⁸ Submission No. 8 from WA Tab Agents Association, 30 November 2009, pp7-8.

- Agents are not able to operate more than one site at a time;
- Agents' long term capital investments are jeopardised because there is no guarantee of renewal at the expiry of an SL1 licence; this creates further disincentive to grow and develop the business.⁹³⁹

The main point put forward by WA TAB Agents' Association can be summarised by the following statement:

*Agents consider that without the freeing up of the operation of their businesses, both the Agent and RWWA are unable to reach the potential of the Agencies.*⁹⁴⁰

RWWA was asked to address many of these issues, to which it offered the following responses:

In regard to the lack of territorial rights of agents, RWWA stated that the licensees have never been offered a regional area and that placing an alternative TAB outlet close to a full retail SL1 TAB has proven to have minimal impact on the existing retail agencies. A PubTAB for example, will largely draw business from new customers who would not otherwise make use of a SL1 TAB. Nonetheless, RWWA noted that a form of voluntary compensation is in place should a retail TAB lose turnover as a result of a new TAB outlet being opened in close proximity.⁹⁴¹ It should be noted that the WA TAB Agents' Association stressed in their submission that this compensation is 'missing the point' as it does not address the long term impact an alternative TAB will have on the future resale of an existing TAB licence.⁹⁴²

To the criticism that it exercises too much control over the operating environment of full retail TABs, RWWA asserted that the wagering market is a highly regulated industry, so many of the operational and Licence requirements reflect these regulations, which the licensee is made aware of before they choose to enter into the business.⁹⁴³

In respect to the prescriptive nature in which RWWA determines each aspect of a TAB agency's operation, RWWA stipulated that it is simply trying to maintain professional standards, much like other retail 'chains', whereby the presentation and service offered at a full retail TAB agency is recognisable and consistent with any other SL1 agency.⁹⁴⁴

It is clear that some confusion exists between what RWWA and the licensee believe to be the role of a SL1 agency. RWWA argues that the SL1 agent should provide a full wagering service to customers, the provision of which must necessarily be prescribed by RWWA, because RWWA is

⁹³⁹ Ibid., p8.

⁹⁴⁰ Ibid., p9.

⁹⁴¹ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 20 August 2010, p50.

⁹⁴² Submission No. 8 from WA Tab Agents Association, 30 November 2009, p7.

⁹⁴³ Mr Richard Burt, CEO, Racing and Wagering Western Australia, *Transcript of Evidence*, 20 August 2010, p49.

⁹⁴⁴ Ibid.

in turn regulated by the Gaming and Wagering Commission.⁹⁴⁵ The WA TAB Agents' Association argued that it is appropriate for SL1 agents to be able to grow their businesses, and have some input into decisions that impact on the long term financial performance of their investment.⁹⁴⁶

In this regard, the TAB Agents' Advisory Committee⁹⁴⁷ has received criticism from stakeholders who believe that, like many of the comments received about the consultative capacity of RWWA,⁹⁴⁸ the process lacks any genuine attempt to negotiate or consult with the nominated TAB agents who attend these meetings. It has been suggested that decisions are only presented, not discussed. Mr Timothy Barnes, Morley TAB, noted that there is plenty of scope for consultation through the advisory committee but that:

*...if there is any particular critical issue that we vehemently oppose, we just get railroaded; it does not matter.*⁹⁴⁹

The Committee accepts the rationale asserted by the WA TAB Agents' Association that if full retail TAB agents are provided with long term incentives to develop and grow their businesses, both they and RWWA—and therefore the racing and wagering industry, will benefit. As such, RWWA should employ marketing and promotional opportunities that assist the entire retail wagering network—and avoid activities that promote one sector of the retail network to the detriment of another. To do otherwise could disguise or inhibit real growth in RWWA's wagering retail market.

As such, the Committee finds that the consultation and communication between RWWA and its TAB agents should be improved to clarify the operational role of a SL1 TAB retail agent and to explore more fully incentives and opportunities for business development.

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.

⁹⁴⁵ Ibid., p48.

⁹⁴⁶ The WA TAB Agents' Association notes that the initial capital investment to purchase some full SLI Licences could exceed one million dollars: Submission No. 8 from WA TAB Agents' Association, 30 November 2009, p2.

⁹⁴⁷ The 2006 Assignable Business Licence provides for the election of four TAB Agents onto the TAB Agents Advisory Committee, to be joined by representatives of RWWA, and who meet on a regular basis. Submission No. 8 from WA TAB Agents' Association, 30 November 2009, p5.

⁹⁴⁸ Refer to Chapter 2.6 (Consultation).

⁹⁴⁹ Mr Timothy Barnes, Director, Morley TAB Agents, *Transcript of Evidence*, 8 March 2010, p9.

(iii) Wagering commission rates

Both SL1 TAB Agencies and SL2 Pub and ClubTABs have noted that the current commission rates are of concern.^{950 951}

The WA TAB Agents' Association, which represents SL1 TAB agencies, noted that the commission rates are virtually the same as they were under the 1996 contract. As such, agents are 'dependent on growth to get an increase in our income. Of course, if you do not get the growth, your income does not increase'.⁹⁵² This creates an imperative for every SLI agency to grow.⁹⁵³

The AHA, which represents nearly 200 PubTABs in their dealings with RWWA, stated that one of its chief concerns is that the current commission arrangements do little to provide an incentive for operators to grow the TAB element of their business:

*PubTAB operators are not seeking to make massive profits from their wagering facilities but expect a reasonable return for the hard work, responsibility and effort that goes into running a punting agency for RWWA however [in some cases] the return on investment is negligible to the point of unviable.*⁹⁵⁴

The AHA further submitted that there is a general view amongst operators that RWWA is seeking to reduce the existing commission rates. The AHA argued this would be harmful to the industry.⁹⁵⁵

The Committee has previously noted that a factor critical to maintaining and growing wagering revenues relates to maintaining the existing wagering sales network.⁹⁵⁶ Subsequently, it cautions against a situation occurring whereby commission rates become a disincentive to full time TAB agents and PubTAB operators to grow, or even maintain, their TAB operations.

As such, the Committee finds that a review into the commission rates payable to operators of SL1 and SL2 licences should be conducted, taking into account associated business costs, to determine a rate payable to provide an incentive to operators to establish, maintain or grow their retail wagering operations.

⁹⁵⁰ Submission No. 45 from Australian Hotels Association Western Australia, 3 August 2010, p6, Mr Robert Morgan, President, WA TAB Agents' Association, *Transcript of Evidence*, 8 March 2010, p12; Submission No. 44 from Clubs WA, 13 July 2010, p2.

⁹⁵¹ There are currently three categories of TAB outlets in RWWA's retail wagering operations. An SL1 is a full time / full service Agency; an SL2 is a PubTAB or a ClubTAB; and the SL3 is a self service site.

⁹⁵² Mr Robert Morgan, President, WA TAB Agents' Association, *Transcript of Evidence*, 8 March 2010, p12.

⁹⁵³ Refer to the discussion raised earlier in this Chapter on issues concerning SL1 Tab Agency Agreements. It includes information about the perceived impediments that exist for SLI agents in regard to growing their own businesses.

⁹⁵⁴ Submission No. 45 from Australian Hotels Association Western Australia, 3 August 2010, p6.

⁹⁵⁵ Ibid.

⁹⁵⁶ Refer to Chapter 2.9(b) for a discussion on mechanisms to enhance wagering revenues.

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.

(iv) Racing Radio

Racing Radio is a service provided by RWWA to broadcast racing activity throughout the state. A number of stakeholders have noted the inadequacy of Racing Radio coverage in country areas. From the evidence received, it was generally stressed that racing radio is a very important tool to promote racing in country areas. As such, stakeholders were critical about the provision of racing radio with respect to the intermittent coverage in country areas and the lack of local product that is included in the programming.⁹⁵⁷ An indicative comment of stakeholder sentiment was expressed to the Committee by Mrs Margaret Skinner of Mt Barker Turf Club, who stated:

*Racing Radio is very inadequate. It has been a bugbear for years and years and years.*⁹⁵⁸

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.

In regard to the intermittent coverage, Mr Richard Burt, RWWA agreed that coverage in the country was not ideal and stressed that the poor coverage is a direct factor of RWWA not being in a commercial position to acquire radio licences with broad coverage:⁹⁵⁹

⁹⁵⁷ Mr Tony Marwick, President, Northam Race Club, *Transcript of Evidence*, 26 March 2010, p13; Mr Timothy Borgward, President, Pingrup Racing Club, *Transcript of Evidence*, 3 May 2010, p2; Mr David Wrensted, Vice President, Western Australian Provincial Thoroughbred Racing Association, *Transcript of Evidence*, 26 February 2010, p11; Mr Alfred Paganoni, Past President, Western Australian Country Harness Racing Association, *Transcript of Evidence*, 26 February 2010, p6; Mr Brendon Gardiner, Vice President, Bridgetown Harness Racing Club, *Transcript of Evidence*, 6 April 2010, p2; Mr David Abbott, Busselton Trotting Club, *Transcript of Evidence*, 6 April 2010, p13; Mrs Margaret Skinner, Secretary, Mt Barker Turf Club Inc, *Transcript of Evidence*, 12 March 2010, p11; Mr Barry Mahood, Chairman, York Racing Inc, *Transcript of Evidence*, 26 March 2010, p11.

⁹⁵⁸ Mrs Margaret Skinner, Secretary, Mt Barker Turf Club Inc, *Transcript of Evidence*, 12 March 2010, p11.

⁹⁵⁹ RWWA stated that Racing Radio costs between \$2-2.5million a year.

*It is inadequate in regional areas. We would like it to be better. Unless we get an ABC-type licence whereby we can get state coverage and can commercially afford it, it just will not happen...we are running narrowcast AM signals...at the bottom end of the spectrum...*⁹⁶⁰

RWWA indicated that the current cost of running racing radio is around \$2 million per year, which includes the cost of running studio operations, announcers, the breakfast show and the 50 or so radio licenses that transmit across the state.⁹⁶¹ RWWA asserted it is in communication with the Australian Communications and Media Authority about seeking new licences. Mr Burt explained that it is a highly regulated industry, with many restrictions in place with regard to the transmission of radio signals to ensure that there is no interference with other radio stations or mobiles phones. He described the process as ‘a nightmare’ but nonetheless stressed that RWWA is very active in trying to find ways to improve the racing radio system:

*We are taskmasters at being able to get into people and talk about how we can do this better and cheaper, putting transmitters on top of other people’s towers. It is a nightmare. If someone can help us in transmitting better, I welcome the opportunity.*⁹⁶²

On the issue of the lack of local product being broadcast, Mr Alf Paganoni of WACHRA, asserted that it was essential for country clubs to have their local product broadcast on racing radio:

*I believe that radio is probably the only way forward for country clubs—they cannot get their vision out, but they can get the voice out.*⁹⁶³

Mr Brendon Gardiner, Bridgetown Harness Racing Club stated that the lack of reliability of local product in racing radio was impacting on their ability to survive as a club.⁹⁶⁴ Mr David Abbott, Busselton Trotting Club noted that it is wrong that RWWA is not broadcasting local races:

*We do not get preference in our state to our own business. RWWA is not giving preference to our own races.*⁹⁶⁵

Mr Barry Mahood of York Racing stated that racing radio ‘is a joke in the bush’ and that it can have a considerable impact on country clubs and their ability to create turnover because ‘people like to have a bet but they do not bet if they cannot hear their race’.⁹⁶⁶

RWWA stated that local content only contributes about 5 per cent value to the product that it broadcasts on racing radio; the rest being composed of what is being covered on Sky.⁹⁶⁷ It was

⁹⁶⁰ Mr Richard Burt, CEO, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010 p24.

⁹⁶¹ *Ibid.*, p22.

⁹⁶² *Ibid.*, pp23-24.

⁹⁶³ Mr Alfred Paganoni, Past President, Western Australian Country Harness Racing Association, *Transcript of Evidence*, 26 February 2010, p6.

⁹⁶⁴ Mr Brendon Gardiner, Vice President, Bridgetown harness Racing Club, *Transcript of Evidence*, 6 April 2010, p2.

⁹⁶⁵ Mr David Abbott, Busselton Trotting Club, *Transcript of Evidence*, 6 April 2010, p13.

⁹⁶⁶ Mr Barry Mahood, Chairman, York racing Inc, *Transcript of Evidence*, 26 March 2010, p11.

not established by the Committee if this was a function of cost. Nonetheless, RWWA did concede that its ability to promote local wagering product is under pressure.⁹⁶⁸

*We pay for everything, and without adequate funding, will either spend more on wagering and less on racing, or we will not have wagering services.*⁹⁶⁹

On the future of Racing Radio, Mr Richard Burt, CEO of RWWA stated the following:

*I can see a positive future as we move towards digital radio and the population of Western Australia takes up digital radio, and we can see an improvement in the quality of our coverage. Without adequate funding, I can see it going the other way.*⁹⁷⁰

The Committee acknowledges that Racing Radio coverage is a very important service to industry participants throughout the state. As such, every effort should be made to maintain and improve the Racing Radio service. The Committee recognises that RWWA is not currently in a position to acquire a radio licence that is capable to broadcast statewide. The remedy may be found in new technologies like digital radio and the Committee understands that RWWA will continue to seek new ways to broadcast Racing Radio to country areas. In addition, despite the financial limitations that RWWA faces, the recent expansion of RWWA's radio network in the Kalgoorlie-Boulder and Kambalda regions⁹⁷¹ demonstrates that RWWA is in fact continuing to improve Racing Radio coverage in the short term.

With respect to the quantity of local product being broadcast on the system, the Committee concurs with stakeholder views that industry participants are more likely to have a bet on local product if they can either see or hear local races being broadcast. This will increase the potential ability of race clubs to generate turnover and subsequently help reduce the burden that product fees place on the Western Australian industry. As such, the Committee finds that it is incumbent on RWWA to broadcast and generally promote local product wherever possible.

Finding 87

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

⁹⁶⁷ Mr Richard Burt, CEO, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010 p23.

⁹⁶⁸ This included RWWA's wagering spend on TABForm and its other wagering promotional material; of which Racing Radio is a part.

⁹⁶⁹ Mr Richard Burt, CEO, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, p23.

⁹⁷⁰ Ibid.

⁹⁷¹ Dean Stacey, 'Coup for Punters', *Kalgoorlie Miner*, 2 October 2010, p58.

(v) Animal welfare issues

Although the topic of animal welfare was not raised extensively during the course of the Inquiry, the Committee considers it an issue of ongoing importance that should be taken into consideration by RWWA, and the industry overall, as it plans for the future. Some of the main themes conveyed to the Committee can be summarised as follows:

- Without the horse and its correct treatment and welfare, the racing industry would not be able to generate turnover. Greater research is required into the welfare of horses to guard against future outbreaks of diseases, like equine influenza.⁹⁷²
- RWWA has a duty of care to ensure that a horse is not being overworked. In relation to harness racing, the current method of liaising with trainers to ensure that a horse is 'fit' is inadequate as the horse is more than likely to be fit because it is traditional in harness racing to produce 'tough' horses. A policy should be introduced restricting the number of times a horse can start within a week, a month, a quarter, and any consecutive 12 month period. Some possible timeframes could be (respectively), no more than 3 times in a week; no more than 6 times in a month; no more than 10 times in a quarter; no more than 26 times in a year.⁹⁷³
- Animal welfare issues associated with thoroughbred, harness and greyhounds are not being appropriately recognised by the industry or by government. The *Animal Welfare Act 2002* does not specifically offer any prescribed protection for racing animals.⁹⁷⁴

The Committee notes that RWWA and industry participants are subject to the *Animal Welfare Act 2002* which does afford substantial protection to racing animals. In particular, Section 19 of the *Animal Welfare Act 2002* prescribes offences against animals, of which Section 19(3) specifically states that it is an offence of cruelty against an animal if the animal is worked, driven, ridden or otherwise used when it is not fit, is overused or is used in a manner which is likely to cause harm.

RWWA has noted that animal welfare is a critical industry issue and threat if not managed properly. It actively promotes that there is a need to minimise any threat to the wellbeing of animals across all racing codes and to 'maintain active development of our animal welfare programmes'.⁹⁷⁵ RWWA's current initiatives with respect to animal welfare issues include:

- A memorandum of understanding (MOU) between RWWA and the RSPCA on animal welfare breaches, agreeing to facilitate the successful investigation of alleged breaches of animal welfare in racing animals;⁹⁷⁶

⁹⁷² Ms Lisa Baker MLA, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 21 October 2009, p8401.

⁹⁷³ Submission No. 15, 30 November 2009, pp4-5.

⁹⁷⁴ Submission No. 20 from A. Herlihy, 8 December 2009, pp1-2.

⁹⁷⁵ Racing and Wagering Western Australia, 'Towards Sustainability, April 2009. Available at: www.rwwa.com.au/home/towards-sustainability.pdf Accessed on 7 October 2010.

⁹⁷⁶ Racing and Wagering Western Australia, 'Thoroughbred Racing Consultative Group (TRCG), Minutes of the meeting held on Tuesday 31 August 2010', Available at: www.rwwa.com.au/home/TRCG_Minutes_20100831.pdf. Accessed on 7 October 2010.

- The Animal Welfare Group (RAWG) established by RWWA stewards and veterinarians. The group's focus is to develop animal welfare policies and promote the importance of animal welfare issues across all three codes. In 2008-09, the RAWG produced the RAWG Manual containing formalised animal welfare policies; and undertook research relating to breeding and racing across all codes, to be made available for future strategic planning;⁹⁷⁷ and
- The Western Australian Equine Influenza Industry Group (WAEIIG) established by RWWA following the equine influenza outbreak. The group was to provide strategic advice to protect the WA horse industry from EI, develop risk minimisation strategies consistent with the nationally agreed response and communicate effectively with all horse industry stakeholders, the general public and the state government.⁹⁷⁸

The Committee acknowledges that RWWA is taking steps to mitigate any risk of breaches to the welfare of animals in the racing industry. Nonetheless, the Committee makes the following observations as to how RWWA may further strengthen its approach to animal welfare:

1. Increase information on the RWWA website in regard to RWWA's animal welfare policies and guidelines, for example the RAWG Manual could be used to increase awareness among industry participants and the wider community regarding RWWA's animal welfare policies;
2. Expand animal welfare guidelines and policies, to more appropriately inform participants as to what constitutes an offence against animals under the *Animal Welfare Act 2002*;
3. Seek stakeholder input to assist development of future animal welfare policies and reinforce existing policies; and
4. Educate industry participants on animal welfare issues and continue research into animal welfare issues.

(vi) Breeding incentives

The West Australian Bloodhorse Breeders Association Inc (WABBA) submitted that the breeding industry for both thoroughbred and standardbred horses is essential to the racing and wagering industry:

*It drives ownership of racehorses, which in turn drives the amount of racing product available for field size, therefore producing better turnover and, ultimately through TAB profits, the amount that can be delivered to the community for the state's economic, employment, community and social well being.*⁹⁷⁹

WABBA contended that thoroughbred racing is developing strongly in WA with horses beginning to sell and perform well interstate and internationally. Further, given the benefits breeding brings to the industry, it is imperative that RWWA invests money into an appropriate sales venue for

⁹⁷⁷ Racing and Wagering Western Australia, *Annual Report 2009*, RWWA, Perth, 12 October 2009, p24.

⁹⁷⁸ Racing and Wagering Western Australia, 'Western Australian Equine Influenza Industry Group, 2007, Available at: www.rwwa.com.au/home/waeiig.html. Accessed on 7 October 2010.

⁹⁷⁹ Submission No. 18 from West Australian Bloodhorse Breeders Association Inc, 8 December 2009, p2.

marketing Western Australian bred horses. WABBA noted that breeders in the state have been trying to sell horses in a substandard facility for a long time:

*...to be unable to show off our produce to people in a proper way is actually detrimental to the industry as a whole, because it flows on to whether we get people from overseas and the better trainers...from the eastern states.*⁹⁸⁰

WABBA also stated that it is important that a quarantine facility be established in the state ‘to encourage the participation of overseas horses in any racing program or to accommodate shuttle stallions from the US and Europe’.⁹⁸¹ Without this, WABBA argued that the breeding industry would contract throughout the state—which will be detrimental to the entire industry. As such, it should be a matter of priority that RWWA examines a way to establish or finance a purpose built sales/quarantine facility in WA.⁹⁸²

With regard to harness racing, the Committee received feedback from stakeholders that the breeding stock in harness racing is in critical decline because there are no incentives for breeders.⁹⁸³ This has often meant it has been easier to import race ready horses from interstate or overseas.⁹⁸⁴ Mr Mark Roberts of WACHRA observed this is partly because the advent of artificial insemination has meant that mares are breeding more easily with eastern state sires and as such incentives like ‘sire stakes’ are required to encourage breeders. Mr Roberts also suggested that uncertainty in the industry, and particularly the tentative state of harness racing, had discouraged breeders:

*In the past two or three years it [breeding] has dropped even more because people are struggling to see where the industry is heading. It is hard for someone to spend \$5 000 or \$10 000 on breeding a horse when they are unsure whether they will have a place to race it in two or three years when the horse is ready to race.*⁹⁸⁵

The Committee believes that a strong breeding industry is critical to the ongoing and overall viability of the WA racing industry. It is therefore important for WA to have a vital local breeding industry across all racing codes.

⁹⁸⁰ Mr Gray Williamson, President, West Australian Bloodhorse Breeders Association Inc, *Transcript of Evidence*, 26 February 2010, p4.

⁹⁸¹ Mr Gray Williamson, President, West Australian Bloodhorse Breeders Association Inc, *Transcript of Evidence*, 26 February 2010, p3.

⁹⁸² Submission No. 18 from West Australian Bloodhorse Breeders Association Inc, 8 December 2009, pp 3-5.

⁹⁸³ Mr Stephen Hyde, Williams Harness Racing Club, *Transcript of Evidence*, 3 May 2010, p6.

⁹⁸⁴ Submission No. 46 from Pinjarra Harness Racing Club, 6 April 2010, p2; Submission No. 15, 30 November 2009, pp3-4.

⁹⁸⁵ Mr Mark Roberts, President, WACHRA, *Transcript of Evidence*, 26 February 2010, p13.

Finding 88

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

(b) Committee observations

The following list of challenges confronting RWWA and the racing industry has been informed by Members' own experiences as participants in the racing industry⁹⁸⁶ and partly by observations during this Inquiry. These challenges are highlighted here due to their potential bearing on the future of racing and wagering in Western Australia:

(i) Remaining competitive in a challenging wagering market

It is critical that RWWA is able to remain competitive in an ever-changing and growing wagering market. The particular challenges confronting RWWA in this respect have already been examined in Chapter 2.9 (Wagering Revenues) where it was also noted that increasing racing in Western Australia is not the answer to generating increased revenues. The Committee analysed a number of alternative mechanisms to boost wagering revenues in Chapter 2.9 and also examined RWWA's ability to compete more effectively through a reduction in the rate of wagering tax (Chapter 2.8). RWWA itself has indicated that it is taking a more proactive approach to ensuring that in the lead up to the expiration of its pooling agreement with Tabcorp in August 2012,⁹⁸⁷ it is not confronted again with significantly higher costs. RWWA has indicated in this regard that it is exploring all options specifically it 'can either pull back in Victoria or New South Wales...talk to the UniTAB operation or ... stand alone'.⁹⁸⁸

Another important element in remaining competitive in the wagering sector relates to ensuring that the TAB has the highest quality infrastructure. This too was alluded to in Chapter 2.9 (Wagering Revenues). In this regard, RWWA has recently undertaken significant capital works in the form of bet engine replacement.⁹⁸⁹ The estimated total cost of the project as at the end of the 2008-09 financial year was approximately \$31 million. Ticket terminal replacement has also occurred with a view to upgrading technology to adapt to changing wagering conditions at an estimated total cost of \$17 million.⁹⁹⁰

⁹⁸⁶ Members' private interests pertaining to racing and/or wagering were tabled in the Legislative Assembly on 24 November 2009.

⁹⁸⁷ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 30 April 2010, p7.

⁹⁸⁸ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, pp52-53.

⁹⁸⁹ Mr James Freemantle, Deputy Chairman, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, p33.

⁹⁹⁰ Racing and Wagering Western Australia, *Annual Report 2009*, pp27, 70. Available at: www.rwwa.com.au/home/rwwa-annual-report-2009.pdf Accessed on 4 October 2010.

It is encouraging also that RWWA is actively investing in improvements to its retail wagering network:

*Part of our plan is to upgrade the agencies. The board is dealing with a major infrastructure plan at the moment for agencies, which is about modernising; continuing the modernisation program of putting in toilets, making them more aesthetic with fixtures, fittings and services, and making them more secure.*⁹⁹¹

(ii) Infrastructure

As detailed in Chapters 2.7 (Distribution of Funds) and 2.8 (Taxation), it is essential that RWWA meets the urgent need for racing industry infrastructure. This relates to both the provision of new, and maintenance of existing, infrastructure with regard to racing and training facilities across the three codes. Government grants will only go part of the way to addressing the \$70 million infrastructure shortfall identified by RWWA. As detailed in this report, the establishment of a dedicated infrastructure fund will ensure a secure funding stream for this purpose.

The implementation of some of the following findings/recommendations will only be possible with the establishment of the proposed infrastructure fund.

(iii) Racing/training facilities into the future

Thoroughbred racing/training facilities

Industry concerns regarding training facilities in the metropolitan area have been examined in Chapter 2.7 (Distribution of Funds). In relation to metropolitan thoroughbred training facilities, land at Ascot and Lark Hill is now priced out of the reach of most new trainers entering the industry. Perth Racing indicated that its subsidy from RWWA does not cover the cost of maintaining the facility for the large number of horses that work there.⁹⁹² In other major cities stables are being forced out of city suburbs like Ascot, with stables either relocated on-course or trainers moving to training centres outside the city area.

The WA Trainers' Association has also expressed concern about a lack of racing/training facilities in the metropolitan area and has suggested that 'there are sufficient horses in training to support three race meetings a week in the near metropolitan area now, let alone with the continued expansion of population in and around the city. Provincial tracks are barely adequate to meet industry needs with fields reduced to 10 starters in some cases....'⁹⁹³ RWWA has indicated in relation to the latter point that it continues to work towards optimal field sizes (12-14 runners) and

⁹⁹¹ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 20 August 2010, p50.

⁹⁹² Mr Edward (Ted) van Heemst, Chairman, Perth Racing, *Transcript of Evidence*, 26 February 2010, pp4-5.

⁹⁹³ Submission No. 22B from WA Racing Trainers' Association, 6 August 2010, p2.

although field sizes have averaged fewer runners in metropolitan and provincial races, the emphasis has been on maintaining full fields in order to enhance wagering revenue.⁹⁹⁴

As detailed in Chapter 2.7 (Distribution of Funds), RWWA has recognised the importance of training facilities in its strategic vision for the thoroughbred code:

*...from a capital infrastructure investment perspective, it is imperative that we adequately sustain training tracks, particularly those that service our metropolitan and provincial starter numbers: Ascot, Lark Hill and Bunbury ... From a metropolitan perspective, it is recommended that an evaluation of long-term venue training and racing requirements is undertaken taking into account Ascot's capacity to accommodate long-term stabling along with horse population demands. From a provincial perspective, the six key venues - Bunbury, Pinjarra, Northam, Albany, Geraldton and Kalgoorlie - will continue to be the focus of track and training investment.*⁹⁹⁵

Perth Racing indicated that it had suggested a potential site to RWWA for a dedicated training facility which would relieve the cost pressures on the club from having to provide training facilities at Ascot.⁹⁹⁶ RWWA indicated however that it does not have the ability to fund a new training track and that 'the cost to acquire the land is one thing, but to build a new track and full training facilities would cost \$15 million. That is not including the land purchase'.⁹⁹⁷ As such, RWWA's approach to training facilities, as outlined in the thoroughbred vision statement is to leverage the existing tracks:

*We need horses to be trained at Ascot. But we want to take pressure off Ascot. Between 400 and 600 horses train there on training mornings, which is an overcrowded environment. We have complete empathy for Ascot. We need to do two things. We need to put boxes and stalls at Lark Hill and have on-course stables. That is what people are asking for. They want to move out of the large blocks that are highly capitalised. They want to realise their cash and live in a different environment in which their horses live on-course. That will give new entrants who cannot afford the land the ability to lease the stalls at subsidised rates to enable them to be there...The plan is to continue training at Ascot, to develop 300 or 400 stalls at Lark Hill, and to continue to leverage inner and outer regional tracks as training tracks.*⁹⁹⁸

⁹⁹⁴ Racing and Wagering Western Australia, *Securing the Future: A Vision of Sustainability for the WA Thoroughbred Industry*, RWWA, March 2010, p12.

⁹⁹⁵ Racing and Wagering Western Australia, *Securing the Future: A Vision of Sustainability for the WA Thoroughbred Industry*, RWWA, March 2010, p9.

⁹⁹⁶ Mr Edward (Ted) van Heemst, Chairman, Perth Racing, *Transcript of Evidence*, 26 February 2010, p5.

⁹⁹⁷ Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 30 April 2010, p42.

⁹⁹⁸ *Ibid.*, pp42-43.

RWWA's proposal to upgrade the Lark Hill facility forms part of its \$70 million requirement for infrastructure funding.⁹⁹⁹ As stated above, this again highlights the importance of securing a dedicated funding stream for racing infrastructure.

It is the Committee's view that RWWA should take a long-term approach to the provision of training facilities for the metropolitan area.

Finding 89

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

Metropolitan racetracks

The Committee understands that there is a misconception within the wider community regarding the need for two metropolitan thoroughbred racetracks at Ascot and Belmont Park.

RWWA has indicated support¹⁰⁰⁰ for the continuation of two thoroughbred turf racing tracks in the metropolitan area:

*As for thoroughbreds, while there is the need to race on a grassed surface, and that is the favoured surface of the thoroughbred industry worldwide, and certainly in Australia, there is a requirement to have two tracks. You cannot race the number of meetings that are conducted in the metropolitan and provincial areas without giving those turf tracks some respite.*¹⁰⁰¹

With regard to the location of Perth's metropolitan racetracks, RWWA reinforced that this matter is out of its hands since both tracks (Ascot and Belmont) are club assets belonging to Perth Racing:

*We do not control the industry's assets; the members do ... whatever the constitution says. We can do what we can do. We can apply commonsense and business rationale but on the big subject of major assets it is really up to the club to make wise decisions.*¹⁰⁰²

It is the Committee's view that the current level of racing within the metropolitan area warrants the continuation of two thoroughbred racetracks.

⁹⁹⁹ Submission No. 7C from Racing and Wagering Western Australia, 31 May 2010, Appendix D.

¹⁰⁰⁰ Mr Ross Bowe, Chairman, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, p40.

¹⁰⁰¹ Mr Robert Pearson, Director, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, p39.

¹⁰⁰² Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, p39.

Finding 90

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

In relation to harness racing, there has been some conjecture regarding the future of the WATA-owned Gloucester Park given its asset value and whether the headquarters of harness racing should be moved to an outer metropolitan venue as has occurred in some other states.

When asked by the Committee, RWWA indicated that the jury is still out in NSW and Victoria which had moved racing from inner metropolitan sites to outer metropolitan venues and that if RWWA had reason to believe from the experience on the east coast that beneficial outcomes could be achieved for the industry, it would have reason to look at whether similar outcomes could be translated to a WA context. In the meantime, RWWA acknowledged that the harness industry favoured the continuation of racing at Gloucester Park:

*The harness industry in Western Australia, and certainly the metropolitan area, seems very fixed on being able to stay at Gloucester Park. That is their right; and, if they have the ability to do so, so be it. If we were to find from the experiment in the other two states that we had reason to believe that we could influence the people involved with Gloucester Park by giving them reasons we think they should move, I am sure that in a proper and sane community it would be looked at.*¹⁰⁰³

It is the Committee's view that RWWA should work with the WATA to ensure that the harness racing industry has the best possible facility for metropolitan racing.

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.

Synthetic tracks

As highlighted in Chapter 2.7 (Distribution of Funds), the Bunbury Turf Club announced a plan to install a synthetic track inside its grass racetrack as part of its \$14m - \$15m redevelopment proposal. The synthetic track will be available for racing and training. This calls into question more broadly whether a synthetic track is needed in the metropolitan area to help meet the increasing demand for better training facilities and take some of the load off existing grass tracks, which are costly to maintain and also require heavy watering.

¹⁰⁰³ Mr Robert Pearson, Director, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, p39.

RWWA does not support the use of synthetic tracks for racing, however, is more open to the potential for synthetic tracks to be used for training purposes.¹⁰⁰⁴ RWWA acknowledged that it had been criticised for being slow on the issue,¹⁰⁰⁵ although the inclusion of the Bunbury Turf Club proposal as part of RWWA's identified need for infrastructure spending is perhaps evidence that this is changing. Even so, given the real and immediate pressures relating to training facilities and water conservation, it would be appropriate for RWWA to thoroughly investigate the viability of synthetic tracks.

Recommendation 52

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

(iv) National totalisator pool

During the Committee's visit to Queensland and Victoria, there was widespread support across various sectors of the industry for a national totalisator pool as the best method for state TABs to compete with corporate bookmakers.¹⁰⁰⁶ Contributors to the Inquiry warned of the difficulties of achieving such a goal (for example anti-competitive reasons might be raised by the ACCC, and there are also the vested interests of the wagering operators in the larger states to compete with).¹⁰⁰⁷ There would also be difficulty coordinating such a process without a federal Minister for Racing. However, the Committee believes that RWWA and the Minister for Racing and Gaming should continue to pursue whatever avenues are available.

Finding 92

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

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.

¹⁰⁰⁴ Ibid.

¹⁰⁰⁵ Mr Ross Bowe, Chairman, Racing and Wagering Western Australia, *Transcript of Evidence*, 4 June 2010, p40.

¹⁰⁰⁶ The Committee heard comments in favour of the idea of larger and/or national pools and also the difficulties involved during briefings conducted with Harness Racing Queensland (13 April 2010); Greyhounds Queensland Limited (13 April 2010); Harness Racing Victoria (14 April 2010); Racing Victoria Limited (16 April 2010).

¹⁰⁰⁷ For example, Mr Ross Bowe, Chairman, and Mr Richard Burt, Chief Executive Officer, Racing and Wagering Western Australia, *Transcript of Evidence*, 30 April 2010, p7.

CHAPTER 4 SUMMARY OF RECOMMENDED LEGISLATIVE AMENDMENTS

As the purpose of the Committee's Inquiry is foremost to review the RWWA Acts, for ease of reference the recommendations pertaining to amending the Act are reproduced here.

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 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 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 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 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 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 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 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 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 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 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 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 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 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 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’.

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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.

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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.



MR J.E. McGRATH, MLA
CHAIRMAN

APPENDIX ONE

SUBMISSIONS RECEIVED

The following submissions were received by the Committee for the Inquiry:

Date	Name	Position	Organisation
20 October 2009	Mr George C Barber	(Private submission)	
4 November 2009	Mr George W Pyett	(Private submission)	
10 November 2009	Mr R.E. Dowding	(Private submission)	
19 November 2009	Mr N.A. Harman	(Private submission)	
18 November 2009	Mr Barry Mahood	Chairman	York Racing (Inc)
29 November 2009	Mr Bruce Brown	Secretary/Treasurer	Geraldton Harness Racing Club (Inc)
30 November 2009	Mr Richard Burt	Chief Executive Officer	Racing and Wagering Western Australia
30 November 2009	Mr Robert Morgan	President	WA TAB Agents' Association Inc.
30 November 2009	Mr Frank Peczka	(Private submission)	
30 November 2009	Ms Toni Walkington	Branch Secretary	CPSU/CSA
30 November 2009	Mr Dino Di Cianno	Director	Best Bookies Price Pty Ltd
30 November 2009	Mr Jon Menzel	Manager	Narrogin Race & Pace Inc
30 November 2009	Ms Margaret Skinner	Secretary	Mt Barker Turf Club Inc
30 November 2009	Mr David Simonette	Chief Executive Officer	Western Australian Greyhound Racing Association
27 November 2009	Mr Wayne Barnes and Mr Tim Barnes	Morley TAB Agents	
26 November 2009	Mr Kevin O'Brien	(Private submission)	

Date	Name	Position	Organisation
27 November 2009	Mr Les Coulson	(Private submission)	
27 November 2009	Ms Astrid Herlihy	(Private submission)	
29 November 2009	Ms Lorna Maund	(Private submission)	
4 December 2009	Mr Gray Williamson	President	West Australian Bloodhorse Breeders' Association Inc.
14 December 2009	Mr Doug Milner	Manager	Broome Turf Club (Inc)
14 December 2009	Mr Brian Paddick	Secretary	WA Racing Trainers' Association
18 December 2009	Mr Craig Chadwick	Chairman	Bunbury Turf Club
24 December 2009	Mr David Prance	Vice Chairperson	Western Australian Provincial Thoroughbred Racing Association (Inc)
24 December 2009	Mr David Wrensted	Manager	Geraldton Turf Club Inc.
23 December 2009	Ms Nicole Bell	Manager	Northam Race Club Inc.
30 December 2009	Mr Harvey Crossman	President	Western Australian Racehorse Owners' Association
15 January 2010	Mr Kevin Jeavons	President	Harness Racing Owners Association of WA Inc
15 January 2010	Mr John Burt	President	Western Australian Trotting Association
15 January 2010	Mr Gino Monaco	President	Fremantle Harness Racing Club (Inc)
14 January 2010	Mr Rob Deadman	Secretary	West Australian Country Harness Racing Association
18 January 2010	Mrs Lesley Solly	President	Albany Racing Club Inc
28 January 2010	Mr Ted van Heemst	Chairman	Perth Racing
2 February 2010	Mr Ken Davies	President	Albany Harness Racing Club
3 February 2010	Mr Richard Burt	Chief Executive Officer	Racing and Wagering Western Australia

Date	Name	Position	Organisation
25 February 2010	Mr Bob Howat	President	WA Bookmakers Association (Inc)
8 March 2010	Mr G.H. Adams	(Private submission)	
23 March 2010	Mr James Spasich	(Private submission)	
6 April 2010	Mr Brendon Gardiner	Secretary/Treasurer	Bridgetown Harness Racing Club Inc
6 April 2010	Mr Revell Douglas	General Manager	Pinjarra Harness Racing Club (Inc)
16 April 2010	Mr Arnold Carter	Secretary	Country Racing Association
26 May 2010	Mr Matthew Spurr	President	Wagin Trotting Club
1 June 2010	Mr Ron Alexander	Director General	Department of Sport and Recreation
13 July 2010	Mr Peter Seaman	Executive Director	Clubs WA
3 August 2010	Mr Bradley Woods	Executive Director	Australian Hotels Association Western Australia
22 September 2010	Hon Grant Woodhams MLA	Member for Moore, Speaker of the Legislative Assembly	

APPENDIX TWO

HEARINGS

The following public hearings were undertaken by the Committee for the purpose of its Inquiry:

Date	Name	Position	Organisation
19 February 2010	Hon Nick Griffiths	Former Minister for Racing and Gaming	
19 February 2010	Mr Ray Turner AM	Former Chairman WA Racing Industry Review	
19 February 2010	Mr Barry Sargeant	Director General	Department of Racing, Gaming and Liquor
26 February 2010	Mr Edward (Ted) van Heemst	Chairman	Perth Racing
	Mr Lex Piper	Vice Chairman	Perth Racing
26 February 2010	Mr Tony Marwick	Chief Executive Officer	WA Provincial Thoroughbred Racing Association
	Mr David Wrensted	Vice Chairman	WA Provincial Thoroughbred Racing Association
26 February 2010	Mr Gray Williamson	President	WA Bloodhorse Breeders Association
	Mr Colin Brown	Committee Member	WA Bloodhorse Breeders Association
	Mr Harvey Crossman	President	Western Australian Racehorse Owners Association
	Mr Bruce Hyde	President	WA Racing Trainers Association
	Mr Brain Paddock	Secretary	WA Racing Trainers Association
26 February 2010	Mr Mark Roberts	President	WA Country Harness Racing Association

Date	Name	Position	Organisation
	Mr Alfred Paganoni	Past President	WA Country Harness Racing Association
26 February 2010	Mr John Burt	President	WA Trotting Association
	Mr Robert Bovell	Chief Executive Officer	WA Trotting Association
	Ms Kerry Hanks	Assistant Chief Executive Officer	WA Trotting Association
8 March 2010	Mr Robert Morgan	President	WA TAB Agents Association Inc
	Ms Swee-Gaik Lim	Secretary	WA TAB Agents Association Inc
	Mr Kenneth Trainer	Advisor	WA TAB Agents Association Inc
8 March 2010	Mr Timothy Barnes	Director	Morley TAB Agency
	Mr Wayne Barnes	TAB Assistant	Morley TAB Agency
8 March 2010	Mr Robert Howat	President	WA Bookmakers Association Inc
	Mr Brian Brown	Association Secretary	WA Bookmakers Association Inc
8 March 2010	Mr Dino Di Cianno	Director	Best Bookies Price Pty Ltd
	Mr Fabio Di Cianno	Employee	Best Bookies Price Pty Ltd
12 March 2010	Ms Vivienne Taylor	President	Mount Barker Turf Club Inc
	Mrs Margaret Skinner	Secretary	Mount Barker Turf Club Inc
	Ms Lynn Heppell	Vice President	Mount Barker Turf Club Inc
	Mr Bill Pearce		Mount Barker Turf Club Inc
	Mr Steve Caporn		Mount Barker Turf Club Inc
12 March 2010	Mrs Lesley Solly	President	Albany Racing Club Inc
	Mr Terence Zambonetti	Vice President	Albany Racing Club Inc
	Mr Shane O'Loughlin	Committee Member	Albany Racing Club Inc

JOINT STANDING COMMITTEE ON THE REVIEW OF THE RACING AND WAGERING WESTERN AUSTRALIA ACTS

Date	Name	Position	Organisation
12 March 2010	Mr Colin Park	General Manager	Albany Harness Racing Club
	Mr Victor Jury	Trainer	Albany Harness Racing Club
19 March 2010	Mr Evan Spencer	President	Golden Mile Trotting Club
	Mr Phillip Virgin	Junior Vice President	Golden Mile Trotting Club
	Mr Brett Snell	Past President	Golden Mile Trotting Club
	Mr Neville Sly	Committee Member	Golden Mile Trotting Club
	Ms Julie Beccaria	Committee Member	Golden Mile Trotting Club
19 March 2010	Mr John Biggs	Representative	North Eastern Goldfields Racing Clubs
19 March 2010	Mr Murray Percasky	Chairman	Kalgoorlie Boulder Racing Club
	Mr Trevor McManus	Vice-Chairman	Kalgoorlie Boulder Racing Club
	Mr David Prance	Immediate Past Chairman	Kalgoorlie Boulder Racing Club
	Mrs Janice Glasson	Administration and Racing Manager	Kalgoorlie Boulder Racing Club
26 March 2010	Mr Barry Mahood	Chairman	York Racing Inc
	Mr Kevin O'Brien	Treasurer	York Racing Inc
	Mr Anthony Boyle	Committee Member	York Racing Inc
26 March 2010	Mr Mervyn Grey	President	York Harness Racing Club
	Mr Patrick Flynn	Vice President	York Harness Racing Club
	Mr Rob Deadman	Secretary	York Harness Racing Club
26 March 2010	Mr Tony Marwick	President	Northam Race Club Inc
	Mrs Nicole Bell	Manager	Northam Race Club Inc
26 March 2010	Mr Peter Dempster	President	Northam Harness Racing Club
	Mr Mark Roberts	Vice President	Northam Harness Racing Club
	Mr Brett Taylor	President	Central Wheatbelt Harness Racing Club

Date	Name	Position	Organisation
29 March 2010	Mr Rodney O'Bree	Chairman	Geraldton Turf Club Inc
	Mr Donald Hammarquist	Vice Chairman	Geraldton Turf Club Inc
	Mr David Wrensted	Manager	Geraldton Turf Club Inc
29 March 2010	Mr Graham Cox	President	Geraldton Harness Racing Club
	Mr John Reynolds	Vice President	Geraldton Harness Racing Club
	Mr Bruce Brown	Treasurer/Committee Member	Geraldton Harness Racing Club
29 March 2010	Mr Robert Newton	Vice President	Mingenew Turf Club
	Mr Tony Crowhurst	Chairman	Dongara Irwin Race Club
6 April 2010	Mr Kenneth Godley	President	Bunbury Trotting Club
	Ms Julie Caldwell	Manager	Bunbury Trotting Club
6 April 2010	Mr Kenneth Nottle	President	Harvey District Trotting Club
	Mr Bruce Jones	Vice President	Harvey District Trotting Club
6 April 2010	Mr Graeme Waters	Vice President	Bridgetown Harness Racing Club
	Mr Brendon Gardiner	Secretary/Treasurer	Bridgetown Harness Racing Club
	Mrs Patricia Abbott	Secretary/Treasurer	Busselton Trotting Club
	Mr David Abbott	Vice President	Busselton Trotting Club
6 April 2010	Mrs Rosanne Pimm	Treasurer	Collie Race Club
	Mr Robert Pimm	Committee Member	Collie Race Club
	Mr Peter Hemsley	Secretary	Collie Harness Racing Club
6 April 2010	Mr Kimberley Tuckey	President	Pinjarra Harness Racing Club
	Mr Revell Douglas	General Manager	Pinjarra Harness Racing Club
6 April 2010	Mr Phillip Ibbotson	Acting Chairman	Pinjarra Race Club
	Mr Keith Jeffreys	Committee Member	Pinjarra Race Club
	Mr Gregory Dixon	Committee Member	Pinjarra Race Club

JOINT STANDING COMMITTEE ON THE REVIEW OF THE RACING AND WAGERING WESTERN AUSTRALIA ACTS

Date	Name	Position	Organisation
	Mr Colin Bellchambers	General Manager	Pinjarra Race Club
30 April 2010	Mr David Simonette	Chief Executive Officer	Western Australian Greyhound Racing Association
30 April 2010	Mr Ross Bowe	Chairman	Racing and Wagering Western Australia
	Mr James Freemantle	Deputy Chairman	Racing and Wagering Western Australia
	Mr Robert Pearson	Director	Racing and Wagering Western Australia
	Mr Richard Burt	Chief Executive Officer	Racing and Wagering Western Australia
30 April 2010	Mr Sam Celenza	President	Western Australian Greyhound Breeders, Owners and Trainers' Association
	Mr Allen Kinnish	Committee Member	Western Australian Greyhound Breeders, Owners and Trainers' Association
3 May 2010	Mr Matthew Spurr	President	Wagin Trotting Club
	Mr Kevin Spurr	Vice President	Wagin Trotting Club
	Mr Donald Davies	Vice President	Wagin Trotting Club
3 May 2010	Mr Steven McGuire	Tote Manager	Kojonup Turf Club
	Mr Timothy Borgward	President	Pingrup Turf Club
	Mr Alan Lewis	Secretary/Treasurer	Pingrup Turf Club
3 May 2010	Mr Nicholas Bosly-Pask	Acting Chair	Narrogin Racing
	Mr Jonathan Menzel	Manager	Narrogin Racing
3 May 2010	Mr John Cowcher	Committee Member	Williams Harness Racing Club
	Mrs Helen Bunch	Secretary/Treasurer	Williams Harness Racing Club
	Mr Stephen Hyde	Life Member	Williams Harness Racing Club
7 May 2010	Mr Kevin Jeavons	President	Harness Racing Owners Association of WA Inc

Date	Name	Position	Organisation
	Mr Kerry Clarke	President	Western Australian Standardbred Breeders Association Inc
	Mr Robert Tomlinson	President	Breeders Owners Trainers and Reinspersons Association of WA Inc
7 May 2010	Mr Maxwell (Dixie) Solly	President	Country Racing Association
7 May 2010	Mr Craig Chadwick	Chairman	Bunbury Turf Club
	Mr Paul Rossiter	Manager	Bunbury Turf Club
16 May 2010	Mr Geoffrey Fahl	Chairman/Treasurer	Carnarvon Race Club
	Mr Laurie Simmons	Committee Member	Carnarvon Race Club
16 May 2010	Mr Victor Barrett	President	Junction Race Club
	Mr Brett Smith	Committee Member	Junction Race Club
4 June 2010	Mr Ross Bowe	Chairman	Racing and Wagering Western Australia
	Mr James Freemantle	Deputy Chairman	Racing and Wagering Western Australia
	Mr Robert Pearson	Director	Racing and Wagering Western Australia
	Mr Richard Burt	Chief Executive Officer	Racing and Wagering Western Australia
4 June 2010	Mr Gino Monaco	President	Fremantle Harness Racing Club
	Mr Geoffrey Warwick	Vice President	Fremantle Harness Racing Club
	Mr Ross Pyke	Secretary/Manager	Fremantle Harness Racing Club
13 August 2010	Mr Barry Sargeant	Director General	Department of Racing, Gaming and Liquor
13 August 2010	Hon Tom McNeil	Past Chairman	Racecourse Development Trust
20 August 2010	Mr Ross Bowe	Chairman	Racing and Wagering Western Australia
	Mr James Freemantle	Deputy Chairman	Racing and Wagering Western Australia

Date	Name	Position	Organisation
	Mr Robert Pearson	Director	Racing and Wagering Western Australia
	Mr Richard Burt	Chief Executive Officer	Racing and Wagering Western Australia

APPENDIX THREE

BRIEFINGS HELD

The following briefings assisted the Committee with its Inquiry:

Date	Name	Position	Organisation
12 April 2010	Mr Ian Fletcher	Director General	Department of Employment, Economic Development and Innovation (DEEDI)
	Mr David Ford	Deputy Director General	Liquor, Gaming, Racing and Fair Trading (DEEDI)
	Mr John Paterson		Office of Racing (DEEDI)
13 April 2010	Mr Bob Lette	Chairman	Harness Racing Queensland
	Mr Mike Godber	Chief Executive	Harness Racing Queensland
13 April 2010	Mr Darren Beavis	General Manager	Greyhounds Queensland Limited
14 April 2010	Mr Roger Joseph	Manager Racing Administration	Australian Trainers Association (Victoria)
14 April 2010	Mr John Anderson	Chief Executive Officer	Harness Racing Victoria
14 April 2010	Mr John Stephens	Chief Executive Officer	Greyhound Racing Victoria
15 April 2010	Mr Andre Agterhuis	Chairman	Ballarat Turf Club
	Mr Shane Brennan	Chief Executive	Ballarat Turf Club
	Mr Ian Ford	Treasurer	Ballarat Turf Club
15 April 2010	Mr Paul James	President	Ballarat and District Trotting Club Inc
	Mr Paul Rowse	Chief Executive	Ballarat and District Trotting Club Inc
	Ms Tamara Lane	Racing Manager	Ballarat and District Trotting Club Inc

Date	Name	Position	Organisation
15 April 2010	Mr Joe Ivisic	General Manager	Harness Racing Victoria Tabcorp Park
16 April 2010	Ms Kerri Hereward	Principal Policy Officer	Department of Justice Office of Gaming and Racing
	Mr Anthony Ilot	Policy Advisor	Department of Justice Gambling Licenses Review
	Mr David Ware	Director	Department of Justice Wagering Licence Allocation and Gambling Licences Transition and Review
16 April 2010	Mr Michael Caveny	Chairman	Country Racing Victoria Limited
	Mr Scott Whiteman	Chief Executive Officer	Country Racing Victoria Limited
	Mr Jamie McGuinness	Strategy and Business Manager	Country Racing Victoria Limited
16 April 2010	Mr Rob Hines	Chief Executive Officer	Racing Victoria Limited (RVL)
	Mr Mark Close	Government Relations Manager	Racing Victoria Limited (RVL)
16 April 2010	Mr Greg Nichols	Managing Director of Sporting Affairs	Betfair
21 June 2010	Mr Bob Bentley	Chairman	Queensland Racing Limited
	Mr Malcolm Tuttle	Chief Operations Manager	Queensland Racing Limited

APPENDIX FOUR

LEGISLATION

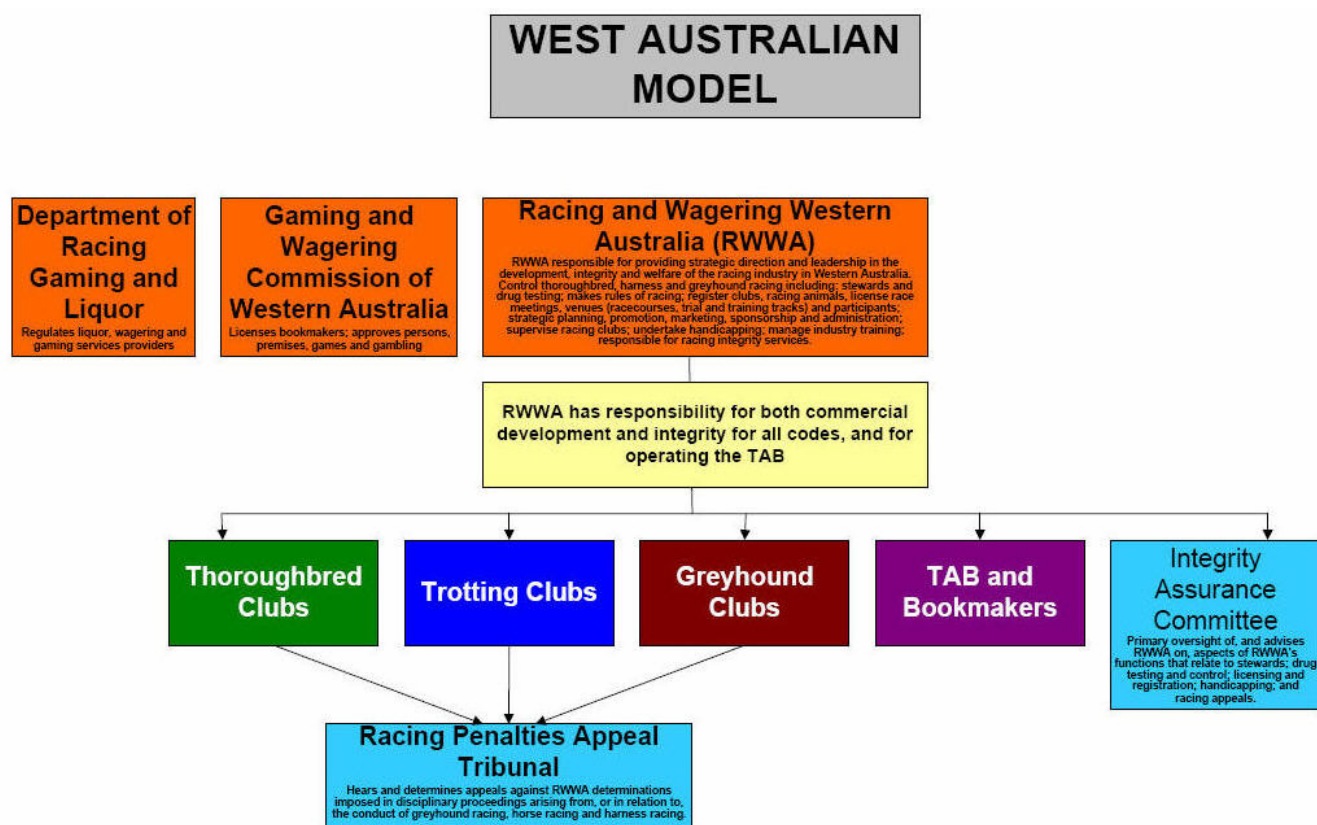
The following legislation was used in the Inquiry:

Legislation	State (or Country)
<i>Acts Amendment (Fixed Odds Betting) Act 1999</i>	Western Australia
<i>Animal Welfare Act 2002</i>	Western Australia
<i>Auditor General Act 2006</i>	Western Australia
<i>Betting Control Act 1954</i>	Western Australia
<i>Betting Control Regulations 1978</i>	Western Australia
<i>Bookmakers Betting Levy Act 1954</i>	Western Australia
<i>Casino (Burswood Island) Agreement Act 1985</i>	Western Australia
<i>Corporations Act 2001</i>	Commonwealth
<i>Financial Management Act 2006</i>	Western Australia
<i>Freedom of Information Act 1992</i>	Western Australia
<i>Gaming and Wagering Commission Act 1987</i>	Western Australia
<i>Liquor Control Act 1988</i>	Western Australia
<i>Parliamentary Commissioner Act 1971</i>	Western Australia
<i>Racing (Proprietary Business Licensing) Act 2000</i>	South Australia
<i>Racing Act 2002</i>	Queensland
<i>Racing and Wagering Western Australia Act 2003</i>	Western Australia
<i>Racing and Wagering Western Australia Regulations 2003</i>	Western Australia
<i>Racing and Wagering Western Australia Tax Act 2003</i>	Western Australia
<i>Racing Penalties (Appeals) Act 1990</i>	Western Australia
<i>Racing Restriction Act 2003</i>	Western Australia

Legislation	State (or Country)
<i>State Records Act 2000</i>	Western Australia
<i>Statutory Corporations (Liabilities of Directors) Act 1996</i>	Western Australia
<i>Thoroughbred Racing Act 1996</i>	New South Wales
<i>Totalisator Agency Board Betting Tax Amendment Act 1999</i>	Western Australia

APPENDIX FIVE

INTEGRITY ASSURANCE FRAMEWORK FOR RACING AND WAGERING IN WESTERN AUSTRALIA¹⁰⁰⁸



¹⁰⁰⁸ Judge G.D. Lewis AM, *A Report on Integrity Assurance in the Victorian Racing Industry*, 1 August 2008, p94. Available at: www.justice.vic.gov.au/wps/wcm/connect/e2d0aa80404a6ff3a2befbf5f2791d4a/Lewis+Report+-+Integrity+Assurance+-+Vic+Racing+Industry+Aug+08.pdf?MOD=AJPERES Accessed on 12 October 2010.

APPENDIX SIX

COMPARISON OF WAGERING TAXATION RATES BY JURISDICTION¹⁰⁰⁹

TAB Tax Rate Comparison Table - Estimates			Rate includes GST at 9.09% or 1/11th of Gross Revenue or Margin									
	Rate of Turnover / Gross Revenue											
	WA	NSW	VIC		QLD	SA		TAS	Betfair	NT	ACT	
			Pre 2012	Post 2012		Pre 2012	Post 2012					
Pari Racing Gross Wagering Tax												
% of Gross Revenue	21.00%	28.20%	28.20%	16.69%	20.00%	11.19%	9.09%	9.09%		40.00%	9.09%	
% of Turnover	3.57%	4.79%	4.79%	2.84%	3.40%	1.90%	1.55%	1.55%		2.45%	1.55%	
Fixed Odds Betting Racing Gross Wagering Tax												
% of Gross Revenue	18.18%	20.00%	20.00%	13.47%	20.00%	9.09%	9.09%	9.09%	24.09%	19.09%	9.09%	
% of Turnover	2.00%	2.20%	2.20%	1.48%	2.10%	1.00%	1.00%	1.00%	1.20%	1.24%	1.00%	
Pari Sports Gross Wagering Tax												
% of Gross Revenue	20.00%	28.20%	28.20%	16.69%	20.00%	11.19%	9.09%	9.09%		40.00%	9.09%	
% of Turnover	5.00%	4.79%	4.79%	2.84%	3.40%	1.90%	1.55%	1.55%		2.45%	1.55%	
Fixed Odds Betting Sports Gross Wagering Tax												
% of Gross Revenue	5.00%	20.00%	20.00%	13.47%	20.00%	9.09%	9.09%	9.09%	24.09%	9.09%	9.09%	
% of Turnover	0.50%	2.00%	2.00%	1.35%	2.00%	0.91%	0.91%	0.91%	1.20%	0.91%	0.91%	
Notes:												
Pari Racing tax rates as a % of Turnover are based on a Retail take out rate of 17% for all TAB's (Equivalent to Gross Revenue)												
FOB Racing tax rates as a % of Turnover are based on a Retail FOB book margin of 11% for all TAB's FOB books except in NT corporate setting where 6.5% has been used and 5% for Betfair (= Gross Revenue)												
Victorian estimates assume that the benefit of Gaming machine revenues already result in an offset tax (i.e. on the current tax or Economic rent paid)												
GST in all circumstances is one eleventh of the Gross Revenue (where Gross Revenue = turnover less dividends paid to the customer)												
NT Bookmakers' taxes are capped at 250K per annum - Individual enterprise and total rate of tax on bookmakers turnover unknown as volume and margin rates vary												
Betfair also pays sponsorship to Race Clubs directly												
ToteTAS pays and annual wagering licence fee of approximately 6m per annum indexed, ACT TAB pays a annual fee of Licence fee monthly of 10% of capital. In addition clubs receive 4% and RDF 0.5%.												
In cases of GST Reimbursement, the GST is paid directly to the ATO and rebated back via WA Treasury and RGL												
VIP tax rate for (contracted professional electronic customers) who receive a commission/rebate, i.e. we will receive a tax concession on pari margin Tax of 10% of gross Revenue)												
ACT License Fee:												
Pursuant to a deed of agreement with the ACT Government, ACTTAB has been granted a 20-year exclusive license to provide totalisator betting services to the public, commencing from 1 Jul 1996. An annual license fee is payable (in monthly instalments) to the ACT government, equal to 10% of the present value of the estimated profit after income tax equivalents expense of ACTAB for the 20-year period. ACT Treasury has advised that the value of the license was \$35,661,484 as at 1 July 2002.												
ACTTAB 2008-2009 Annual Report, pp.18-19												
TAS Annual Wagering Levy												
The Totalisator Wagering Levy will commence in 2009-10 and is indexed in line with the Consumer Price Index.												
The Levy will be paid by the holder of the Tasmanian Gaming Licence with a totalisator (parimutuel) endorsement.												
During 2009-10, the regulation of TOTE Tasmania, and any subsequent holder of a Tasmanian Gaming Licence with a totalisator endorsement,												
will come under the jurisdiction of the Gaming Control Act 1993. A fixed annual totalisator wagering levy of \$6.0 million (indexed) will apply in 2009-10 to the holder of such a licence.												

¹⁰⁰⁹ Reproduced with the permission of Racing and Wagering Western Australia (Mr Evan Nunn, Manager Corporate Strategy, Racing and Wagering Western Australia, email, 28 September 2010).

