



**THIRTY-EIGHTH PARLIAMENT**

**REPORT 35**

**STANDING COMMITTEE ON ESTIMATES AND  
FINANCIAL OPERATIONS**

**REPORT ON THE**

**INQUIRY INTO WESTERN AUSTRALIAN  
TOURISM COMMISSION'S INVOLVEMENT  
IN MAJOR TOURISM EVENTS**

Presented by Hon Giz Watson MLC (Chair)

December 2011

## **STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS**

### **Date first appointed:**

30 June 2005

### **Terms of Reference:**

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

#### **“2. Standing Committee on Estimates and Financial Operations**

- 2.1 *An Estimates and Financial Operations Committee* is established.
- 2.2 The Committee consists of 5 Members, 3 of whom shall be non-government Members.
- 2.3 The functions of the Committee are to consider and report on -
- (a) the estimates of expenditure laid before the Council each year;
  - (b) any matter relating to the financial administration of the State;
  - (c) any bill or other matter relating to the foregoing functions referred by the House;
  - (d) to consult regularly with the Auditor General and any person holding an office of a like character.”

### **Members as at the time of this inquiry:**

Hon Giz Watson MLC (Chair)

Hon Ljiljana Ravlich MLC

Hon Philip Gardiner MLC (Deputy Chair)

Hon Ken Travers MLC

Hon Liz Behjat MLC

The Hon Ken Travers MLC participated in the Hearings for this Inquiry but did not take part in Committee deliberations regarding the final report.

### **Staff as at the time of this inquiry:**

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## **Government Response**

This Report is subject to Standing Order 337:

*After tabling, the Clerk shall send a copy of a report recommending action by, or seeking a response from, the Government to the responsible Minister. The Leader of the Government or the Minister (if a Member of the Council) shall report the Government's response within 4 months.*

The four-month period commences on the date of tabling.



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## EXECUTIVE SUMMARY AND RECOMMENDATIONS

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1 This inquiry's principal focus was to determine whether the Western Australian Tourism Commission's (Tourism WA) sponsorship of the One Movement for Music Festival represented value for money for the taxpayer. In this regard, the Committee's main focus was on the public outcomes that were achieved in sponsoring the event.

### **Value to the taxpayer**

2 The Committee is of the view that the main outcomes of the One Movement for Music Festival were:

- the public tourism related benefits were reasonably close to those forecast for the event;
- while event attendances were poor, there were some positive artistic benefits from staging the event; and
- the most significant adverse outcome of the One Movement for Music Festival was the financial loss incurred by One Movement Pty Ltd in establishing, promoting and staging the One Movement for Music Festival in 2009 and 2010.

3 The Committee is of the view that the Global Financial Crisis (GFC) had an adverse impact on the event's viability, particularly in 2009.

4 The Committee finds that the Western Australian taxpayer received value for money from Tourism WA's sponsorship of the One Movement for Music Festival as it achieved an independently measured positive tourism return on investment.

5 However, after taking One Movement Pty Ltd's financial losses into account, the value of the festival to the Western Australian economy as a whole is open to question.

### **Accountability**

6 Tourism WA attracted substantial criticism for its role in the One Movement for Music Festival.

7 Tourism WA's initial reluctance to answer the Committee's questions and lack of transparency surrounding the One Movement for Music Festival, understandably led the Committee to seek further answers which again were unsatisfactory leading the Committee to initiate this Inquiry.

8 The Committee does, however, acknowledge the full cooperation of Tourism WA following the establishment of this Inquiry.

**RECOMMENDATIONS**

Recommendations are grouped as they appear in the text at the page number indicated:

Page 11

**Finding 1: The Committee accepts that the Global Financial Crisis had an adverse impact on the event’s viability, particularly in 2009.**

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**Finding 2: The Committee considers milestone payments to be an effective way to minimise risk in contracts for these types of sponsorship arrangements. Although the performance reputation of the proponent mitigates the risk of default by the proponent, the Committee suggests that stronger safeguards would be preferable to prevent the proponent from accepting payments and then not staging the event.**

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**Recommendation 1: The Committee recommends that during future contract negotiations Tourism WA seeks stronger safeguards in matching the timing of milestone payments with the timing of the contractual performance delivery of the event.**

Page 17

**Finding 3: The Committee finds that the Shareholders Agreement (to which Tourism WA was not a party) was a relevant document but was not executed. This indicates that Tourism WA may not have been sufficiently diligent in their scrutiny of all relevant documents.**

Page 17

**Finding 4: The Committee finds that the Sponsorship Agreement was not binding on all parties.**

Page 17

**Finding 5: The Committee finds that although all financial contractual obligations were met in this instance, the fact that the Sponsorship Agreement was not binding on all parties is not good practice and should not happen in the future.**

Page 17

**Recommendation 2: The Committee recommends that in future, Tourism WA ensure that all material supporting agreements are consistent throughout, formally executed and give proper effect to the main contract.**



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**Finding 6:** The Committee finds that Tourism WA responded quickly and appropriately in implementing the recommendations of the Public Sector Commissioner's report.

Page 26

**Finding 7:** The Committee finds that in future Tourism WA should not proceed with major tourism events without engaging relevant stakeholders.

Page 27

**Recommendation 3:** The Committee recommends that due to the high financial risk of many major tourism events that, as a matter of urgency, Tourism WA produce a policy that sets out the minimum standards required for due diligence.

Page 31

**Finding 8:** The Committee finds that Tourism WA in its sponsorship of the One Movement for Music event operated to fill a gap due to market failure. In doing so it minimized the financial exposure of the State.

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**Recommendation 4:** The Committee recommends that Tourism WA should review its methodology of calculating economic value to the State from visitor numbers.

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**Finding 9:** The Committee finds it unusual that Tourism WA and Eventscorp management did not formally inform the full Tourism WA Board in 2010 of the losses incurred by One Movement Pty Ltd in running the 2009 event.

The Committee is of the view that this is a significant matter because One Movement Pty Ltd's losses were so large they brought into question its capacity to continue to stage the event.



# CHAPTER 1

## INTRODUCTION

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- 1.1 The Estimates and Financial Operations Committee regularly holds hearings with government departments and agencies regarding their budgets. On 18 October 2010, in the course of the Budget Estimates hearing with Tourism WA, several questions were taken on notice regarding the One Movement for Music Festival. One of these questions was seeking detailed information regarding the One Movement for Music Festival events such as tickets sold, event attendance figures and how many free tickets had been issued and who had received them.
- 1.2 In response, Tourism WA asked the Committee to reconsider its request for the information on the grounds that it was commercially sensitive to third parties<sup>1</sup>.
- 1.3 The Committee in assessing Tourism WA's response raised its concerns that responses it had received '*did not answer the nature of the question or the detail for which we were seeking in that question appropriately*'<sup>2</sup> and therefore determined that a second hearing was required.
- 1.4 After the second hearing held on 13 December 2010, the Committee was still not satisfied that its concerns had been met and resolved to inquire further into the matter. It adopted the following Terms of Reference:

*The Standing Committee on Estimates and Financial Operations is to inquire into and report on whether the Western Australian Tourism Commission's (and its subsidiaries including Eventscorp) involvement with and support for the One Movement for Music Festival is delivering value for money to the Western Australian taxpayer.*

*With respect to the One Movement for Music Festival the Inquiry will consider:*

- *Western Australian Tourism Commission's corporate objectives and strategy in supporting this event;*

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<sup>1</sup> Letter from Minister of Tourism, 18 October 2010, Answer to Question on Notice A8

<sup>2</sup> Hon Philip Gardiner MLC, Acting Chair, Standing Committee on Estimates and Financial Operations *Transcript of Evidence*, 13 December 2010, p2.

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- *the effectiveness of Western Australian Tourism Commission's management with respect to arranging and/or participating in this event;*
- *the decision-making process and rationale behind Western Australian Tourism Commission's financial involvement in supporting this event;*
- *the apportionment of risk between the public and private sector with respect to this event;*
- *the adequacy of processes for evaluating whether this event meets the Western Australian Tourism Commission's expected outcomes; and*
- *any other relevant matter.*

1.5 The Committee advertised the inquiry in the West Australian on 26 February 2011, 2 March 2011 and 5 March 2011. The Committee wrote to nine identified stakeholders inviting them to provide a submission. The Committee requested from Tourism WA all relevant documents and in response received over four hundred documents. A list of submissions received is provided in Appendix One. A list of witnesses who appeared before the Committee is provided in Appendix two.

1.6 The Committee restricted its consideration of the Western Australian Tourism Commission's strategic plan to whether or not the sponsorship of the One Movement for Music event was consistent with that plan.

1.7 The Committee limited its examination of the measurement of tourism event outcomes to:

- examining the outcomes achieved for the One Movement for Music Festival; and
- whether or not there were any issues associated with those outcomes.

### **Tourism WA's involvement in the One Movement for Music Festival**

1.8 Tourism WA's involvement with this major music festival started with their decision to provide \$1.55m sponsorship to In the City Access All Areas.

1.9 The WA event was an attempt to take the successful Manchester In the City event and create an Asian franchise based in Perth. The Manchester In the City event was assessed in 2006 as a well established, highly regarded annual music industry event

run in Manchester, United Kingdom. A key person in the event was Mr Tony Wilson, the founder along with Mrs Yvette Livesey of In the City Manchester.

- 1.10 Mr Wilson died on 10 August 2007 and the event proponents decided not to proceed with the event, advising Tourism WA on 29 August 2007 that sponsorship funding would no longer be required.
- 1.11 Sunset Events reactivated the proposal to stage the In the City Event and sought sponsorship funding from Tourism WA. The Board of Tourism WA (TWA Board) resolved in March 2008 to approve *'the total payment of \$2.975m to Sunset Events over three years to conduct 'In the City Perth' from 2009 to 2011, subject to the negotiation of suitable contractual terms.'*<sup>3</sup> This funding included:
- \$2.7 million in event sponsorship;
  - \$50,000 in research; and
  - \$225,000 in event leveraging.
- 1.12 In August 2008, the TWA Board was advised by Sunset Events that it proposed to use a different event partner, Musexpo, and to change some parameters for the event<sup>4</sup>. The Board agreed that a number of issues needed to be discussed further with the event proponents and agreed to re-consider a Matter for Decision after discussion with event proponents.
- 1.13 These discussions took place with Sunset Events on 29 August 2008 and Tourism WA management reported back to the Board the key outcomes which included:
- *the level of funding previously approved at the March 2008 Tourism WA Board meeting for the concept under the 'In the City Perth' banner remains unchanged at \$2.7m over three years (2009-2011)*<sup>5</sup>;
  - noting *'the proponents investment and acknowledges that a significant level of investment risk is being carried by the group'*<sup>6</sup>; and
  - *Eventscorp contract with the One Movement group to deliver the event as opposed to the own and operate model.*<sup>7</sup>

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<sup>3</sup> Tourism WA, Minutes of Board Meeting, 28 March 2008.

<sup>4</sup> Letter from Sunset Events, August 2008.

<sup>5</sup> Tourism WA Chief Executive Officer and Executive Director, Eventscorp, *Minutes of Meeting with Sunset Events*, 29 August 2008, p3.

<sup>6</sup> *Ibid.* p4.

<sup>7</sup> *Ibid.*, p5.

- 1.14 Following the change of government in September 2008, the TWA Board on 31 October 2008 ratified its decision to endorse the event and resolved, amongst other things to ‘*approve the subsequent recommendations that have been made by Tourism WA in response to the business arising from the August 2008 Board Meeting.*’<sup>8</sup>
- 1.15 The first festival was held between 16 and 18 October 2009.
- 1.16 The second festival was held between 6 and 10 October 2010.
- 1.17 On 1 April 2011 the third festival was deferred following discussions between Eventscorp and One Movement Pty Ltd.
- 1.18 On 23 July 2011 the organisers of the One Movement for Music Festival and Eventscorp agreed to discontinue the festival.

### **The One Movement for Music Festival**

- 1.19 The One Movement for Music Festival was proposed to be an event based around a music conference and aimed to expose new emerging international music talent to the public and industry decision makers.
- 1.20 The Sponsorship Agreement between One Movement Pty Ltd and Tourism WA required it to stage an event that consisted of three components:
- A music industry convention ‘*consisting of panels, forums, interviews and networking opportunities for industry leaders and executives to exchange views, participate in discussions relating to latest industry trends, discuss new opportunities, network with peers from various aspects of music, media and technology sectors.*’<sup>9</sup>
  - A music festival showcasing signed and unsigned local, national and international acts;<sup>10</sup> and
  - A Trade Show/Expo to allow companies to connect and promote their products with entertainment and music industry decision makers. The Trade show was not intended to be run in 2009.<sup>11</sup>

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<sup>8</sup> Tourism WA, *Minutes of Board Meeting*, 31 October 2008.

<sup>9</sup> Sponsorship Agreement, 9 March 2009, p1.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

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**Event Stakeholders**

1.21 There were a number of participants in the staging of the One Movement for Music festival:

- One Movement Pty Ltd;
- Sunset Events;
- Chugg Entertainment Pty Ltd;
- Pangea Entertainment LLC ('A&R Worldwide'); and
- Tourism WA.

*One Movement Pty Ltd*

1.22 One Movement Pty Ltd was the event promoter. It was created solely for the event.

*Sunset Events*

1.23 A significant related party to One Movement Pty Ltd was Sunset Events. Sunset Events is a partnership, consisting of the same companies that are shareholders of One Movement Pty Ltd.<sup>12</sup>

1.24 Sunset Events has a history of involvement in a number of well known, successful events including Southbound, West Coast Blues 'n' Roots Festival and Stereosonic.

1.25 Sunset Events was appointed general manager of One Movement Pty Ltd with responsibilities that included, amongst other things, managing the event on a day to day basis, implementing and complying with the business plan for the event and completing documents required by Tourism WA.<sup>13</sup>

*Chugg Entertainment Pty Ltd*

1.26 Chugg Entertainment Pty Ltd is the promotional company of Mr Michael Chugg. He was described by Sunset Events as '*the pioneer of the Australian music industry having over 40 years experience in organising and promoting international artists.*'<sup>14</sup>

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<sup>12</sup> Mr Andrew Chernov, Director, One Movement Pty Ltd, *Transcript of Evidence*, 5 September 2011, p17.

<sup>13</sup> Shareholder's Agreement V2, Undated, p11-12.

<sup>14</sup> Letter from Sunset Events, March 2008, p4.

- 1.27 Chugg Entertainment Pty Ltd's role included, amongst other things, east coast marketing activities, general introductions and assisting with delivering music content.<sup>15</sup>

*A&R Worldwide*

- 1.28 Pangea Entertainment Group LLC trades as A&R Worldwide which runs Musexpo, *'an established annual international music and media conference that has taken place in West Hollywood, California since 2005.'*<sup>16</sup> A&R Worldwide was responsible for the delivery of a turn-key music conference under a consultancy agreement with One Movement Pty Ltd.<sup>17</sup>

*Tourism WA*

- 1.29 Tourism WA's role can best be described as that of a cornerstone sponsor of the event.

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<sup>15</sup> Shareholder's Agreement V2, Undated, p14.

<sup>16</sup> Letter from Sunset Events, March 2008, p3.

<sup>17</sup> Shareholder's Agreement V2, Schedule 9.

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## CHAPTER 2

### TOURISM WESTERN AUSTRALIA - STRATEGIC AND CORPORATE OBJECTIVES

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#### **Tourism WA Strategic Plan**

- 2.1 The 2008-2013 strategic plan was in place when the One Movement for Music Festival was approved by the Tourism WA Board. This plan was revised with the change of Government in September 2008 and was adopted in 2010/11.
- 2.2 The key initiatives of the 2008-2013 strategic plan relevant to the One Movement for Music Festival and this inquiry were:
- measuring ‘*the social and environmental value of tourism in addition to the economic value*’<sup>18</sup>; and
  - promoting and publicising ‘*successful partnerships between Tourism WA and tourism operators and government agencies.*’<sup>19</sup>
- 2.3 The most significant change in the revised 2010/11 Strategic Plan was to focus the agency on three operational areas:
- *marketing WA as a competitive tourism destination;*
  - *developing, attracting and marketing major events; and*
  - *supporting significant tourism infrastructure and development projects.*<sup>20</sup>
- 2.4 The 2010/11 Strategic Plan announced a new major events strategy:
- Eventscorp will build on the work done to date with the development of a new major events strategy that will deliver an annual world class events calendar for the State. The calendar will feature international cultural, arts and sporting events as well as a range of unique, home-grown Western Australian events.*<sup>21</sup>

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<sup>18</sup> Tourism Western Australia, *Strategic Plan 2008 to 2013 Building for the Future*, p25.

<sup>19</sup> *Ibid.*

<sup>20</sup> Tourism Western Australia, *Strategic Plan 2010/11*, p2.

<sup>21</sup> *Ibid.*, p4.

- 2.5 Tourism WA stated that it would be withdrawing from activities that deliver marginal economic benefit and will concentrate on activities that could accelerate significant tourism growth.<sup>22</sup>

### **Restructure of Eventscorp and Tourism WA in May 2010**

- 2.6 In May 2010, Tourism WA announced a restructure as part of adopting the new strategy for tourism.<sup>23</sup> This strategy includes changes to the way marketing opportunities arise from major events to be managed by shifting responsibility for events marketing and leveraging from the Eventscorp business unit to the marketing business unit.

### **Tourism WA's Sponsorship of the One Movement Event**

- 2.7 Tourism WA's involvement with the One Movement for Music Festival was in the form of a sponsorship through which it would pay One Movement Pty Ltd on the completion of certain activities. These activities are termed milestones in the agreement. The total sponsorship to be paid between 2009 and 2011 is outlined in the table below.

**Table 1**

#### **One Movement Festival Sponsorship Funding provided by Tourism WA**

	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>Total</b>
	<b>\$,000</b>	<b>\$,000</b>	<b>\$,000</b>	<b>\$,000</b>
Total Sponsorship	800	900	1,000	2,700

Source: Sponsorship Agreement (amounts exclude GST)

- 2.8 Tourism WA outlined its rationale for supporting the event in its March 2008 Board submission as follows:

*Sunset Events and In The City Manchester consider that the current state of Western Australia's music scene, coupled with Perth's status as Australia's gateway to Asia present the perfect platform from which to launch a major international music industry event.*

...

*Is it aimed that In The City Perth will become the biggest urban based music festival in the Asia Pacific region and become the most*

<sup>22</sup> Tourism Western Australia, *Strategic Plan 2010/11*, p4.

<sup>23</sup> *Ibid*, p2.

*important new music A&R showcase in the region, helping to launch the careers of new bands and artists internationally.*

*It is envisaged that In The City Perth will contribute significantly to the development of an internationally focussed marketplace for the WA Music Industry and open international pathways and trade links. The ultimate goal is to significantly contribute to the development of the creative industries cluster in WA.<sup>24</sup>*

### **Market Failure for Major Tourism Events**

- 2.9 The Committee discussed the issue of event retention with the TWA Board and was advised by the Commissioners that:

*Mr Cearns: ...I think that the last point—or another point—to add is that we are sponsors of events and we support events, predominantly. We rely very heavily on event managers and promoters et cetera to come to us with ideas that we can partner up with them, and we do push pretty hard on those people to try to lock in as much security as we can for Western Australia, whether that be by brand IP or not taking it somewhere else. Largely, they are the risk-takers and we try to push them as hard as we can, but at the end of the day it is their business. To try to lock them in and say, “You can’t do this anywhere else in the world,” that is their bread and butter. We can push them so far too to say, “You can’t do One Movement anywhere else in the world,” but it is kind of hard to say that they cannot do this sort of thing forever and ask them to sign here.<sup>25</sup>*

and later that:

*Mr Welborn: It is easy to say, “Build equity in events”, or, “Build home-grown events”, but it comes down to the issue of ownership. Often in the past you would be bidding for events like the Red Bull Air Race, for example, which comes and then goes somewhere else; you will never get inbuilt exclusivity for that event. One of the advantages of, and why we focussed on, building events is to anchor them in the state. There are a variety of ways to do that either legally or by intrinsically linking the event to infrastructure and other things.<sup>26</sup>*

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<sup>24</sup> Tourism WA Matter for Decision Board Paper, *Funding for In The City Perth*, 14 March 2008.

<sup>25</sup> Mr Howard Cearns, Commissioner, *Tourism WA, Transcript of Evidence*, 26 September 2011, p18-19.

<sup>26</sup> Mr John Welborn, Commissioner, *Tourism WA, Transcript of Evidence*, 26 September 2011, p19.

and finally that:

*Ms Lamont: The only other comment I will make on that is Eventscorp's reason for being is that there is a market failure in this area. If there was not a market failure, we would not need to be doing it. The other point that you may find of interest is that we also try very hard to minimise, in terms of the size of the events budget, the amount we invest in what you may consider to be "high risk"; it is actually very small. Even though it is a significant amount of money, the vast majority of our events funding goes into events that are not start-up events. At some point everyone in business spends a little bit trying to grow something new.<sup>27</sup>*

- 2.10 The evidence provided by the Commissioners, as outlined above, led the Committee to support the Commissioner's view that market forces alone will not produce special events and that Eventscorp exists to address that market failure.

### **The Global Financial Crisis and Tourism Markets**

- 2.11 The Tourism Forecasting Committee's (TFC) 2009 Forecast highlights the challenges facing the tourism industry around the time of the 2009 event. These challenges arise mainly from the GFC. In its overview the TFC stated that tourism '*is facing its third major (and probably its greatest) challenge so far this decade after the terrorism events of 2001, and the SARS period in 2003*'<sup>28</sup> and made the following comment:

*As tourism is a discretionary form of expenditure, global international tourism arrivals are expected to fall for the first time since 2001. In addition, when consumers economise on their travel they commonly substitute shorter haul travel for long haul travel. Australia will not escape these trends.<sup>29</sup>*

- 2.12 In its evidence, Tourism WA advised that it '*certainly put a lot of pressure on the event organisers when things started to unfold in relation to the GFC. Starting an inaugural event in any climate is always a challenge. We were very attuned to the issues as they built up. From March, 2008, I think things got more pressured closer to the event.*'<sup>30</sup>

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<sup>27</sup> Ms Kate Lamont, Commissioner, Tourism WA, *Transcript of Evidence*, 26 September 2011, p19.

<sup>28</sup> Tourism Forecasting Committee, *Forecast 2008 No. 2*, Tourism Research Australia, Department of Resources, Energy and Tourism, Canberra, 4 February 2009, p10.

<sup>29</sup> *Ibid.*

<sup>30</sup> Mr David van Ooran, Executive Director Eventscorp, Tourism WA, *Transcript of Evidence*, 29 August 2011, p8.

2.13 Similarly, the Directors of One Movement Pty Ltd stated that *‘the other thing that was quite damaging to us was, around the time we announced the event, the global financial crisis hit.’*<sup>31</sup>

**Finding 1: The Committee accepts that the Global Financial Crisis had an adverse impact on the event’s viability, particularly in 2009.**

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<sup>31</sup> Mr David Chitty, Director, One Movement Pty Ltd, *Transcript of Evidence*, 5 September 2011, p2.



## CHAPTER 3

### EVENT CONTRACT MANAGEMENT

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3.1 The substantive contract between Tourism WA and One Movement Pty Ltd was the Sponsorship Agreement dated 9 March 2009. This agreement outlined the terms under which Tourism WA would pay its sponsorship of the One Movement for Music Festival to One Movement Pty Ltd.

3.2 The parties to the agreement were Tourism WA and One Movement Pty Ltd.

#### **Contract Structure**

##### *Milestone Payments*

3.3 A critical feature of this agreement is that the financial risk for non-performance was borne by One Movement Pty Ltd. This risk allocation was achieved through a milestone payment structure under which sponsorship payments were triggered by achieving certain performance benchmarks.<sup>32</sup>

3.4 The Committee considers milestone payments to be an effective way to minimise risk in contracts for these types of sponsorship arrangements.

##### *Timing of Cash Flows*

3.5 A further feature of the agreement was that the milestone payments by Tourism WA were to be made over the course of the event. A significant portion of these payments were to be made prior to the staging of the event in each of the successive years.

3.6 The Committee notes that this potentially represented a financial risk to the State as there appeared to be no safeguards preventing the proponent from accepting the payments and then not staging the event. However, this seems to be standard practice for sponsorship arrangements in the tourism industry.

3.7 Tourism WA acknowledged that the risk did exist but advised that the fact that the event promoter's reputation would be damaged if they failed to deliver the event was a major risk mitigant.<sup>33</sup>

3.8 The alternative to the current sponsorship arrangements would be to withhold substantial payment until after the delivery of the event. However, the Committee

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<sup>32</sup> Clause 3, Sponsorship Agreement, 9 March 2009.

<sup>33</sup> Mr Howard Carns, Commissioner, Tourism WA, *Transcript of Evidence*, 26 September 2011, p29.

recognises that attracting events under these arrangements is unlikely to be commercially acceptable in the tourism industry.

### Committee Comment

- 3.9 The Committee accepts Tourism WA's advice with regard to risk mitigation. The Committee recognises the risk of non-performance by proponents but accepts that the nature of these contracts will always have an element of risk to public funds.

**Finding 2: The Committee considers milestone payments to be an effective way to minimise risk in contracts for these types of sponsorship arrangements. Although the performance reputation of the proponent mitigates the risk of default by the proponent, the Committee suggests that stronger safeguards would be preferable to prevent the proponent from accepting payments and then not staging the event.**

**Recommendation 1: The Committee recommends that during future contract negotiations Tourism WA seeks stronger safeguards in matching the timing of milestone payments with the timing of the contractual performance delivery of the event.**

### Parties to the contractual arrangements

#### *Heads of Agreement*

- 3.10 The formal relationship between Tourism WA and the One Movement for Music Festival commenced with the execution of a Heads of Agreement on 24 September 2008 which sets out the commercial outcomes that Tourism WA needed to achieve from the event.
- 3.11 The parties to the Heads of Agreement were Chitty Pty Ltd, Chernov Pty Ltd and Legge Pty Ltd (the Event Holder) and Western Australian Tourism Commission trading as Tourism Western Australia.
- 3.12 The Heads of Agreement sets out the relationship between the various parties. The Agreement is attached at Appendix 3.

#### *Shareholder's Agreement*

- 3.13 During the hearing, the following evidence was provided:

*The CHAIR: Then why did you agree to run the One Movement for Music event with a budget of millions of dollars and establish One Movement Pty Ltd with a share capital of capital of three dollars?*



**Mr Chitty:** *Sorry, I cannot answer that question. That is more of a Andrew or a James question, I think.*

**Mr Chernov:** *Because the share capital was just the standard, I guess, one-dollar-each structure that we wanted to put up as the capital that would be at risk in theory. But in terms of the money that as shareholders we were ultimately obliged to put into the business to keep it going, whether that was not strictly share capital but we still had to pump money into it. There is no real link between the size of the budget and the amount of money that was required to run the event and the share capital that is on the books.*

**The CHAIR:** *Is that a fairly normal arrangement in this line of business?*

**Mr Chitty:** *Most businesses. I think in a lot of businesses you would start a company and then you have got to put money as required to meet your obligations, and to start a company you literally only need to be registered and the accountant to register it and put a dollar in to start it. But effectively there was a lot more money than went in, but just when we set the company up we only need—hence the one-dollar company or whatever the term people refer to.*

**Mr Legge:** *Basically in the shareholder's agreement and certainly the internal workings is that we undertook to provide working capital to the extent required by each party, and that is the backing that we gave One Movement.*

**The CHAIR:** *And that understanding or that agreement, was that in writing as well?*

**Mr Legge:** *It was in the draft shareholders agreement that Andrew was referring to that was not signed. The undertaking, I guess, is formulated in that.*

**The CHAIR:** *But it was never signed.*

**Mr Chernov:** *Never signed, no.*<sup>34</sup>

- 3.14 The Committee received a copy of the draft Shareholders' Agreement between One Movement Pty Ltd, Legge Pty Ltd, Chernov Pty Ltd, Chitty Pty Ltd, Sunset Events, Chugg Entertainment Pty Ltd and A&R Worldwide. While the agreement was not

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<sup>34</sup> Mr James Legge, Mr David Chitty and Mr Andrew Chernov, Directors, One Movement Pty Ltd, *Transcript of Evidence*, 5 September 2011, p30.

formally executed, One Movement Pty Ltd directors stated they believed the draft agreement was binding as is set out in the evidence above.<sup>35</sup>

- 3.15 The meeting of their financial obligations relating to this event by the parties to the Shareholders Agreement evidences the statement above.
- 3.16 Tourism WA was not a party to the Shareholder's Agreement.

#### *Sponsorship Agreement*

- 3.17 Clause 4.3 of the Sponsorship Agreement executed on 9 March 2009 states:

*Subject to clause 2.19.13 the Event Holder must not (and must procure and all times ensure that any Related Entity of the event Holder does not) during the term sanction, hold, be instrumental in holding or do anything to assist any other entity to hold or be instrumental in holding any event within the Territory that is in the opinion of Tourism WA similar to the event without Tourism WA's prior written approval. The approval of Tourism WA may be given or withheld at the absolute discretion of Tourism WA.*<sup>36</sup>

- 3.18 Clause 4.4 is a 24 month non-compete clause applicable to the Related Entity in any location in the Territory.
- 3.19 Related Entity is defined in the agreement as 'Sunset Events Pty Ltd<sup>37</sup>, Chugg Entertainment Pty Ltd, A & R Worldwide, Pangea Entertainment Group LLC and any other related body corporate or as those terms are defined in the Corporations Act.'<sup>38</sup>
- 3.20 The Territory is defined as the nations included in the Indian Ocean Rim for Corporation and a list of selected nations totalling 36 countries.
- 3.21 Sunset Events, Chugg Entertainment Pty Ltd, A&R Worldwide, Pangea Entertainment Group LLC were not parties to the agreement.

#### **Committee Comment**

- 3.22 The Committee is concerned that the Sponsorship Agreement between Tourism WA and One Movement Pty Ltd would not have been enforceable against Sunset Events , Chugg Entertainment Pty Ltd, A&R Worldwide and Pangea Entertainment Group LLC as they were not parties to the contract.

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<sup>35</sup> Mr Andrew Chernov, Director, One Movement Pty Ltd, *Transcript of Evidence*, 5 September 2011, p30.

<sup>36</sup> Sponsorship Agreement, 9 March 2009, c14.3.

<sup>37</sup> The Committee notes that while the agreement states that Sunset Events Pty Ltd is a related entity it is not a corporation but a partnership.

<sup>38</sup> Sponsorship Agreement, 9 March 2009, c111.

**Finding 3: The Committee finds that the Shareholders Agreement (to which Tourism WA was not a party) was a relevant document but was not executed. This indicates that Tourism WA may not have been sufficiently diligent in their scrutiny of all relevant documents.**

**Finding 4: The Committee finds that the Sponsorship Agreement was not binding on all parties.**

**Finding 5: The Committee finds that although all financial contractual obligations were met in this instance, the fact that the Sponsorship Agreement was not binding on all parties is not good practice and should not happen in the future.**

**Recommendation 2: The Committee recommends that in future, Tourism WA ensure that all material supporting agreements are consistent throughout, formally executed and give proper effect to the main contract.**

### Contract Administration

3.23 Tourism WA provided the Committee with a substantial amount of documentation regarding its administration of the Sponsorship Agreement. The Committee notes that Eventscorp and Tourism WA challenged One Movement Pty Ltd's claims for payment, particularly in 2009 in relation to delegate registration.

#### *Sponsorship Agreement Milestone Payments*

3.24 Tourism WA withheld four milestone payments in 2009 totalling \$250,000 to One Movement Pty Ltd. These milestone payments relate to failure to achieve minimum thresholds for registration of international and interstate delegates. Details of the withheld milestone payments are outlined in the table below.

**Table 2**

#### **2009 Sponsorships Agreement Milestone Payments not made**

Milestone	Amount	Description
F	\$100,000	On receipt of written confirmation – 300 interstate delegates - registered and confirmed
G	\$25,000	On receipt of written confirmation – 350 interstate delegates have registered and confirmed (pro rata between 300-350)
H	\$100,000	On receipt of written confirmation – 75 international delegates registered and confirmed

Milestone	Amount	Description
I	\$25,000	On receipt of written confirmation – 100 international delegates have registered and confirmed (pro rata between 75-100)
Total	\$250,000	Excluding GST

3.25 The decision to refuse payment was challenged by One Movement Pty Ltd. The main point in contention was the definition of a delegate in the Sponsorship Agreement. The matter was resolved in favour of Tourism WA.

3.26 Similarly in 2010, one milestone was not met and only part of the milestone payment was actually paid. There was no dispute over this withheld milestone payment.

#### **Deferment and Discontinuation of the event**

3.27 On 1 April 2011, Tourism WA issued a media release which stated that the *'2011 One Movement for Music event due to be staged in Perth in October has been deferred, pending a review of the event's structure.'*<sup>39</sup>

3.28 On 23 July 2011, Tourism WA advised the Committee that the *'organisers of the One Movement for Music Festival and Eventscorp have agreed to discontinue the festival after a commercially sustainable alternative model could not be found.'*<sup>40</sup>

<sup>39</sup> Media Release from Tourism WA, 1 April 2011, p1.

<sup>40</sup> Media Release from Tourism WA, 23 July 2011, p1. This was not released to the Public.

## CHAPTER 4

### TOURISM WESTERN AUSTRALIA - CONFLICT OF INTEREST

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- 4.1 On 25 and 26 November 2009, Mr John Hyde MLA raised a number of matters in Parliament relating to Tourism WA and its involvement with the One Movement for Music Festival.
- 4.2 One of the matters raised related to an alleged conflict of interest regarding an employee of Tourism WA. This employee was involved in assessing the sponsorship arrangements for the One Movement for Music Festival and negotiating the Sponsorship Agreement. Subsequently the employee resigned in order to take up employment with Sunset Events, a related party of One Movement Pty Ltd.
- 4.3 The then CEO of Tourism WA, Mr Richard Muirhead, requested the Public Sector Commissioner investigate the conflict of interest allegation.<sup>41</sup> The Public Sector Commissioner conducted an investigation and his report formed the basis of the Committee's considerations of this matter.

#### **Public Sector Commissioner's Report**

- 4.4 The Public Sector Commissioner's report concluded, amongst other things, that:

*There was both an actual and perceived conflict of interest in that an employee of Tourism WA, [name deleted by Committee] who worked directly on and worked for a majority stakeholder in that event (Sunset Events). This presented a situation which raised competing interests and a perception that there was the potential for the individual concerned and/or Sunset Events to receive an unfair advantage.<sup>42</sup>*

- 4.5 The Committee enquired into Tourism WA's position regarding the report and was advised:

***The CHAIR:** On a more specific matter—the question of conflict of interest—does Tourism WA accept the findings of the Public Sector Commissioner's investigation into the conflict of interest issue with respect to [name deleted by Committee]*

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<sup>41</sup> Letter from the Public Sector Commissioner, 18 January 2010.

<sup>42</sup> Public Sector Commissioner, *Report on Allegations of A Conflict of Interest Involving A Tourism WA Employee and the One Movement for Music Festival*, 18 January 2010, p8.

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**Ms Buckland:** Yes.<sup>43</sup>

### Concerns regarding the Public Sector Commissioner Investigation

4.6 One of the Committee's considerations was whether the scope of the investigation undertaken by the Public Sector Commissioner was sufficient. In response to questions regarding who was interviewed for the investigation the Committee was advised:

**The CHAIR:** *Were the directors of One Movement Pty Ltd interviewed with respect to the conflict of interest matter?*

**Ms Roche:** No.

**The CHAIR:** *I would have thought they might have been interviewed. Was it considered that they would be interviewed?*

**Ms Roche:** *No, we did not consider interviewing them. We certainly interviewed [name deleted by Committee], and Mr Hamilton and Mr van Ooran, who were [the employee] direct supervisors. At the time we believed we had enough information to make an assessment as to the situation.*<sup>44</sup>

4.7 The Committee raised the conflict of interest issue with the directors of One Movement Pty Ltd. The directors advised the Committee that:

*To the best of our recollection the chronology of events here was:*

- *The Heads of Agreement with Tourism WA was signed on 25 September 2008.*
- *David Chitty then spoke with David Van Ooran and Richard Muirhead about our intention to approach [name deleted by Committee].*
- *Whilst they didn't want to lose [name deleted by Committee] they could see our reasoning behind [the employee] being an ideal candidate to fulfil the event director requirements.*
- *David Chitty then approaches [name deleted by Committee] about it.*

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<sup>43</sup> Ms Stephanie Buckland, Chief Executive Officer, *Tourism WA, Transcript of Evidence*, 29 August 2011, p29.

<sup>44</sup> Ms Fiona Roche, Deputy Commissioner, Accountability, Policy and Performance, Public Sector Commission, *Transcript of Evidence*, 2 September 2011, p2.

- [name deleted by Committee] *was offered a position in early October 2008.*
- *The final contract with TWA was signed in March 2009.*<sup>45</sup>

4.8 The table below is a reconstruction of the timeline based on the documents the Committee has received and the evidence it heard.

**Table 3**

**Reconstructed Timeline based on Sunset Events evidence**

24 September 2008	Heads of Agreement Executed between Sunset Events, Chugg Entertainment Pty Ltd and A&R Worldwide
Between 24 Sept 2008 - 3 Oct 2008	Director David Chitty approaches Tourism WA and speaks with Mr Richard Muirhead and Mr David van Ooran about approaching employee in question with an offer of employment
29 September 2008	Queen's Birthday Public Holiday
3 October 2008	Date on First Letter of offer from Sunset Events
9 October 2008	Date on Second Letter of offer from Sunset Events
12 October 2008	Employee handed in notice
26-31 October 2008	Employee took leave to visit MUSEXPO in London
10 Nov 2008	Ministerial Briefing prepared by resigning employee
14 Nov 2008	Employee ceased work with Tourism WA
19 Nov 2008	Former employee started work with Sunset Events
19 Nov 2008	E-mail of complaint from industry regarding conflict of interest
25 Nov 2008	Response to e-mail complaint
9 March 2009	Sponsorship Agreement executed between One Movement Pty Ltd and Tourism WA

<sup>45</sup> Letter from Sunset Events, 3 October 2011, Supplementary Information A8.

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**Action taken**

- 4.9 The current Tourism WA management and Board have confirmed their acceptance of the Public Sector Commission investigator's findings and recommendations.<sup>46</sup>
- 4.10 The Committee received confirmation from the PSC that its recommendations have been adequately implemented.<sup>47</sup>

**Finding 6: The Committee finds that Tourism WA responded quickly and appropriately in implementing the recommendations of the Public Sector Commissioner's report.**

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<sup>46</sup> Ms Stephanie Buckland, Chief Executive Officer, *Tourism WA, Transcript of Evidence*, 29 August 2011, p29.

<sup>47</sup> Letter from Public Sector Commissioner, 21 September 2011.



## CHAPTER 5

### ONE MOVEMENT FOR MUSIC RISK ASSESSMENT

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#### Feasibility Study

- 5.1 The Committee was advised that the Feasibility Study was a key document which contained Tourism WA's risk assessment.<sup>48</sup>

#### *Risks associated with a developmental event*

- 5.2 The Committee was advised by Tourism WA management that:

*the vision for the One Movement event always was for that event to be a development event and something that would build over a period of years. It was always anticipated that that event would run at a loss for several years.*<sup>49</sup>

- 5.3 The Committee was further advised that:

*I think there are a few things that we as an organisation will take away from [this event]. Probably the most important one is a discussion with the event proponent about the proposed model and, in particular, their ability to be able to sustain a continued investment alongside an investment that the state government might make.*<sup>50</sup>

- 5.4 The evidence indicated that Tourism WA did not undertake sufficient analysis of One Movement Pty Ltd's financial capacity and its reliance upon Sunset Events for financial support in the event it incurred losses.

#### *Australian History of Similar Events*

- 5.5 The March 2008 Feasibility Study includes a section which outlines comparable events within Australia.

- 5.6 The Committee was made aware of the Pacific Circle Music Conference and the Australian Music Week events. There is no mention of the Pacific Circle Music Conference or the Melbourne Music Week events in the March 2008 Feasibility Study. Eventscorp management advised the Committee that major differentiating factors

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<sup>48</sup> Mr David van Ooran, Executive Director Eventscorp, Tourism WA, *Transcript of Evidence*, 29 August 2011, p9.

<sup>49</sup> Ms Stephanie Buckland, Chief Executive Officer, Tourism WA, *Transcript of Evidence*, 29 August 2011, p3.

<sup>50</sup> *Ibid.*

between these two events and the One Movement for Music event included the introduction of a:

*large outdoor music festival over multiple days with multiple stages, which I do not think was a key factor of those other two, which were much more convention–conference focused for the music industry.*<sup>51</sup>

- 5.7 Other major differences were the evening showcases, a fringe component and an Indigenous music scholarship.<sup>52</sup> The Committee was advised that the Pacific Circle Music Conference and the Melbourne Music Week ‘*were not successful or viable. I think that after three or four years both of them ceased to keep functioning—Sydney’s first, then Melbourne’s.*’<sup>53</sup>
- 5.8 The Committee finds it unusual that there was no comment in the Feasibility Study differentiating the One Movement for Music Festival from those events currently underway and the failed events run in Sydney and Melbourne. The omission of this information is considered significant because it may have alerted the Board to the fact that there had been a string of unsuccessful similar events in Australia within recent memory.

*Continued involvement of In The City UK in the Australian event*

- 5.9 In September 2007, the original event proponents withdrew their request for funding from Tourism WA due to the death of one of the In the City founders, Mr Tony Wilson. The Board paper dated September 2007 stated that:

*...the event contract include a clause outlining that Eventscorp funding support was conditional upon Mr Wilson’s direct involvement in the event for the first three years during its establishment.*

*Eventscorp fully understands the importance of Mr Wilson with his involvement being a key factor when assessing the event for funding. The importance of ensuring the inaugural event was launched from a positive platform both locally and within the industry, was also recognised. Mr Wilson was integral to securing industry’s involvement, especially for the inaugural event.*

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<sup>51</sup> Mr David van Ooran , Executive Director Eventscorp, Tourism WA, *Transcript of Evidence*, 29 August 2011, p8.

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

*ITC AAA does not rely totally on Mr Wilson and Ms Livesey though they were a very important aspect of the event especially during the start-up phase while the event establishes itself.*<sup>54</sup>

- 5.10 The March 2008 Board Paper informs the Board of the death of Mr Wilson but makes no assessment as to the impact of his death on the In the City event. This is despite previous advice that funding should be contingent upon Mr Wilson's direct involvement.

### **Industry Development**

- 5.11 One of the strategic objectives to be achieved through supporting this was event was previously stated as contributing to the *'development of an internationally focussed marketplace for the WA Music Industry and open international pathways and trade links. The ultimate goal is to significantly contribute to the development of the creative industries cluster in WA.'*<sup>55</sup>
- 5.12 The Committee supports this strategic objective. However, the Committee believes that achieving it requires a whole-of-government approach from a number of agencies including Tourism WA, Department of Culture and Arts, Department of State Development, Department of Sport and Recreation supported by an overarching Government policy.
- 5.13 This requirement was discussed with the Tourism WA Board during a hearing. The evidence is outlined below.

***Hon KEN TRAVERS:*** ...

*When the event was finally signed off, I am not sure that that contemporary music package was still there. I am just interested as to what impact that would have had and whether that was something that the board would have looked at. If you are going to maximise those benefits that you have talked about, you need to have that industry assistance package running—not by Tourism, because I agree with you ... that Tourism should be about getting people into WA, and that other part of it has to be the other arms of government working in tandem. How do you do that and was that an assessment that occurred around One Movement?*

***Ms Lamont:*** *I think everyone on our board would love government agencies to work better together. That is something that I am sure governments would like, politicians would like. I believe, over time,*

<sup>54</sup> Mr David van Ooran, *Matter for Information: Cancellation of In The City AAA*, September 2007, p1-2.

<sup>55</sup> Tourism WA Matter for Decision Board Paper, *Funding for In The City Perth*, 14 March 2008.

*Eventscorp does—as I think I have already said—work very closely with DCA, Sport and Rec and whatever government agency. Do we want to do it better and do we want to try harder? Absolutely.*

*Hon KEN TRAVERS: I understand that, but I am asking: in terms of this event was that ever done and what do we need? Obviously one of the issues for this committee will be what needs to happen in the future. Was that an issue that arose and occurred and do we need to be looking at that for the future?*

*Mr Welborn: Your question harks back to 2006. I was on the board in 2010, so I cannot answer that. Again, all I can refer to is going forward—absolutely. One of the key things, particularly as a lot of our events are in sport, is we are always working across a number of different departments in government and how they interrelate in terms of both the running of the event, but, more importantly, in terms of the impact of it and the ongoing benefit, is very important. We continually assess those. It is part and parcel of a business.<sup>56</sup>*

### Stakeholder Engagement

- 5.14 The main industry stakeholder with respect to the Western Australian music industry is the Western Australian Music Industry Association Incorporated (WAMi). The Committee heard evidence from WAMi about its level of support for the event and its relationship with Tourism WA.
- 5.15 The Committee acknowledges that while WAMi was supportive of the event, it was not engaged to the extent that an industry stakeholder representative body should have been.
- 5.16 There were a number of reasons for the lack of engagement and it highlighted to the Committee that engaging all relevant stakeholders for an artistic event should be a key consideration for Tourism WA to maximise industry development outcomes in the future.

**Finding 7: The Committee finds that in future Tourism WA should not proceed with major tourism events without engaging relevant stakeholders.**

<sup>56</sup> Mr John Wellborn, Commissioner, and Ms Kate Lamont, Chairman, *Tourism WA, Transcript of Evidence*, 26 September 2011, p13.

**Due Diligence Assessment**

5.17 The Committee was given all relevant documents outlining how Tourism WA assessed the One Movement for Music Festival and how it reported to the Board. Despite assurance from Ms Ridsdale that *'there is a very formal process for how those things [due diligence] are assessed and reported'*<sup>57</sup>, there appears to be no overarching document which details the Board's policy with regard to:

- Tourism WA's minimum standards for approving, administering and monitoring events it has sponsored or taken an interest in;
- the requirement for a comprehensive post-event assessment and report to the full Board;
- the roles and responsibilities of Tourism WA management, Eventscorp management, the Tourism WA Board and the Tourism WA Board Events Committee with respect to undertaking due diligence, staging and assessing events;
- the internal management reporting obligations for event development and administration to the Tourism WA Board; and
- the requirements and timing for notifying the Minister of significant matters.

5.18 The Committee believes that as the Board has not formally adopted and communicated its minimum standards for due diligence to management, it is exposed to management's interpretation and judgement of what information should be provided to it regarding events. The One Movement for Music Festival highlights this deficiency.

**Recommendation 3: The Committee recommends that due to the high financial risk of many major tourism events that, as a matter of urgency, Tourism WA produce a policy that sets out the minimum standards required for due diligence.**

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<sup>57</sup> Ms Trish Ridsdale, Commissioner, Tourism WA, *Transcript of Evidence*, 26 September 2011, p30.



## CHAPTER 6

### ONE MOVEMENT PTY LTD'S FINANCIAL CAPACITY

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6.1 The Committee was advised by Tourism WA that the One Movement for Music Festival was a high risk developmental event<sup>58</sup> that was expected to sustain losses in its early years as it established itself.<sup>59</sup> This means that a thorough assessment of the financial resources of One Movement Pty Ltd was required to ensure that the event proponent had sufficient financial capacity to sustain the expected losses in the early years.

#### Capital Base of One Movement Pty Ltd

6.2 The subscribed capital of One Movement Pty Ltd was \$3 at inception.<sup>60</sup>

#### Shareholder Agreement

6.3 The draft Shareholder's Agreement (as detailed in Chapter 3 - Event Contract Management) is significant when considering the financial capacity of One Movement Pty Ltd for the following reasons:

- Clause 17 Paramountcy, which states that a '*provision of this agreement prevails over any inconsistent clause in the Company's Constitution*';<sup>61</sup>
- Clause 7.2 Cheques and Working Capital, which states that:
  - (c) *Ordinary Shareholders will contribute Working Capital to the Company as determined by the Ordinary Shareholders according to the Business Plan from time to time but such contributions will always be in proportion to the Ordinary shares held by each Ordinary Shareholder at the time the contribution is required. The parties will use best endeavours to ensure that, as far as possible, all Event Budget expenditure agreed to for the Event by the Directors will be adhered to and that Working Capital contributions under the Business Plan are kept to a minimum (including structuring the Event cash*

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<sup>58</sup> Ms Stephanie Buckland, Chief Executive Officer, Tourism Western Australia, *Transcript of Evidence*, 29 August 2011, p3.

<sup>59</sup> *Ibid.*

<sup>60</sup> One Movement Pty Ltd, *Financial Statements for the period ending 31 December 2009*, 9 March 2010.

<sup>61</sup> Shareholder's Agreement V2, Undated C117.

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*flow requirements to correspond with funding payments under the EventsCorp Agreement as far as possible).*

*(d) Subject to clause 8(g)(i), Contributions of Working Capital under this clause are to be treated as loans to the Company and will be repaid to the Ordinary Shareholders on a dollar for dollar (pari passu) basis and in accordance with such other conditions as may be agreed by the Ordinary Shareholders.*

*(e) Any further Working Capital requirements as agreed by the Board from time to time will be contributed by the Ordinary Shareholders in proportion to the number of Ordinary Shares held at the time the contribution is required;<sup>62</sup> and*

- Clause 9 Dividends, Profit and Loss Sharing, which states that:

*(c) Each party shall be entitled to a share of the profit of the Company. Ordinary Shareholders shall be liable for a share of all losses of the Company in accordance with each Ordinary Shareholders' shareholding in the Company.<sup>63</sup>*

### **Committee Comment**

6.4 The Committee is of the view that there is a commercial imperative in the private sector to protect shareholders' and directors' interests to the extent practicable when undertaking high risk activities such as the One Movement for Music Festival. The risk mitigation strategy included minimising Sunset Events exposure to the financial performance of the One Movement for Music Festival by requiring an initial injection of capital as 'hurt money'.

6.5 These matters are commercial considerations that go to the heart of the financial capacity of Sunset Events to finance losses incurred in staging the One Movement for Music Festival. The financial capacity of Sunset Events was a key consideration for the Board when it instructed Tourism WA senior executives to meet with the event proponents and negotiate the following:

- *The involvement of key players of the industry;*
- *Consider seeking a reduction in the amount of money being offered by EventsCorp by starting the event at a lower base;*

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<sup>62</sup> Shareholder's Agreement V2, Undated, CI7.2.

<sup>63</sup> Shareholder's Agreement V2, Undated, CI9.



- *The proponents of the event to provide capital for the event and to disclose their level of commitment to the overall costs of the event (ideally equal dollars) to EventsCorp;*
  - *EventsCorp to seek to have some form of greater control over outcomes of the Event through some device (ie possibly a seat on the proponent's Board);*
  - *Keeping equity in the brand - particularly share of IP [intellectual property]; and*
  - *Preferably no guaranteed investment requirement after 3 years.*<sup>64</sup>
- 6.6 The Committee notes that Tourism WA's decision not to take a financial stake, apart from its sponsorship in the event leaving the risk of adverse financial outcomes with the private sector. However, this did not relieve Tourism WA of an obligation to ensure that the event promoters had the financial capacity to fund the event's working capital and losses. All it did was change the nature of the obligation from being based on legal and financial management principles to a counterparty/reputation risk management based obligation.
- 6.7 The decision to not request a director's guarantee in advance of the actual event was a commercial decision made by Tourism WA.
- 6.8 The Committee is of the view that Tourism WA had an obligation to ensure the developmental event proponents had sufficient financial capacity to sustain event losses. However, the Committee recognises that there has to be a balance between encouraging and supporting new and innovative tourism events proposed by the private sector, while at the same time ensuring that the State is not unnecessarily exposed to financial risk.

**Finding 8: The Committee finds that Tourism WA in its sponsorship of the One Movement for Music event operated to fill a gap due to market failure. In doing so it minimized the financial exposure of the State.**

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<sup>64</sup> Minutes of Meeting, CEO Tourism WA and EventsCorp Executive Director and Event Proponents, 29 August 2008, p1



## CHAPTER 7

### ONE MOVEMENT FOR MUSIC FESTIVAL TOURISM OUTCOMES

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#### Tourism Visitation Outcomes

- 7.1 Tourism WA's forecast and actual return for its sponsorship in 2009 is outlined in the table below. The table below indicates that the actual tourism return was greater than that forecast.

**Table 4**

#### Tourism WA 2009 One Movement for Music Festival

#### Return on Investment

2009	Forecast \$	Actual \$
Total Direct Expenditure on Tourism	1,483,000	1,364,013
Tourism WA Sponsorship Payments	800,000	588,519
Return on Tourism Investment *	1.85:1	2.3:1

Source: Forecast: Feasibility Study In The City 14 March 2008  
Actual: Synovate Report February 2010

\* Return on Tourism Investment = Total Direct Expenditure on Tourism / Tourism WA Sponsorship Payments

- 7.2 One of the Inquiry's terms of reference was to consider the adequacy of processes for evaluating whether this event meets the Western Australian Tourism Commission's expected outcomes.
- 7.3 In this regard the Committee was advised that:

*Mr Mazitelli: The fact of the matter is that the money that was put in in the two years was money that was accounted for against key performance indicators and the key performance indicators were, in fact, achieved by the proponent, otherwise the money would not have been paid. In terms of the taxpayers' money, the component that was funded, which was the conference component which gave a return of \$2.3 million ROI, the taxpayer funds achieved a result that was not inconsistent with the results in similar sorts of projects. From that point of view, the taxpayers' money was not at risk in the event because we got a return. We did better than an ROI of one to one. I make that point because I think, inadvertently, perhaps implicit in the comment is that somehow or other taxpayers' money was lost here, whereas it is my interpretation and understanding that it was not and*

*it was only paid out when the key performance indicators that had been put down in the contract had been achieved.*<sup>65</sup>

- 7.4 Taking the tourism return on sponsorship investment at face value implies that the event was a tourism success in terms of visitor outcomes. The event was forecast to achieve a return of 1.85:1 when it actually achieved a 2.3:1 return on sponsorship investment.
- 7.5 The Committee is of the view that this measure has the potential to mislead if it is not taken in context. This then raises the question as to whether or not this method for measuring value to the state as used by Tourism WA is adequate and needs to be reviewed.
- 7.6 In 2009 the event achieved an estimated Total Direct Expenditure of \$1.364m. However, One Movement Pty Ltd lost \$1.361m to achieve that tourism result. From another perspective, the event proponents' losses were so large they nearly outweighed the economic benefit of the direct tourism spend. In adopting a narrow visitor based perspective of assessing major tourism event success, Tourism WA could invest its sponsorship funds in events that are not financially viable to an extent where the end result is a net cost to the Western Australian economy.
- 7.7 Ms Stephanie Buckland, the Tourism WA Chief Executive Officer (CEO), advised the Committee that:

*... I think probably one of the other reasons, just coming back to this whole discussion of economic impact, is that if you look at the way economic impact is calculated, the methodology that Tourism WA has used for many years and is approved by the Department of Treasury and Finance is a methodology where we look to inflows to the state versus outflows. So the economic impact does not take into consideration at all what locals do or do not do; and in this particular event, One Movement, it was certainly in the interest of the event holder to get as many people to come to the event as they possibly could and to pay for the tickets.*<sup>66</sup>

**Recommendation 4: The Committee recommends that Tourism WA should review its methodology of calculating economic value to the State from visitor numbers.**

<sup>65</sup> Mr David Mazzitelli, Deputy Chairman, Tourism WA, *Transcript of Evidence*, 26 September 2011, p11.

<sup>66</sup> Ms Stephanie Buckland, Chief Executive Officer, Tourism WA, *Transcript of Evidence*, 29 August 2011, p36.

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**Tourism Profile Outcomes**

- 7.8 The Committee discussed event evaluation with Tourism WA executives who advised:

*... the first and most obvious one relating to this one is the economic impact report that is independently commissioned. That is undertaken and that gives us an indication of visitation and spend. We think that is a Treasury agreed methodology. It is robust and we are confident of the accuracy of the economic impact reports. Often an event will undertake an independent commissioned media impact report. That is conducted around events that deliver TV broadcasts usually, and we track and put a value against the media value to the state within the TV broadcast. Thirdly, we have undertaken, at various times over the last three years, social impact studies, again independently commissioned. Synovate was providing that for us. That looks at more social outcomes of an event, be it education around an art exhibition, be it health outcomes around a sporting event, participation event, community feel, community responses to the value of the event to the community et cetera. We do three key economic media and social reporting around an event. Is this what you are asking?<sup>67</sup>*

- 7.9 In this regard the Committee was expecting Tourism WA to provide measurable statistics regarding positive media attention the State received through its sponsorship of the event.
- 7.10 Tourism WA advised the Committee that ‘Eventscorp did not conduct an independent media assessment for the One Movement for Music Perth events in 2009 and 2010.’<sup>68</sup>
- 7.11 One Movement Pty Ltd provided a number of reports to the Committee outlining the media attention the event received. These reports indicated that the event did develop a print and on-line media profile in 2009 and 2010.

**Artistic Outcomes**

- 7.12 The principal expected artistic benefits associated with the One Movement for Music event was the exposure of unsigned national and international acts to industry decision makers. These opportunities were the core element of the Fringe Festival.

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<sup>67</sup> Mr David Van Ooran, Executive Director Eventscorp, Tourism WA, *Transcript of Evidence*, 29 August 2011, p38.

<sup>68</sup> Letter from Chairman, Tourism WA, 12 October 2011, Supplementary Question A2.

- 7.13 The Fringe Festivals were poorly attended and were cited as one of the reasons behind the financial losses One Movement Pty Ltd incurred.<sup>69</sup>
- 7.14 The One Movement Pty Ltd directors indicated that a number of acts were signed by promoters which shows that there were some artistic benefits arising from staging the event.<sup>70</sup>
- 7.15 A principal goal of the event was to expose up and coming musical talent to the public and industry decision makers.
- 7.16 The Committee is of the view that because of the lack of attendance by the public at the events and the consequent adverse publicity this received it is difficult to determine whether there was any artistic benefit to the Western Australia community from the event.

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<sup>69</sup> Mr David Chitty, Director, One Movement Pty Ltd, *Transcript of Evidence*, 5 September 2011, p1.

<sup>70</sup> *Ibid.*

## CHAPTER 8

### ONE MOVEMENT FOR MUSIC FESTIVAL FINANCIAL RESULTS

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#### 2009 Event

- 8.1 In 2009 One Movement Pty Ltd incurred a loss of \$1.361m, which is substantially greater than the final budgeted loss for the One Movement for Music Festival of \$47,343. In considering this loss, the Committee notes the Director's evidence that \$400k related to one off start-up costs for the event.<sup>71</sup>

#### Reason for 2009 event losses

- 8.2 The Committee undertook an analysis of One Movement Pty Ltd's 2009 financial statements, comparing them to the 2009 budget. The significant issues noted by the Committee were:
- Total revenue was approximately \$1.26m below that budgeted, with the largest variance being ticket sales which was approximately \$980k below that budgeted; and
  - Total expenses were approximately \$47,485 below that budgeted, with the largest variance attributable to marketing expenses.

#### 2009 Financial Statements for One Movement Pty Ltd

- 8.3 One Movement Pty Ltd's Financial Statements included an unqualified audit opinion stating the accounts provide a true and fair view of the company's financial position as at 31 December 2009. However, attention was drawn to the auditor's 'Emphasis of Matter Regarding Going Concern due to the *'deficiency of working capital and a deficiency of net assets of \$1,361,588 at balance date.'*<sup>72</sup> The Committee noted that working capital was to be provided in the form of loans to the company by One Movement Pty Ltd's shareholders.
- 8.4 Going concern is an accounting term which means that the financial reporting entity is expected to:

(a) *be able to pay its debts as and when they fall due; and*

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<sup>71</sup> Mr James Legge, Director, One Movement Pty Ltd, *Transcript of Evidence*, 5 September 2011, p25.

<sup>72</sup> One Movement Pty Ltd, *Financial Statements for the period ending 31 December 2009*, 9 March 2010.

(b) *continue in operation without any intention or necessity to liquidate or otherwise wind up its operations.*<sup>73</sup>

- 8.5 When the Committee raised the Auditor's Emphasis of Matter with Tourism WA management it was advised that there was '*an unqualified audit after the 2009 event—unqualified. He noted the deficiency in working capital, but it was an unqualified audit.*'<sup>74</sup> However, the Eventscorp executive manager was concerned about the size of the loss.<sup>75</sup>
- 8.6 The Committee views the Auditor's Emphasis of Matter as significant. It raises a legitimate question in the mind of a user of the financial accounts whether One Movement Pty Ltd had sufficient liquidity and could pay its debts as and when they fell due as at 31 December 2009. While the accounts were 'correct' and the actual financial position they portrayed was of a company that may have been in financial difficulties, it should be noted that the Shareholders Agreement stated that working capital requirements were to be covered in the form of loans from shareholders.

#### **Tourism WA Reporting to the Board after the 2009 Event**

- 8.7 On 19 February 2010 the CEO Report to the Board discussed the One Movement for Music event outlining the number of attendees and the tourism related direct spend to the Western Australian state economy.<sup>76</sup>
- 8.8 On 6 April 2010 Eventscorp management made a \$55,000 milestone payment relating to the provision of One Movement Pty Ltd audited financial statements for the year ending 31 December 2009.
- 8.9 On 28 May 2010 the CEO Report to the Board repeated its earlier advice regarding the direct spend and advised of using Grant Thornton to audit interstate and international attendances and related milestone payments of \$250,000.<sup>77</sup>
- 8.10 The Committee asked Tourism WA whether there were any deliberations or formal consideration as to whether it should continue to support the event in 2010. The Committee was advised that the '*Board did not formally consider or deliberate as to whether it should continue to support the event in 2010. ... In addition, some Board*

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<sup>73</sup> Auditing and Assurance Standards Board, *Auditing Standard ASA 570 Going Concern*, April 2006, para 6.

<sup>74</sup> Ms Stephanie Buckland, Chief Executive Officer, Tourism WA, *Transcript of Evidence*, 29 August 2011, p13.

<sup>75</sup> Mr David van Ooren, Executive Director Eventscorp, Tourism WA, *Transcript of Evidence*, 29 August 2011, p13.

<sup>76</sup> Chief Executive Officer's Report to the Board, Tourism WA, 19 Feb 2010.

<sup>77</sup> Chief Executive Officer's Report to the Board, Tourism WA, 28 May 2010.



*members that were more closely involved with the event were generally aware of the losses incurred by One Movement Pty Ltd for the 2009 event.*<sup>78</sup>

8.11 The Tourism WA CEO advised the Committee that:

*To my knowledge, the minister was not advised that the event proponents suffered a financial loss after the first event. However, I will say that it was expected that they were going to suffer a financial loss after the first event. There was always an expectation that the event proponent was going to invest in the first year.*<sup>79</sup>

**Finding 9: The Committee finds it unusual that Tourism WA and Eventscorp management did not formally inform the full Tourism WA Board in 2010 of the losses incurred by One Movement Pty Ltd in running the 2009 event.**

**The Committee is of the view that this is a significant matter because One Movement Pty Ltd's losses were so large they brought into question its capacity to continue to stage the event.**

### **2010 Event**

8.12 The financial result of the 2010 event was a significant improvement on the 2009 result. However, the loss in 2010 of \$1.109m was still substantially greater than the budgeted loss of \$473,754.

### **2010 Financial Statements for One Movement Pty Ltd**

8.13 The most significant aspect of the 2010 Financial Statements is the auditor's opinion. It confirms the nature of the financial losses where the auditor states that the financial report of One Movement Pty Ltd does not give a true and fair view of its financial position as at 31 December 2010 due to the *'existence of a material uncertainty that may cast significant doubt on the company's ability to continue as a going concern.'*<sup>80</sup> The uncertainty related to One Movement Pty Ltd's ability to:

- obtain additional equity capital;
- obtain additional government funding; and

<sup>78</sup> Letter from Acting Chief Executive Officer, Tourism WA, 16 September 2011, Additional Question 4.

<sup>79</sup> Ms Stephanie Buckland, Chief Executive Officer, Tourism WA, *Transcript of Evidence*, 29 August 2011, p12.

<sup>80</sup> One Movement Pty Ltd, *Financial Statements for the period ending 31 December 2010*, 24 Feb 2011, p13.

- generate profitable operations.<sup>81</sup>

8.14 In addition to this uncertainty was the negative \$2.47m in equity in the balance sheet at year end due to the losses incurred to date.

### Working Capital Contributions

8.15 Sunset Events and Chugg Entertainment Pty Ltd provided substantial working capital to One Movement Pty Ltd in the form of loans. The terms of these loans were such that they were effectively subordinated to other creditors as the loans were interest free, unsecured and terms of repayment had not been set.

**Table 5**

#### Loans from Shareholders to One Movement Pty Ltd

	<b>2009</b>	<b>%</b>	<b>2010</b>	<b>%</b>
	<b>\$</b>		<b>\$</b>	
Loan from Sunset Events	1,079,564	75	1,222,536	73.8
Loan from Chugg Entertainment Pty Ltd	358,058	25	433,058	26.2
<b>Total</b>	<b>1,437,622</b>	<b>100</b>	<b>1,655,594</b>	<b>100</b>

8.16 The table above outlines the working capital contributions. The most significant aspect of this is Chugg Entertainment Pty Ltd's contribution when it is not a shareholder of One Movement Pty Ltd and the Shareholder's Agreement was not formally executed.

8.17 A key concern of the Committee was to ensure that One Movement Pty Ltd adequately protected creditor's rights after the 2010 event. This is particularly the case when the 2010 financial statements indicate the company was in substantial financial distress.

#### *One Movement Pty Ltd's cash flow constraints after the 2010 event*

8.18 In evidence before the Committee, the One Movement Pty Ltd directors stated there was *'a small delay in the payment of some invoices post [the 2010] event, whilst we got in the sponsorship money, corporate and government, to pay for those events. All the suppliers were notified that there was to be a slight delay.'*<sup>82</sup>

8.19 The slight delay was *'30 to 60 days post normal terms.'*<sup>83</sup>

<sup>81</sup> One Movement Pty Ltd, *Financial Statements for the period ending 31 December 2010*, 24 February 2011, p8.

<sup>82</sup> Mr James Legge, Director, One Movement Pty Ltd, *Transcript of Evidence*, 5 September 2011, p27.

<sup>83</sup> *Ibid.*

- 8.20 One Movement Pty Ltd stated that *'all accounts were fully settled once the cash flows married up.'*<sup>84</sup>
- 8.21 The directors of One Movement Pty Ltd advised the Committee that as at 5 September 2011 it is not operating, has no outstanding creditors and that it had no outstanding tax liabilities.<sup>85</sup>

*Committee Comment*

- 8.22 The Committee believes that One Movement Pty Ltd suffered a temporary lack of liquidity after the 2010 event which was fully rectified within a reasonable time frame, having regard to the commercial realities of the situation.



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**Hon Giz Watson MLC**  
**Chair**

**Date: 1 December 2011**

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<sup>84</sup> *Ibid*, p26.

<sup>85</sup> *Ibid*, p26.



**APPENDIX 1**  
**LIST OF SUBMISSIONS RECEIVED**

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<b>No.</b>	<b>Submission</b>	<b>Date</b>
1.	Private	02/03/2011
2.	Mr Richard Campbell, Director, CMS Events	04/03/2011
3.	Mr Martin Wright, Managing Director, City Sightseeing Perth	04/03/2011
4.	Mayor Glenys Godfrey, City of Belmont	17/03/2011
5.	Ms Carolyn Bailey, Consultant	24/03/2011
6.	Mr Peter Schneider, Chief Executive Officer, East Metropolitan Regional Council	24/03/2011
7.	Mr John Hyde MLA, Member for Perth	28/03/2011
8.	Mr John Hyde MLA, Member for Perth	14/04/2011
9.	Mr John Hyde MLA, Member for Perth	21/04/2011
10.	Mr John Hyde MLA, Member for Perth	18/09/2011



## APPENDIX 2

### LIST OF WITNESSES

Witness	Date
Ms Stephanie Buckland Chief Executive Officer Tourism Western Australia	29/08/2011
Mr David Van Ooran Executive Director Tourism Western Australia	29/08/2011
Ms Derryn Belford A/Manager, Executive and Strategic Services Tourism Western Australia	29/08/2011
Mr Richard Muirhead Former Chief Executive Officer Tourism Western Australia	02/09/2011
Mr Malcolm Wauchope Commissioner Public Sector Commission	02/09/2011
Mr David Chitty Managing Director and Promoter Sunset Events	05/09/2011
Mr Andrew Chernov Director, Legal and Business Affairs Sunset Events	05/09/2011
Mr James Legge Director, Finance and Operations Sunset Events	05/09/2011
Mr Campbell Ansell Partner Grant Thornton Australia	12/09/2011
Mr Paul Bodlovich Chief Executive Officer The West Australian Music Industry Association	12/09/2011
Ms Kate Lamont Chairman Western Australian Tourism Commission Board	26/09/2011

<b>Witness</b>	<b>Date</b>
Mr David Mazitelli Deputy Chairman Western Australian Tourism Commission Board	26/09/2011
Mr John Welborn Commissioner Western Australian Tourism Commission Board	26/09/2011
Mr Howard Cearns Commissioner Western Australian Tourism Commission Board	26/09/2011
Ms Trish Ridsdale Commissioner Western Australian Tourism Commission Board	26/09/2011



# APPENDIX 3

## HEADS OF AGREEMENT

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Tourism WA File: EVT/1449

Wednesday 24 September 2009

Mr David Chitty  
Director  
Sunset Events  
PO Box 111  
Fremantle WA 6959

Dear Mr Chitty



2 Mill Street  
PERTH WA 6000  
GPO Box X2261  
PERTH WA 6847  
info@westernaustralia.com  
Tel: 08 9262 1700  
Fax: 08 9262 1702  
westernaustralia.com

### Heads of Agreement – One Movement Perth 2009, 2010 and 2011

Following our recent discussions with regard to the staging of One Movement Perth in Perth, Western Australia in 2009, 2010 and 2011 ("the Event") as the exclusive location, we have set out the commercial points that the Western Australian Tourism Commission trading as Tourism Western Australia ("Tourism WA") needs to achieve from the Event and through the relationship with Chitty Pty Ltd ACN 102 589 873, Chernov Pty Ltd ACN 102 589 855 and Legge Pty Ltd ACN 107 740 018 (together, "the Event Holder").

It is understood that the Event will be owned by an entity yet to be incorporated which will be owned by the Event Holder and its joint venture partners in the Event Pangaea Entertainment Group LLC ('A and R Worldwide') and Chugg Entertainment Pty Ltd. As such, any legally binding contract or deed will be between Tourism WA and that entity, provided that the identity and attributes of that entity are acceptable in all respects to Tourism WA.

The Event Holder will ensure that the entity referred to above will accept and abide by the commercial terms set out in this Heads of Agreement.

The Event will comprise three major components:

1. The Music Industry Convention - The convention to consist of panels, forums, interviews and networking opportunities for industry leaders and executives to exchange views, listen to the latest trends and meet to do deals.
2. The Music Festival - The Music Festival will showcase signed and unsigned acts, both local/national and international. The music festival aims to attract local/national/international music fans that are attracted by breaking artists and international showcases.
3. The Trade Show/Expo - Companies exhibit in the Trade Show to connect and promote their products with the entertainment and music industry decision makers. It is not intended to run the Trade Show in the first year of the Event.

Notwithstanding anything expressed or implied to the contrary in this Heads of Agreement, with the exception of clauses 8, 9 and 10 (which clauses are intended to be and shall be legally binding), this Heads of Agreement is neither intended to be nor shall it be legally binding.

All provisions of this Heads of Agreement (with the exception of clauses 8, 9 and 10) are intended by the parties to be, and are, non-justiciable statements of current intent only. With the exception of clauses 8, 9 and 10, no legal relations will exist between the parties (and/or anyone else)

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unless and until a proper legally binding contract or deed between them is brought into existence and executed by all relevant parties.

The Event Holder in agreement with Tourism WA will stage the Event in Perth, Western Australia in 2009, 2010 and 2011 (*First Term*). Tourism WA will have an option to extend the agreement for a further 3 year term (2012, 2013, 2014 – *Second Term*). Tourism WA shall then have a rolling option to extend the agreement for additional 3 year terms (*Subsequent Terms*) up to (and including) 2034 and the Event Holder shall agree provided the Event recorded an average minimum net profit of 5% across the first two years of each Subsequent Term. The Event Holders may still agree to continue should the Event record an average minimum net profit of less than 5% over total event revenue across the first 2 years of the each Subsequent Term. If the agreement is extended to the Second Term or to the Subsequent Terms then for the first year of the Second Term the funding shall be AUD\$1 million plus CPI, compounded each year thereafter.

**1. Event Date**

It is agreed that the Event will be held in October or at another time that all relevant parties agree to in 2009, 2010 and 2011 with a Tourism WA option for extension to include the 2012, 2013 and 2014 Events and additional extensions out to a total term of 25 years.

**2. Tourism WA Obligations**

Tourism WA agrees to pay the Event Holder up to AUD \$2,700,000 (“the Fee”) for the staging of the Event in 2009, 2010 and 2011 based on the achievement of mutually agreeable milestones as outlined in item 3 (i), 3 (ii) and 3 (iii) and subject to clause 5;

Tourism WA acknowledges that the current activities of ‘A and R Worldwide’, a partner of the Event Holder in the Event and current owner of MUSEXPO, and their A and R Worldwide’s company ‘Pangaea’ in relation to the Big Sound Festival in Queensland as defined in Schedule 1 are not in conflict with the Event;

**3. Milestones**

Tourism WA will pay agreed amounts for the 2009, 2010 and 2011 events attached to each milestone as they are achieved;

Amount	Milestones
<b>(i) 2009 Event Milestone Payments</b>	
(a) \$150,000	The execution of the formal agreement by both parties.
(b) \$50,000	On receipt of the 2009 Event Communications Plan, Event Budget, Marketing Plan, Risk Management Plan, and the mutually agreed Operations Plan.
(c) \$50,000	On receipt of all relevant 2009 event approvals.
(d) \$50,000	On receipt of a mutually agreed 2009 event and conference program, featuring national and international music industry executives.

(e) \$100,000	On receipt of written confirmation from the Event Holder that a minimum of four international showcases have been confirmed for the 2009 Event.
(f) \$125,000	On receipt of written confirmation from the Event Holder that a minimum of 350 delegates have registered and paid to attend the 2009 Event.
(g) \$125,000	On receipt of written confirmation from the Event Holder that a minimum of 100 international delegates have registered and paid to attend the 2009 Event.
(h) \$50,000	On the first day of the 2009 Event.
(i) \$50,000	On receipt of the 2009 final event report.
(j) \$50,000	On receipt of the 2009 audited accounts.
<b>(ii) 2010 Event Milestones</b>	
(a) \$150,000	Upon written notification by the Event Holder, following the completion of the 2009 Event and at least nine months prior to the scheduled date for the 2010 Event, that the 2010 Event will be staged and provision of mutually agreed event dates.
(b) \$50,000	On receipt of the 2010 Event Communications Plan, Event Budget, Marketing Plan, Risk Management Plan, and the mutually agreed Operations Plan.
(c) \$50,000	On receipt of all relevant 2010 event approvals.
(d) \$50,000	On receipt of a mutually agreed 2010 event and conference program, featuring national and international music industry executives.
(e) \$100,000	On receipt of written confirmation from the Event Holder that a minimum of seven international showcases have been confirmed for the 2010 Event.
(f) \$175,000	On receipt of written confirmation from the Event Holder that a minimum of 500 delegates have registered and paid to attend the 2010 Event.
(g) \$175,000	On receipt of written confirmation from the Event Holder that a minimum of 200 international delegates have registered and paid to attend the 2010 Event.
(h) \$50,000	On the first day of the 2010 Event.
(i) \$50,000	On receipt of the 2010 final event report.
(j) \$50,000	On receipt of the 2010 audited accounts.

<b>(iii) 2011 Event Milestones</b>	
(a) \$150,000	Upon written notification by the Event Holder, following the completion of the 2010 Event and at least nine months prior to the scheduled date for the 2011 Event, that the 2011 Event will be staged and provision of mutually agreed event dates.
(b) \$50,000	On receipt of the 2011 Event Communications Plan, Event Budget, Marketing Plan, Risk Management Plan, and the mutually agreed Operations Plan.
(c) \$50,000	On receipt of all relevant 2011 event approvals.
(d) \$50,000	On receipt of a mutually agreed 2011 event and conference program, featuring national and international music industry executives.
(e) \$100,000	On receipt of written confirmation from the Event Holder that a minimum of eight international showcases have been confirmed for the 2011 Event.
(f) \$225,000	On receipt of written confirmation from the Event Holder that a minimum of 700 delegates have registered and paid to attend the 2011 Event.
(g) \$225,000	On receipt of written confirmation from the Event Holder that a minimum of 350 international delegates have registered and paid to attend the 2011 Event.
(h) \$50,000	On the first day of the 2011 Event.
(i) \$50,000	On receipt of the 2011 final event report.
(j) \$50,000	On receipt of the 2011 audited accounts.

**4. The Event Holder's Obligations**

The Event Holder shall:

- a) be responsible for the staging and managing and all other operational aspects of the Event;
- b) guarantee that the Event and the association with MUSEXPO is exclusive to this Territory, where 'Territory' is defined as the nation members of the Indian Ocean Rim Association for Cooperation and selected nations located in the Asia-Pacific region (as per the countries listed in Schedule 2);
- c) guarantee that the MUSEXPO name will not be associated with any other events staged in the Territory;
- d) incorporate "Western Australia" or "Perth" or other wording as provided by Tourism WA into all Event communication and Event collateral specifically designed to promote the Event;

- e) ensure the word "Western Australia" (or other inclusion as specified by Tourism WA) is prominently featured in the Event Logo;
- f) ensure all PR activity about the Event in Western Australia is jointly agreed upon between the two parties;
- g) guarantee the following commitments;
- h) During the Term, the Event Holder will retain 51% or more of the shareholding in the structure which owns the intellectual property in or associated with the Event and will not own less than 51% without the prior written consent of Tourism WA;
- i) The Event Holder must not directly or indirectly engage in any business which is in conflict with the interests of the Event in the Territory during the term of their agreement. This includes a commitment not to enter into discussions to move the Event to another location outside of Western Australia whilst the Event is being funded by Tourism WA;
- j) The Event Holder must provide Tourism WA with the first right of refusal to negotiate continued funding of the Event at all times;
- k) Event Budgets for each Event are to be submitted to the Tourism WA Board for approval each year prior to the Event;
- l) **DELETED BY RESOLUTION OF THE COMMITTEE**
- m) Agreement to use Best Endeavours to provide significant opportunities to the Western Australian Music Industry Association Inc (WAMI) members to benefit from the Event and also to provide opportunities for WAMI to provide appropriate services to the Event such as the presentation of a Western Australian showcase of local bands and the provision of a panel topic;
- n) Agreement to provide full disclosure in relation to the finances (ie income and expenditure) of the Event;
- o) Agreement to participate in bi-monthly meetings with Eventscorp to provide progress updates;
- p) The Event Program is to contain a minimum of 20 showcase acts for the Music Industry Convention, with a target of 30 acts and a minimum of 50 acts to perform for the Music Festival component of the Event;
- q) That if any party comprising the Event Holder retires their involvement with the Event, for a period of 24 months following retirement, that party agrees not to organise, or be involved in any way, a similar event to the Event in any location in the Territory unless the remaining parties and Tourism WA agree in writing.

#### 5. Distribution of Profits

Tourism WA will be granted a share of any surplus income over revenue as determined by the audited accounts, according to the index outlined below in this clause, remaining at the conclusion of the Event, and after payment of all debts and obligations and provision for all contingent liabilities.

##### Profit-Share Index

% Return (Surplus Income) on Revenue	%Tourism WA Share	% Event Holder Share
0-10.999999%	0%	100%
11-19.999999%	10%	90%
20% and over	15%	85%

**6. Insurance**

The Event Holder shall effect and maintain insurances by a reputable insurance company that has been approved by APRA, ([www.apra.gov.au](http://www.apra.gov.au)) and relevant to the risks associated with the operation of an event of this nature and ensuring the Government of Western Australia is indemnified against any action that may occur from the conduct of the Event.

**7. Governing Laws**

Any formal agreement will be governed by the laws of Western Australia.

**8. Formal Agreement**

In addition to the points raised above, any formal agreement will contain customary terms and conditions (including appropriate limitation and indemnity provisions) for the hosting and staging of the Event.


**9. Exclusivity**


Each party shall negotiate in good faith with the other with a view to entering into a proper legally binding contract or deed (referred to in the third paragraph of this Heads of Agreement) within 6 months after the date of this Heads of Agreement.


Pending the completion of negotiations the Event Holder agrees not to negotiate with any other party with a view to hosting the Event whilst the Event is being funded by Tourism WA.


**10. Public Announcement**

Both parties agree that a public announcement of the event being awarded to Western Australia will be embargoed until a mutually agreed date when a mutually agreed media statement will be jointly issued by the Tourism Minister for Western Australia and the Event Holder.

Signed for and on behalf of the Western Australian Tourism Commission by Kate Lamont, Chairman of that Commission as a lawful delegate of that Commission:
Signed: 
Chairman
Date: 24 September 2008

Signed for and on behalf of Chitty Pty Ltd (ACN 102 589 873) atf Coonaring Discretionary Trust by Person:
Signed: 
Director
Date: 24/9/2008

Signed for and on behalf of Chernov Pty Ltd (ACN 102 589 855) atf Twiggy Discretionary Trust by Person:
Signed: 
Director
Date: 25/9/08

Signed for and on behalf of Legge Pty Ltd (ACN 107 740 018) atf James Legge Discretionary Trust by Person:
Signed: 
Director
Date: 25/9/08

**SCHEDULE 1**  
**ONE MOVEMENT AND BIG SOUND**

DELETED BY RESOLUTION OF THE COMMITTEE



**Schedule 2****Territory**

Australia  
India  
Kenya  
Mauritius  
Oman  
Singapore  
South Africa  
Indonesia  
Malaysia  
Madagascar  
Mozambique  
Sri Lanka  
Tanzania  
Yemen  
Bangladesh  
Iran  
Thailand  
UAE  
Japan  
Korea (North and South)  
China (including Hong Kong and Macau)  
Taiwan (R.O.C)  
Brunei  
Cambodia  
Fiji  
Laos  
New Zealand  
Papua New Guinea  
Philippines  
Samoa  
Solomon Islands  
Timor  
Tonga  
Taiwan  
Vanuatu  
Vietnam