

**NATIONAL COMPETITION POLICY  
LEGISLATION REVIEW**

**RACING RESTRICTION ACT 1917**

**Final Report  
February 1999**

**Office of Racing, Gaming and Liquor  
Perth, Western Australia**

## **REVIEW CONDUCT**

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### **DATE OF REVIEW**

December 1998 to February 1999

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## 1. INTRODUCTION

This report details a review of the *Racing Restriction Act 1917*. The review was undertaken in accordance with commitments of the Western Australian Government under the National Competition Policy Agreement.

The *Racing Restriction Act 1917* contains provisions that establish the framework for the control of horse racing in Western Australia.

As required by the Competition Principles Agreement, the terms of reference for the review were to:

- clarify the objectives of the relevant legislation;
- identify the nature of any restrictions on competition;
- analyse the likely effects of the restrictions on competition;
- assess and balance the costs and benefits of the restriction; and
- consider alternative means for achieving the same result.

The review examined sections of the legislation that potentially restrict or constrain an individual or organisation from undertaking or participating in any economic activity. Constraints on economic activity were considered as restrictions on competition regardless of whether the constraint applies equally or unequally to all parties affected by the legislation. It may be argued that if the restriction applies equally to all participants in a particular industry then it is not considered to constitute a restriction on competition. However, from a broader perspective such restrictions may affect competition for resources between industries and thus potentially influence the allocation of productive resources through the economy. In this sense, National Competition Policy (NCP) is about identifying government regulation of any sort that creates friction for any economic activity. It is from this standpoint that this review was undertaken.

## **2. PROFILE OF THE HORSE RACING INDUSTRY IN WESTERN AUSTRALIA**

There are two main horse racing activities carried on in Western Australia. These are thoroughbred racing, commonly known as simply racing or gallops, and standardbred racing, commonly known as harness racing or trotting. Each of these types of horse racing is breed specific and each has stringent controls in place to ensure that racing animals conform to long established breeding requirements.

While each of these codes is governed by a not-for-profit organisation, participation in the racing activities of each is highly commercialised with only a minor level of non-professional or hobby involvement.

Outside the thoroughbred and standardbred racing codes, other forms of horse racing are conducted on a non-professional basis. Quarter horse or speed horse racing is conducted under the control of a national body that manages its own stud book and licensing activities. However, due to different breeding and racing distance restrictions, quarter horse racing cannot obtain a licence to race for prize or reward and, therefore, cannot be bet on lawfully.

Gymkhanas or picnic race meetings are a common social activity, particularly in country areas. These events do not offer prize money and, therefore, do not require a licence under the Racing Restriction Act.

While the organisations that conduct racing are non-profit clubs, participation in thoroughbred racing and standardbred racing is highly commercialised. In 1996/97, 63 gallops and trotting clubs conducted 4,166 races involving 43,128 starters and paid stake money totalling approximately \$35.5 million. Most of this stake money was generated from the local betting industry with annual turnover of approximately \$1 billion annually.

In terms of impact on the State's economy, a 1992 study undertaken by ACIL Australia concluded that the horse racing industry in Western Australia provided in the vicinity of 12,200 full and part time jobs and, together with the greyhound and race betting sectors, contributed \$177 million to GDP.

The current system of control of the horse racing industry in Western Australia is founded on the provisions of the Racing Restriction Act 1917. This Act establishes two clubs, the Western Australian Turf Club (WATC) and the Western Australian Trotting Association (WATA), as the controlling authority, or principal club, for their respective codes of horse racing. These two organisations form part of a national network of principal clubs that control racing in accordance with national and local rules governing the conduct of gallops and trotting. Being clubs, both the WATC and the WATA have a system of committee control with members of each committee elected periodically by the general body of members.

The WATC and WATA each have two quite distinct roles to perform. As a private club each is responsible for managing the club's affairs and conducting its own local racing and other racecourse activities. As principal club they have responsibility for:

- registering or licensing clubs to conduct race meetings in their respective industries;
- licensing industry participants such as trainers, riders/drivers, stable hands etc;
- registering racing animals and managing stud book requirements;
- setting and allocating race dates to the various clubs;
- administering and enforcing the Rules of Racing through the establishment of a system of steward control and centralised drug testing capabilities; and
- managing general industry business activities including finance, marketing and promotion, event broadcasting, capital development etc.

Proprietary racing, that is racing conducted for personal gain, is not currently carried on in Western Australia.

### **3. SCOPE OF THE LEGISLATION**

#### **3.1 Background**

The Racing Restriction Bill was debated in the Legislative Assembly on 13 March 1917. From the Hansard Report of the debate it is apparent that, prior to the passing of the Racing Restriction Bill, there were no licensing requirements relating to the establishment of racecourses or the holding of race meetings in Western Australia. The only control that existed was through legislation governing the registration of totalisators under which the Colonial Secretary could issue totalisator licences to bona fide clubs.

The Attorney General at the time suggested that the unchecked spread of racing and racecourses was impacting on the viability of racing clubs, the standard of racecourses and of the gallopers and trotters competing at them, and on the good character of industry participants. In regard to this last point, views offered during the debate suggested that persons disqualified from racing by one club could continue to participate in racing activities with another club.

Some concern was also expressed during the debate that the conduct of racing for private gain, common during these times, was not in the public interest and the Opposition at the time suggested that the Bill should also address this issue. The Racing Restriction Act was subsequently passed without any provision to restrict proprietary racing. However after the implementation of the Act, the removal of proprietary racing was achieved through the discretionary application of the licensing powers vested in the controlling authorities, although there is no documentary evidence to support this.

The Act has undergone a number of amendments in the 81 years since it was first proclaimed. In 1984 the restrictions limiting the maximum number of race meetings permitted in any one year were removed. At the same time, provisions were inserted to allow the Minister to intervene in relation to a dispute involving race dates in circumstances where the Club or Association proposes to make a change in the program of metropolitan race meetings which may result in reduction or change in the program of races held outside the metropolitan area.

Despite these changes, the general thrust of the legislation, and the factors that gave rise to it, are still relevant today.

### **3.2 Objectives of the Legislation**

The Racing Restriction Act was enacted in 1917 to stop unregistered racing, and to restrict the number of race meetings held. The purpose being to protect the economic viability of the racing industry, the quality of racing activities and the integrity of racing industry participants.

This was achieved by stipulating that no galloping or trotting race for stake or prize may be held without a licence from the Western Australian Turf Club or the Western Australian Trotting Association respectively. This effectively established the Club and the Association as the controlling authorities for thoroughbred racing and harness racing respectively in Western Australia.

The original Act also placed limits on the number of races that could be held in various areas in any one year. However these limits have since been repealed

#### **4. SUBMISSIONS TO THE REVIEW**

A consultation program was undertaken to invite submissions to the review. This program was undertaken jointly for the reviews of betting, gambling and racing legislation, although these reviews are reported separately.

Invitations to make submissions to the review were made by written advice to persons and organisations with a known interest in the racing betting and gambling industries (Appendix A) and by public advertisement in a Saturday edition of *The West Australian* and an edition of the *Sunday Times* (6,14 December 1997: Appendix B).

Submissions that made general comments relating to all the legislation being reviewed were received from the following parties.

- Country Women's Association of Western Australia (Inc.).
- Lotteries Commission of Western Australia.
- Western Australian Turf Club.
- Western Australian Bookmakers' Association.

However, none of the issues raised in these submissions relate to the *Racing Restriction Act 1917*



## 5. RESTRICTIONS ON COMPETITION

The five sections of the *Racing Restriction Act 1917* have been reviewed to establish if there are any provisions that restrict competition.

From this review competitive restrictions contained in the legislation have been identified as follows:

- Restriction 1** No race meeting and no horse or pony race for any stake or prize may be held without a licence in writing issued by the Western Australian Turf Club (section 2(1)).
- Restriction 2** No trotting race meeting and no trotting race for any stake or prize may be held without a licence in writing issued by the Western Australian Trotting Association (section 3(1)).
- Restriction 3** Where the Western Australian Turf Club or Western Australian Trotting Association proposes to make a change in the program of race meetings customarily held in the metropolitan area and this change may necessitate a reduction or change in the program of races customarily held outside the metropolitan area, any dispute arising in relation to the matter may be referred to the Minister and the Minister may give such directions to the Western Australian Turf Club or Western Australian Trotting Association as the Minister thinks fit (sections 2(2) and 3(2)).
- Restriction 4** The Western Australian Turf Club and Western Australian Trotting Association may hold a limited number of race meetings in aid of any public hospital or other charitable or patriotic purpose (sections 2 (2b) and 3(4)).

## 6. EFFECTS OF THE RESTRICTIONS

*Restrictions 1 and 2* have two main effects.

First, the restrictions establish centralised control over the conduct of each code of racing. However, it is important to note in this regard that the restrictions do not make any stipulation, exclusion or condition on how this control is to be exercised. This means that a controlling authority is free to exercise this control as it sees fit and may permit any form of horse or trotting race or race meeting.

Second, the restrictions bestow the right and obligation to exercise this centralised control on the WATC with regard to horse and pony races and race meetings, and the WATA with regard to trotting races and race meetings. The effect of this is that any person or organisation wishing to conduct a horse or trotting race or race meeting must satisfy any conditions or prerequisites of the WATC or WATA and must conform and maintain conformity with the Rules of Racing that they each lay down.

In this regard both the WATC and the WATA have adopted national rules which are breed specific. These rules establish stringent breeding eligibility requirements that are prerequisite to a horse being registered for racing purposes. Therefore, this restriction indirectly prevents races or race meetings being conducted, for prize or reward, that involve horses that are not thoroughbred or standardbred.

*Restriction 3* allows the Minister, in certain circumstances, to intervene and issue a direction in relation to a dispute over race dates between a controlling authority and a country racing club.

The effect of this restriction is that the Minister may, in certain circumstances overrule a controlling authority in relation to a decision made regarding race dates.

*Restriction 4* was intended to provide the codes with the power to hold additional, charitable purpose race meetings.

With the removal of the restriction on the number of permissible race meetings and the abolition of oncourse betting taxes, this restriction is no longer relevant. As such it is concluded that this restriction does not require any further evaluation and should be repealed.

## **7. ASSESSMENT OF THE ADVANTAGES AND DISADVANTAGES OF THE RESTRICTIONS**

### **7.1 Restriction 1**

**No race meeting and no horse or pony race for any stake or prize may be held without a licence in writing issued by the Western Australian Turf Club (section 2(1)).**

In assessing the advantages and disadvantages of this restriction, it is necessary to separately examine the two main effects, namely -

- the establishment of centralised control for horse racing; and
- the vesting of this centralised control in the WATC.

#### **7.1.1 Establishment of Centralised Control**

##### *Potential Disadvantages of the Restrictions*

- Horse racing clubs or organisations are constrained in their ability to race on days and at times that may best suit their own purposes.
- Potential new horse racing clubs or organisations are constrained in their ability to conduct races and race meetings.
- Racing industry participants and patrons are restricted in their choice of racing venues to attend.

##### *Potential Advantages of the Restrictions*

- Integrity of racing activities can be more effectively maintained by a single controlling authority.
- Economies of scale can be achieved in the centralised management and regulation of racing industry activities.
- Consistent and enforceable rules of racing can be developed and applied to all racing venues and participants.
- Viability of the racing industry can be maintained through limiting the number of racing clubs and venues.
- Optimum levels of patronage and revenue can be achieved through race date scheduling being undertaken by a central controlling authority.

### *Assessment of Public Benefit*

In today's highly commercialised racing industry, two factors are critical to maintaining an acceptable level of viability in terms of industry participation. These are:

- maintaining the integrity of the racing product, including betting conducted on the racing product; and
- ensuring the good management of the racing product to allow it to compete effectively and achieve optimum results in the entertainment market.

History has shown that horse racing is capable of bringing out the best and the worst in human nature. For an activity long regarded as the "Sport of Kings" and a pastime of affluent gentlemen and women, its history is littered with well publicised episodes of race fixing, horse substitutions, betting scams, retributive violence and other generally dishonest activities.

As detailed in the *Background* section of the report, prior to centralised control being established in 1917 the approach to regulation of racing activities and probity of industry participants was fragmented and inconsistent. This impacted poorly on the image and integrity of the racing product and this impact threatened the viability of the racing industry.

Product quality is always an important issue to consumers, and consumers of racing and racing betting products are particularly sensitive in this regard. Providing the necessary level of product assurance in racing and racing betting requires a high level of close scrutiny and maintaining the required level of scrutiny can be expensive. On an individual club basis, the temptation to compromise on this scrutiny in order to minimise costs, particularly when a club is facing difficult financial times, is ever present.

The Racing Restriction Act was introduced to place this responsibility in the hands of a central controlling authority with the necessary powers and experience. The controlling authorities have adopted a system of steward control with responsibility for supervising the conduct of racing and betting on a state wide basis through the application of consistent rules. It is considered that only this type of approach can provide the level of control and assurance required by industry participants and betting customers.

These restrictions also establish centralised control over the issue of licences to conduct race meetings and the allocation of race meeting dates with the purpose of avoiding a situation where there are too many racing venues, or overlapping race meetings. This approach allows the controlling authority to manage the racing activities in the State in a coordinated manner so as to provide the best economic outcomes for the industry as a whole.

On face value, this restriction has the capacity to prevent full and open competition between potential and active racing clubs which, in normal circumstances, would be difficult to justify. However, racing clubs do not rely solely on oncourse patronage for

their revenue stream. If this were the case, open competition would see the best supported clubs survive.

However, the close link between racing and race betting is highlighted by the fact that all race clubs rely on revenue from off-course betting operations conducted by the TAB as their principal source of income. Generally speaking, most race clubs are able to raise sufficient revenue from their oncourse activities to cover the cost of administering club activities, but rely almost exclusively on revenue from the TAB to provide stake money for their race meetings. In 1996/97, the TAB distributed \$36.5 million to the horse racing industry (racing and trotting) which, in turn, paid out \$35.5 million in stake money.

Due to physical programming limits and the need to target the most profitable race meetings both within the state and interstate, the TAB is not able to cover the full program of racing in Western Australia. Therefore, any move to allow unrestricted racing opportunities in Western Australia is unlikely to boost TAB profit and would most likely result in a diminution of revenue distributions to all clubs and a general weakening of the industry as a whole.

#### *Alternative Means of achieving the Legislative Objectives*

An alternative to centralised control would be to permit individual racing clubs to openly compete and control their own racing activities. However, in view of the reliance on TAB distribution and the problems of inconsistent jurisdictional control which existed prior to the implementation of the Racing Restriction Act, a return to self regulation at club level is not considered to be a viable alternative.

#### *Conclusion*

On balance, it is considered that centralised control of horse racing activities establishes a substantial public benefit and the restriction should be maintained.

### **7.1.2 Vesting of this centralised control in the WATC**

#### *Potential Disadvantages of the Restrictions*

- Horse breeds that do not satisfy thoroughbred breeding criteria can not be raced for prize or reward.
- The establishment of the WATC as both a racing club and a controlling authority creates a potential conflict of interest.
- Consumers are restricted in the types of horse racing that they can attend and bet on.
- Racing industry participants are restricted in their choice of horse racing activities.

#### *Potential Advantages of the Restrictions*

- Restricted horse racing opportunities provide for easier regulation and control.
- No opportunity for non-contributing racing activities to have access to traditional horse racing betting revenue.

- Economies of scale can be achieved by narrowing the types of horse racing that can be conducted on a commercial scale and by combining the activities of club management and industry management.

#### *Assessment of Public Benefit*

In relation to horse racing generally, it is reasonable to contend that-

- there should be individual controlling authorities established to administer and regulate breed specific horse racing;
- there must be adequate controls in place to ensure that any racing activity conducted on a commercial basis is satisfactorily regulated and supervised; and
- given the reliance on betting revenue, there should be no "free subsidisation" of non-contributing horse racing activities from traditional horse racing revenue sources.

In establishing the WATC as the controlling authority for horse racing (other than trotting), the Racing Restriction Act effectively grants exclusive rights to conduct horse racing activities to a breed specific horse racing club, effectively excluding organised commercial racing between other breeds of horses. This is difficult to justify.

Certainly it is vital that the quality of the racing product is tightly controlled, and that the revenue the racing industry receives, as a return for providing a betting platform with a degree of respect and integrity, is not put at risk or diluted through allowing unrestricted access to the racing and betting market.

However, the current legislation denies any other form of horse racing the opportunity to prove itself. It is not necessary at this stage to argue the merits of any particular form of racing, such as quarter horse racing. What is important is that the legislation should not prevent such an examination being undertaken to determine whether or not the establishment of a third or subsequent form of horse racing can add to the public benefit. Providing an alternative form of horse racing can demonstrate that-

- it can effectively control its breeding and racing activities; and
- pay its own way without subsidisation by the traditional forms of horse racing,

there should be no barrier to entry into the horse racing market.

In such a scenario oncourse betting by totalisator and bookmaker would be allowed as this would not establish any free subsidisation argument. However, this would not be the case in relation to access to the TAB off-course betting network. Any TAB coverage of additional breed specific horse racing is likely to only be achieved through a reduction in the TAB's current horse race betting program. Unless the new breed specific racing is significantly more attractive as a betting product and capable of generating new, incremental betting turnover, there is unlikely to be any significant increase in revenue.

Establishing the WATC as a controlling authority in relation to thoroughbred racing places the organisation in a possible conflict of interests situation. The WATC conducts

racing activities at its own racecourses. Therefore, its status as controlling authority for all thoroughbred racing clubs places it in a situation where it can, conceivably, make decisions that favour its own racing activities over that of other clubs.

In addition, it is common for the committees elected to administer the WATC to include persons with vested racing interests and it is this committee that ultimately makes decisions in relation to whole of industry issues and employs the Stewards that control racing activities. Therefore this conflict of interests applies to two controlling authority functions, namely-

1. policing racing activities; and
2. directing the overall management and administration of the thoroughbred racing industry.

This potential conflict of interest can only establish a legitimate restriction on competition if there are no safeguards to prevent the WATC from improperly using its powers as controlling authority to benefit its own club activities.

In relation to point 1 above, it can also be contended that the existence of these vested interests establishes a strong "self interest" in maintaining the integrity of racing activities as a strong and well controlled industry will provide the rewards sought. It is accepted that the level of involvement of industry participants and punters in the racing industry depends on the integrity of horse racing events. The traditional horse racing industry has worked at gaining experience and knowledge in relation to the control of horse racing for almost 100 years and has committed substantial resources to ensuring the quality of its product. Given the industry's reliance on revenue from betting activities, this is an important factor that must not be undervalued.

The Stewards appointed to police racing are required to operate under a set of national racing rules developed by a conference of controlling authorities from around Australia. Apart from the addition of some local rules, which cannot be inconsistent with the overarching national rules, these rules are applied universally at racetracks around Australia. Decisions made by the WATC Stewards (or the WATC Committee itself) under these rules are appealable to the Racing Penalties Appeal Tribunal. This Tribunal is an independent, statutory authority charged with the responsibility of determining racing appeals in accordance with law.

Accordingly, it is considered that there is little scope for the WATC to improperly influence the policing of racing.

The second point relates to the WATC's principal roles of allocating race meetings and setting race dates, and managing whole of industry finances. While there may be no evidence of improper use of power, there are many instances of dispute or conflict between the principal club and other racing clubs and industry participants in relation to decisions made by the principal club. The perception of a conflict of interest can give rise to accusations of doubtful integrity when incidents occur which raise the ire of industry participants. However, such disagreements can often arise when a controlling authority is

required to place the interests of the industry as a whole before the interests of a particular club or individual and it may be that, in cases such as these, accusations of improper use of power are unfounded and misplaced.

Again, what is important is that there sufficient safeguards are in place to guard against the WATC favouring its own club activities in relation to industry management.

In this regard there are a number of statutory requirements which serve to achieve these safeguards. These are:

1. Section 2(2) of the *Racing Restriction Act* provides the Minister to intervene in a dispute over race scheduling in circumstances where a reduction or other change to the schedule of country race meetings is undertaken by the WATC in order to achieve a change to the schedule of metropolitan race meetings.

This provision was inserted at the time the *Racing Restriction Act* was amended in 1984 to remove limitations on the number of race meetings that may be held as a safeguard for non metropolitan clubs. It is important to note that this ministerial power of intervention has never been used.

2. Section 28(4) of the *Totalisator Agency Board Betting Act* stipulates that the WATC must distribute a set minimum percentage of TAB distribution to non metropolitan racing clubs.

Each year the WATC is required to prepare an accountability statement to Parliament setting out compliance with this requirement. Often the WATC's allocation of TAB distribution to country clubs has exceeded the minimum requirement.

3. The Racecourse Development Trust established under the Racecourse Development Act has responsibility for the allocation of racecourse development funding to all racing clubs.

In addition to these statutory safeguards, the WATC has established two advisory groups, the WA Thoroughbred Racing Industry Council and the WA Racing Industry Planning Group, each comprising broad industry representation, to advise it on racing and business management issues.

In determining whether or not these safeguards are sufficient to support an argument that the conflict of interests are perceived rather than actual, it is important to note that there were no submissions received suggesting that the WATC uses its dual role to gain an advantage over other racing clubs.

Accordingly, it is considered that there is little scope for the WATC to use its status as controlling authority to gain an advantage over other clubs, nor evidence that it has done so.



On balance it is considered that

1. the provision contained in the Racing Restriction Act that does not allow a horse race, not being a trotting race, to be conducted without a permit licence from the WATC does not establish an overall public benefit; and
2. the provision contained in the Racing Restriction Act that vests responsibility for the control of thoroughbred racing in the Western Australian Turf Club contributes to a net public benefit.

*Alternative Means of Achieving the Objects of the Legislation*

An alternative means of permitting and regulating other forms of horse racing would be to allow for the establishment of additional controlling authorities for other forms of breed specific horse racing. For instance, with an appropriate legislative authority in the Racing Restriction Act, the government could, by regulation, approve the establishment of a controlling authority to control and regulate other forms of horse racing where it can be demonstrated that such action is in the public interest and will not impact adversely on the traditional horse racing industry.

In relation to the potential conflict of interest established by vesting the power of controlling authority to one club in preference to others, separation of powers could be achieved by establishing a separate authority whose sole purpose is to exercise control over racing clubs conducting a common, breed specific horse racing activity. While a statutory racing authority is an alternative adopted in some other States, such an authority does not need to be run by government. It would, however, need to be established, or at least recognised by statute, and have in place rules governing its activities and powers.

However, as there is little or no evidence of improper use of power, any move to establish a separate authority to control horse racing is only likely to address the perception of a conflict of interest without any real benefit being achieved. In this regard, it is relevant to note that establishment of an independent controlling authority would require substantial additional set up and running costs. In 1997/98 the WATC expenditure on administration activities totalled \$4.4 million. While some of this expense would relate to the administration of its own club activities, the majority is incurred in its role as controlling authority.

Clearly some controlling authority activities, and funding for those activities, could be neatly transferred from the WATC to an independent authority. However, many services and facilities would need to be duplicated and economies of scale would be lost. It is estimated that the establishment of a separate, independent controlling authority would result in additional costs of several hundreds of thousand dollars. Accordingly this option is not considered to be a viable alternative.

The economies of scale may be improved if a single regulating authority was established to control all forms of racing. While savings could be achieved through reduced administrative and corporate support activities, these savings are unlikely to be significant

when establishment and accommodation costs are taken into account. In addition, as each of the codes of racing adopt and operate under separate, and very different national rules of racing, few benefits associated with the consolidation of regulatory skills and experience would result, nor would there be much opportunity to achieve consistency of regulation across all codes.

Given these circumstances, there would need to be strong argument demonstrating a general failure of the existing system of control to warrant an uninvited intervention by government. In this regard, it is important to note that where independent controlling authorities have been established in other States, such action has been brought about principally because of a failure in the system of control rather than being driven by the need to achieve economies of scale.

### *Conclusion*

It is concluded that the restriction which places control of all horse racing in the hands of the WA Turf Club excludes other forms of non-traditional, breed specific horse racing from gaining, or seeking to gain entry into the horse racing market, thereby establishing a net public cost.

To overcome this the Racing Restriction Act should be amended to-

1. limit the authority of the WATC to thoroughbred racing; and
2. allow the licensing by the Minister or other authority of alternative forms of horse racing where it can be demonstrated that such action is in the public interest.

In relation to thoroughbred racing, it is considered that the provisions which place control of thoroughbred racing in the hands of the Western Australian Turf Club establish a net public benefit and should be retained. However, the WATC's dual role of racing club and industry regulator does establish a possible conflict of interest and while there is no evidence to suggest that the WATC has improperly used this power to further its own club interests, the alternative of establishing an independent regulator should be reconsidered in the event that this situation changes.

## **7.2 Restriction 2**

**No trotting race meeting and no trotting race for any stake or prize may be held without a licence in writing issued by the Western Australian Trotting Association (section 3(1)).**

Again, in assessing the advantages and disadvantages of this restriction, it is necessary to separately examine the two main effects, namely -

- the establishment of centralised control for trotting racing; and
- the vesting of this centralised control in the Western Australian Trotting Association.

## **7.2.1 Establishment of Centralised Control**

### *Potential Disadvantages of the Restrictions*

- Trotting clubs or organisations are constrained in their ability to race on days and at times that may best suit their own purposes.
- Potential new trotting clubs or organisations are constrained in their ability to conduct trotting races and race meetings.
- Trotting industry participants and patrons are restricted in their choice of trotting racing venues to attend.

### *Potential Advantages of the Restrictions*

- Integrity of trotting racing activities can be more effectively maintained by a single controlling authority.
- Economies of scale can be achieved in the centralised management and regulation of trotting industry activities.
- Consistent and enforceable rules of racing can be developed and applied to all trotting racing venues and participants.
- Viability of the trotting industry can be maintained through limiting the number of trotting clubs and venues.
- Optimum levels of patronage and revenue can be achieved through race date scheduling being undertaken by a central controlling authority.

### *Assessment of Public Benefit*

The arguments supporting centralised control of trotting racing are identical to those detailed in section 7.1.1 in relation to thoroughbred racing. The trotting industry operates in much the same manner as thoroughbred racing, having a heavy reliance on income from betting, and therefore must address the same product integrity issues. The Western Australian Trotting Association also operates under a set of national rules and employs Stewards to enforce those rules.

Again, the principal outcomes that the Western Australian Trotting Association as the industry controlling authority is best placed to achieve are-

- maintaining the integrity of the racing product, including betting conducted on the racing product; and
- ensuring the good management of the trotting product to allow it to compete effectively and achieve optimum results in the entertainment market.

Trotting racing is no less exposed to dishonest practices than thoroughbred racing. Providing the necessary level of product assurance in trotting racing and betting on trotting races requires a high level of close scrutiny and maintaining the required level of scrutiny can be expensive.

This restriction also establish centralised control over the issue of licences to conduct trotting race meetings and the allocation of race meeting dates with the purpose of avoiding a situation where there are too many trotting racing venues, or overlapping trotting race meetings. This approach allows the controlling authority to manage the trotting racing activities in the State in a coordinated manner so as to provide the best economic outcomes for the industry as a whole.

### *Conclusion*

It is considered that centralised control of trotting racing establishes a substantial public benefit and the restriction should be maintained.

### **7.2.2 Vesting of this centralised control in the Western Australian Trotting Association**

Unlike the responsibility that is vested in the Western Australian Turf Club in relation to all horse racing, this restriction only places control of trotting in the hands of the Western Australian Trotting Association. Therefore, there is not the same breed specific problem associated with this restriction as there is with *Restriction 1*. Consequently the potential disadvantages of the restriction are lessened.

#### *Potential Disadvantages of the Restrictions*

- The establishment of the WATA as both a trotting club and a controlling authority creates a potential conflict of interest.

#### *Potential Advantages of the Restrictions*

- Economies of scale can be achieved by combining the activities of club management and industry management.

#### *Assessment of Public Benefit*

Establishing the WATA as a controlling authority in relation to trotting places the organisation in a possible conflict of interests situation. This situation is the same as applies to WATC in relation to thoroughbred racing. Therefore the arguments presented in section 7.1.2 are again relevant and are adopted for the purposes of examining this restriction.

As with the WATC, this potential conflict of interest can only establish a legitimate restriction on competition if there are no safeguards to prevent the WATA from improperly using its powers as controlling authority to benefit its own club activities.

The WATA also appointed a panel of stewards to police trotting under a set of national rules developed by a conference of controlling authorities from around Australia.

Decisions made by the WATA Stewards (or the WATA Committee itself) under these rules are appealable to the Racing Penalties Appeal Tribunal

Accordingly, it is considered that there is little scope for the WATA to improperly influence the policing of trotting.

In relation to industry management, the WATA is subject to the same safeguards as the WATC.

- 1 Section 3(1) of the Racing Restriction Act provides the Minister to intervene in a dispute over race scheduling in circumstances where a reduction or other change to the schedule of country race meetings is undertaken by the WATA in order to achieve a change to the schedule of metropolitan race meetings.

This provision was inserted at the time the *Racing Restriction Act* was amended in 1984 to remove limitations on the number of race meetings that may be held as a safeguard for non metropolitan clubs. It is important to note that this ministerial power of intervention has never been used.

2. Section 28(5) of the *Totalisator Agency Board Betting Act* stipulates that the WATA must distribute a set minimum percentage of TAB distribution to other trotting clubs.

Each year the WATA is required to prepare an accountability statement to Parliament setting out compliance with this requirement. Often the WATA's allocation of TAB distribution to country clubs has exceeded the minimum requirement.

3. The Racecourse Development Trust established under the Racecourse Development Act has responsibility for the allocation of racecourse development funding to all trotting clubs.

In addition to these statutory safeguards, the WATA has established two advisory groups, the Harness Racing Industry Council and the WATA RDT Advisory Council, each comprising broad industry representation, to advise it on trotting racing and business management issues.

In determining whether or not these safeguards are sufficient to support an argument that the conflict of interests are perceived rather than actual, it is important to note that there were no submissions received suggesting that the WATA uses its dual role to gain an advantage over other clubs.

Accordingly, it is considered that there is little scope for the WATA to use its status as controlling authority to gain an advantage over other clubs, nor evidence that it has done so.

On balance it is considered that the provision contained in the Racing Restriction Act that vests responsibility for the control of trotting in the Western Australian Trotting Association contributes to a net public benefit.

#### *Alternative Means of Achieving the Objects of the Legislation*

In relation to the potential conflict of interest established by vesting the power of controlling authority to one club in preference to others, separation of powers could be achieved by establishing a separate authority whose sole purpose is to exercise control over clubs or other organisations conducting trotting racing. While a statutory trotting authority is an alternative adopted in some other States, such an authority does not need to be run by government. It would, however, need to be established, or at least recognised by statute, and have in place rules governing its activities and powers.

However, as there is little or no evidence of improper use of power, any move to establish a separate authority to control trotting is only likely to address the perception of a conflict of interest without any real benefit being achieved. In this regard, it is relevant to note that establishment of an independent controlling authority would require substantial additional set up and running costs. Again, the WATA expends several millions of dollars on administration activities, most of which is incurred in its role as controlling authority.

Clearly some controlling authority activities, and funding for those activities, could be neatly transferred from the WATA to an independent authority. However, many services and facilities would need to be duplicated and economies of scale would be lost. It is estimated that the establishment of a separate, independent controlling authority would result in additional costs of several hundreds of thousand dollars. Accordingly this option is not considered to be a viable option.

The economies of scale may be improved if a single regulating authority was established to control all forms of racing. However, these savings are unlikely to be significant when establishment and accommodation costs are taken into account and, as such, there would need to be a strong argument supporting a general failure of the existing system of control to warrant an uninvited intervention of this nature. In this regard, it is important to note that where independent controlling authorities have been established in other States, such action has been brought about principally because of a failure in the system of control rather than being driven by the need to achieve economies of scale.

#### *Conclusion*

It is considered that the provisions which place control of trotting in the hands of the Western Australian Trotting Association establish a net public benefit and should be retained. The option of establishing an independent regulator should only be considered if and when there is a failure in the current system of control brought about by improper use of power on behalf of the WATA.

### **7.3 Restriction 3:**

**Where the Western Australian Turf Club or the Western Australian Trotting Association proposes to make a change in the program of race meetings customarily held in the metropolitan area and this change may necessitate a reduction or change in the program of races customarily held outside the metropolitan area, any dispute arising in relation to the matter may be referred to the Minister and the Minister may give such directions to the Western Australian Turf Club or Western Australian Trotting Association as the Minister thinks fit (sections 2(2) and 3(2)).**

*Assessment*

This provision was put in place in 1984 specifically to provide an avenue for the Minister to intervene in disputes over race dates in instances where the principal club could be favouring racing activities at its own club to the detriment of country clubs. While there have been a handful of disputes over race dates since then these have been resolved without the Minister needing to use the intervention power.

As mentioned in the discussion on restrictions 1 and 2, these provisions serve to mitigate the perceived conflict of interest situation that exist with the current controlling authorities and on that basis is considered to be in the public interest.

In terms of actual impact this restriction is extremely minor, having never been implemented, and does not warrant any detailed analysis or investigation of alternatives.

*Conclusion*

Sections 2(2) and 3(2) should be retained.

#### **7.4 Restriction 4**

**The Western Australian Turf Club and Western Australian Trotting Association may hold a limited number of race meetings in aid of any public hospital or other charitable or patriotic purpose (sections 2 (2b) and 3(4)).**

*Conclusion*

This restriction has previously been identified as being redundant and should be repealed.

## **8. SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS**

The examination of the legislation pertaining to this review resulted in compilation of a list of four potential restrictions on competition

These potential restrictions on competition were assessed in respect of their potential costs and benefits and the possibility of using alternative and less restrictive means of achieving legislative objectives. Conclusions were drawn as to whether the provisions of the legislation should be retained amended or repealed. These conclusions are summarised below with specific recommendations for the retention, amendment or repeal of the respective sections of the legislation.

### **Restriction 1**

No race meeting and no horse or pony race for any stake or prize may be held without a licence in writing issued by the Western Australian Turf Club (section 2(1)).

#### *Recommendations*

1. The provisions contained in the Racing Restriction Act which establish centralised control of horse racing are in the public interest and should be retained.
2. Section 2(1) of the Racing Restriction Act should be amended to limit the authority of the Western Australian Turf Club to thoroughbred racing.
3. A provision should be inserted into the Racing Restriction Act to allow the licensing by the Minister or other authority of alternative forms of horse racing where it can be demonstrated that such action is in the public interest.
4. The establishment of a single independent regulator should be considered if it is demonstrated that the Western Australian Turf Club has improperly used its power as controlling authority to favour its own club activities over other clubs under its control.

### **Restriction 2**

No trotting race meeting and no trotting race for any stake or prize may be held without a licence in writing issued by the Western Australian Trotting Association (section 3(1)).

#### *Recommendations*

1. The provisions contained in section 3(1) of the Racing Restriction Act which establish centralised control of trotting racing, and vest that control in the Western Australian Trotting Association are in the public interest and should be retained.
2. The establishment of a single independent regulator should be considered if it is demonstrated that the Western Australian Trotting Association has improperly



used its power as controlling authority to favour its own club activities over other clubs under its control.

### **Restriction 3**

Where the Western Australian Turf Club or the Western Australian Trotting Association proposes to make a change in the program of race meetings customarily held in the metropolitan and this change may necessitate a reduction or change in the program of races customarily held outside the metropolitan area, any dispute arising in relation to the matter may be referred to the Minister and the Minister may give such directions to the WATC or WATA as the Minister thinks fit (sections 2(2) and 3(2)).

#### *Recommendation*

The restriction is considered to be in the public interest and should be retained.

### **Restriction 4**

The Western Australian Turf Club and Western Australian Trotting Association may hold a limited number of race meetings in aid of any public hospital or other charitable or patriotic purpose (sections 2 (2b) and 3(4)).

#### *Recommendation*

With the removal of the restriction on the number of permissible race meetings and the abolition of oncourse betting taxes, this restriction is no longer relevant and the provisions that establish this restriction should be repealed.

## **9. IMPLEMENTATION OF LEGISLATIVE CHANGE**

It is proposed that legislative change in response to recommendations made in this review, while not considered to be urgent, should be initiated at the next available opportunity.

**APPENDIX A  
ORGANISATIONS AND PERSONS INVITED TO MAKE  
SUBMISSIONS TO THE REVIEW**

WA Turf Club  
WA Trotting Association  
WA Greyhound Racing Authority  
WA Totalisator Agency Board  
WA Provincial Thoroughbred Racing Association  
WA Country Trotting Association  
WA Country Racing Association  
WA Bookmakers Association  
Chief Steward, WA Greyhound Racing Authority  
Chief Steward, WA Turf Club  
Chief Steward, WA Trotting Association  
WA Lotteries Commission  
Great Southern Districts Trotting Council  
South Western Districts Trotting Council  
North Eastern Districts Trotting Council  
Members of the Betting Control Board  
The Gaming Commission of WA  
All Thoroughbred Racing Clubs registered with the WA Turf Club (42 in total)  
All Harness Racing Clubs registered with the WA Trotting Association (22 in total)

**APPENDIX B**

**PUBLIC ADVERTISEMENT OF THE REVIEW**