

**NATIONAL COMPETITION POLICY
LEGISLATION REVIEW**

RACING RESTRICTION ACT 1927

**Final Report
February 1999**

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

REVIEW CONDUCT

REVIEW CONTACT

Mr Jon Nichols
Manager - Racing
Office of Racing, Gaming and Liquor
PO Box 6119
EAST PERTH WA 6892
Tel. (08) 9425 1806; Fax (08) 9221 9838

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PERSONS UNDERTAKING THE REVIEW

Mr Jon Nichols
Manager - Racing
Office of Racing, Gaming and Liquor
PO Box 6119
EAST PERTH WA 6892
Tel. (08) 9425 1806; Fax (08) 9221 9838

1. INTRODUCTION

This report details a review of the *Racing Restriction Act 1927*. The review was undertaken in accordance with commitments of the Western Australian Government under the National Competition Policy Agreement.

The *Racing Restriction Act 1927* contains provisions relating to the conduct of racing by animals other than horses 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. SUBMISSIONS TO THE REVIEW

The Racing Restriction Act 1927 was not originally included in the schedule of Acts to be reviewed under the terms of the National Competition Principles Agreement. Accordingly the invitation for public submissions did not include a reference to the Racing Restriction Act 1927.

However given the circumstances surrounding the restriction contained in the Act and the conclusion reached by this review, it is not considered that a public consultation program is necessary.

SCOPE OF THE LEGISLATION

3.1 Background

The *Racing Restriction Bill (1927)* was debated in the Legislative Assembly on 25 October 1927. From the *Hansard Report* of the debate it is apparent that a new form of racing had emerged known as "tin hare" racing, which was described during the debate as

"...greyhounds running against each other incited by the sight of a stuffed hare skin in front of them in merely a test of speed. Usually eight dogs compete in a heat. Each dog wears a light cover of distinctive colour - blue, red, green, black, etc - on which its number in the race book is plainly shown. The track is between two and three furlongs around and most of the races are of a trifle more than a round with an occasional one of half a mile. The hare is attached to a short arm projecting from a mono-rail which runs around the outside of the track and is protected by a covering of galvanised iron"

This new form of racing, which is obviously greyhound racing as we know it today, was evidently attracting large crowds and those attending were betting large amounts of money with up oncourse bookmakers numbering in the hundreds. At the time gambling was considered to be a social evil unable to be controlled. The concern of the Parliament was not so much the tin hare racing itself but more so the opportunity for gambling it created. However, as the laws aimed at restricting gambling itself had been largely ineffective, the government's only viable option was to remove the opportunity for gambling by banning the activity.

The act established a prohibition on the use of a mechanical contrivance in connection with racing between animals other than horses. The reference to mechanical contrivance was directed at the use of a mobile, mechanical lure involved in "tin hare" racing. This distinction was needed so as not to inhibit traditional greyhound "coursing" events which was a popular sport at the time.

There have been no amendments to the *Racing Restriction Act 1927* since its inception.

It is important to note the both the *Western Australian Greyhound Racing Authority Act 1981*, and its predecessor the *Greyhound Racing Control Act 1972* (repealed 1981) include a provision exempting the conduct of greyhound racing from the provisions of the *Racing Restriction Act 1927*.

3.2 Objectives of the Legislation

The purpose of enacting the *Racing Restriction Act* in 1927 was to make "tin hare" or greyhound racing unlawful in order to remove an opportunity for gambling. Why the legislation refers to all animals other than horses is not clear from the research material available. It appears that this was either an unintended side effect or aimed at restricting any other new form of betting activity that may surface.

4. RESTRICTIONS ON COMPETITION

The three sections contained in the *Racing Restriction Act 1927* have been reviewed to establish if there are any provisions that restrict competition.

From this review a competitive restriction contained in the legislation has been identified as follows:

Restriction 1 The use of a mechanical contrivance in connection with racing between animals other than horse is not permitted. (section 2).

5. EFFECTS OF THE RESTRICTION

The effect of this restriction is that it is unlawful to use a mechanical device in the conduct of racing between animals other than horses.

The original purpose of this legislation was to remove opportunities for gambling on animal racing other than horse racing. However, a side effect of this restriction is that other forms of racing conducted as a sport, hobby or social activity, where a mechanical device such as a starting gate or box, saddle or similar are technically illegal. For example widely accepted forms of animal racing such as pigeon racing, camel racing, mouse racing etc are all conducted using a mechanical contrivance and are therefore technically unlawful.

Given that the original target of the legislation - greyhound racing - has been allowed by statute since 1972, and all forms of gambling are now strictly controlled under a raft of dedicated legislation, the intent of this Act is no longer relevant.

Accordingly it is considered that the restriction contained in the Racing Restriction Act no longer serves its purpose and should be repealed. As the Act has no other purpose it should be repealed in its entirety.

5. RECOMMENDATION

The *Racing Restriction Act 1927* be repealed at the first opportunity.