

RACING AND WAGERING WESTERN AUSTRALIA

Management Services Agreement between Racing and Wagering Western Australia and William Hill Australia Wagering Pty Ltd

RWWA's submissions in response to submissions lodged by Western
Australian Bookmakers Association Inc. in relation to application for
revocation and substitution of authorisations A091342 and A91343

PUBLIC VERSION

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Introduction

- 1 On 30 November 2017 the Western Australian Bookmakers Association Inc. (**WABA**) made submissions (**WABA Submission**) opposing RWWA's application for revocation and substitution of authorisations A091342 and A91343.
- 2 In these responsive submissions, RWWA sets out its response to certain matters in the WABA Submission but does not deal with all matters raised in the WABA Submission. RWWA does not agree with much of the material in the WABA Submission and the fact that a matter raised in the WABA Submission is not dealt with below does not mean that RWWA agrees with that matter. RWWA relies on its original submissions in support of its application for the reauthorisation of the 2012 Agreement (**RWWA's Submissions**) for their full force and effect.
- 3 Words beginning with a capital letter and which are not defined in this responsive submission have the same meaning given to them in RWWA's Submissions
- 4 For ease of reference, RWWA's responsive submissions adopt the same headings as used in the WABA Submission.

WABA Members

- 5 RWWA agrees that WABA members contribute funds to the Western Australian racing industry through payment of a betting levy and have done so over many decades.
- 6 In the 2016/2017 financial year WABA members paid approximately **[CONFIDENTIAL INFORMATION DELETED]** in betting levies which were ultimately distributed to the Western Australian racing industry. In that same period, RWWA's financial distributions to the Western Australian racing industry arising from its operations in the same period was approximately \$152 million.
- 7 In the 2016/2017 financial year, the combined wagering turnover of WABA members from wagering activities was approximately **[CONFIDENTIAL INFORMATION DELETED]**. In that period, RWWA's wagering turnover from its fixed odds wagering was approximately \$0.68 billion¹ out of a total wagering turnover of approximately \$2.02 billion².

RWWA

- 8 RWWA agrees that it competes with WABA members in the provision of fixed odds wagering products on thoroughbred and harness racing in Western Australia to consumers. WABA members are permitted to offer fixed odds wagering products on sports and racing, but RWWA is not aware of any WABA members that offer fixed odds wagering products on sports or greyhound racing.
- 9 As noted in RWWA's Submissions, RWWA is a statutory corporation which has the functions and powers conferred on it by the *Racing and Wagering Western Australia Act 2003* (WA).

¹ Racing Australia Fact Book 2016/17 at pages 103 and 107 available at <http://www.racingaustralia.horse/Aboutus/FactBook.aspx>

² Ibid

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- 10 RWWA submits that all of the material under this heading in the WABA Submission, relating as it does to the original applications for authorisations, is irrelevant to the ACCC's consideration of the applications for revocation and substitution and should be ignored.

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- 11 The WABA Submission says that it is questionable if RWWA has been offering fixed odds wagering products at a better price and purports to provide unsubstantiated evidence of prices offered on particular horses in particular races at one race meeting.
- 12 That limited sample, even if it is accurate, does not affect or negate the argument that by allowing RWWA to continue to obtain the Management Services from WHA is likely to allow RWWA to continue to offer fixed odds wagering products to customers at a better price than *it* could in the future without the conduct.
- 13 It is not clear whether, in referring to section 50(1)(b)(v) of the RWWA Act as it does on page 6 of the WABA Submission, WABA suggests that RWWA ignores or is not compliant with its statutory duties and obligations. To the extent that is being suggested, RWWA is fully compliant with all of its statutory duties and obligations.
- 14 On page 7 of the WABA Submission, WABA refers to its analysis of the position if RWWA chose not to conduct fixed odds wagering. RWWA derives profit from its fixed odds wagering operations. It is obliged to distribute all of its profits (after various prescribed deductions) to the Western Australian racing industry. If RWWA ceased its fixed odds wagering operations, RWWA would have less funds available to distribute to the Western Australian racing industry.

Marketing Conduct by RWWA

- 15 RWWA has entered into lawful sponsorship agreements with racing clubs in Western Australia.
- 16 WABA's submissions relating to RWWA's marketing arrangements with racing clubs in Western Australia are irrelevant to the application before the ACCC and WABA's dissatisfaction with RWWA's marketing arrangement with racing clubs should be disregarded.

Radio Services by RWWA

- 17 RWWA does not permit any other bookmaker or wagering service provider to advertise on TAB Radio (a radio service that is owned and operated by RWWA).
- 18 WABA's submissions relating to RWWA's radio services are irrelevant to the application before the ACCC and WABA's dissatisfaction with RWWA's decision not to allow WABA members to advertise on TAB Radio should be disregarded.

Further parties

- 19 Contrary to the statement in the WABA Submission, no other parties "utilise" the Original Authorisations.

- 20 RWWA does not provide fixed odds wagering services for or on behalf of racing clubs in Western Australia. The fixed odds wagering products that RWWA provides on-course in Western Australia are provided according to law.
- 21 WHA does not conduct on-course betting in Western Australia, whether in conjunction with RWWA or on its own account.

RWWA Website and Apps

- 22 WABA's submissions relating to RWWA's website and wagering applications are irrelevant to the application before the ACCC.
- 23 RWWA's use of its website and wagering apps will remain constant in both the factual and counterfactual analysis provided in RWWA's submissions. Those matters have no effect on the public benefit that is likely to arise if RWWA is permitted to continue to obtain the Marketing Services from WHA under the 2012 Agreement.
- 24 The fact that the WABA is dissatisfied with RWWA's development and use of its website and wagering apps is not relevant to the ACCC's consideration of the applications for revocation and substitution.

Rules of Racing 2005

- 25 WABA's submissions relating to the *Rules of Racing 2005* website and wagering applications are irrelevant to the application before the ACCC.
- 26 RWWA has always amended the *Rules of Racing 2005* in accordance with requests made by WABA and its members if the requested amendments have the support of the Gaming and Wagering Commission of Western Australia.

Concerns

- 27 The first paragraph in WABA Submission is the reason that RWWA sought the Original Authorisations and is pursuing the revocation and substitution applications.
- 28 The ACCC has accepted on numerous occasions that the market for wagering products is an Australia wide market, and not a state based market.
- 29 RWWA is fully compliant with its legislative requirements, including the obligation to produce a Statement of Corporate Intent.