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Mr Scott Gregson
The General Manager
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Australian Competition and Consumer Council
PO Box 1199
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Dear Mr Gregson

**EXCLUSIVE DEALING NOTIFICATION N93093 – WORKERS' COMPENSATION
RACING AND WAGERING WESTERN AUSTRALIA**

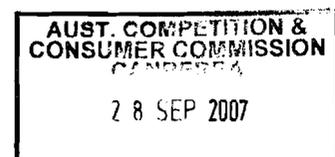
Thank you for your letter of 30 August 2007 seeking comments on an exclusive dealing notification the Australian Competition and Consumer Council (ACCC) has received from Racing and Wagering Western Australia (RWWA). WorkCover WA has prepared a "position paper" on this issue which outlines the reasons for our opposition to the RWWA proposal.

While WorkCover WA understands the RWWA's desire to have all thoroughbred trainers commit to their proposed scheme there is no indication that such an arrangement will deliver reduced premiums or a more efficient and effective claims management service. On the basis of the information presented by RWWA there appears to be no basis for thoroughbred trainers to be denied the opportunity to make decisions based on their individual workers' compensation and other insurance needs.

I note from further correspondence dated 17 September 2007 that the RWWA has requested a pre-decision conference in relation to the draft notice issued by the ACCC. I am pleased to advise that Mr Chris White, General Manager, Scheme Development will represent WorkCover WA at the pre-decision conference scheduled for 11 October 2007. Mr White can be contacted on (08) 9388 5698 or by email at chris.white@workcover.wa.gov.au.

Yours sincerely

ADRIAN WARNER
CHIEF EXECUTIVE OFFICER
21 September 2007



Date	21 September 2007
Subject	EXCLUSIVE DEALING NOTIFICATION N93093 – WORKERS' COMPENSATION RACING AND WAGERING WESTERN AUSTRALIA

PURPOSE

1. The purpose of this briefing note is to provide policy advice on an "exclusive dealing notification" submitted by Racing and Wagering WA (RWWA) to the Australian Competition and Consumer Commission (the ACCC). Based on the notification the RWWA seek to offer a licence to conduct thoroughbred horse training activities in WA on condition that trainers obtain workers' compensation insurance from a nominated insurer, who is yet to be determined.

BACKGROUND

2. In administering the *Trade Practices Act 1974* (the TPA) the ACCC seeks to prevent anti-competitive conduct to encourage competition and efficiency in business and therefore greater choice for consumers in price quality and service. Section 47 of the TPA in certain circumstances, prohibit exclusive dealing which involves one business trading with another person, imposing restrictions on the other's freedom to choose with whom, or in what, it deals.
3. Sections 47(6) and 47(7) prohibit 'third line forcing' which involves the supply of goods and services on condition that the customer also acquires goods or services from a third party. The 'notification' lodged with the ACCC by the RWWA seeks protection against conduct that might breach the exclusive dealing provisions of the TPA.
4. The RWWA is the controlling authority for thoroughbred, harness and greyhound racing in WA and is a corporate body under the *Racing and Wagering Western Australia Act 2003* (the RWWA Act). It is not an agent of the Crown and is not part of the public sector.
5. Under section 35(1)(i) of the RWWA Act the RWWA is "to endeavour to ensure that racing industry issues such as insurance ...are carried out in an appropriate and adequate manner". The RWWA therefore argues it has a statutory responsibility to workers' compensation insurance for horse-trainers are available in the most efficient and cost effective form.

6. The 681 thoroughbred horse trainers in WA must be licensed by the RWWA to conduct training activities and may issue the licence subject to such conditions as it determines. One such condition is that the horse trainers must hold a current workers' compensation policy which trainers currently obtain from an approved insurer.
7. The RWWA propose conducting a tender process to select one nominated insurer to underwrite all the workers' compensation insurance needs of the thoroughbred trainer with a proposed implementation date of 1 July 2008.
8. The RWWA maintain such an arrangement will result in public benefits from:
 - reduced premiums through volume discounts negotiated with one insurer
 - more efficient and effective claims management process
 - greater confidence that all employees of licensed horse trainers will be covered for workers' compensation insurance.

WORKERS' COMPENSATION ISSUES

9. section 160 of the *Workers' Compensation and Injury Management Act 1981* (the Act) requires employers to obtain workers' compensation insurance. Thoroughbred horse trainers in WA, as employers, can obtain insurance cover from any of the insurers approved to underwrite workers' compensation insurance. Recommended premium rates for workers' compensation are reviewed and published annually by WorkCover WA. The Act is written on the basis of employers having a choice of approved insurer with employers encouraged to obtain alternative quotes when taking out or renewing their policy. This is a fundamental premise of a privately underwritten, multi-insurer system.
10. While there appear to be some parallels between the RWWA proposal and the Western Australian Local Government Association (WALGA) group workers' compensation scheme, all local authorities have the option of selecting their own workers' compensation insurer. The proposal by RWWA is predicated on all the thoroughbred horse trainers being required to take out a workers' compensation insurance policy with a selected insurer before they are granted a licence.

11. The RWWA proposal seeks reduced premiums through volume discounts negotiated with one insurer and more efficient and effective claims management. While this is a worthy objective, being required to take insurance through a nominated insurer may actually disadvantage a number of thoroughbred trainers who have already negotiated competitive insurance packages through a preferred insurer and established a productive business relationship.
12. WorkCover WA is concerned the RWWA proposal is predicated on all current (681) thoroughbred horse trainers being required to take out workers' compensation insurance cover with a selected insurer before they are granted a licence. As indicated in the Draft Notice this form of third line forcing removes the choice of insurance provider and the ability for the thoroughbred horse trainers to shop around for the premium and benefits package that suits them best.
13. A simple scenario may involve a trainer having all their insurance needs packaged up with a single insurer at a competitive rate. Forcing trainers to move to the workers' compensation insurer of the RWWA's choice may financially disadvantage individual trainers in terms of their overall insurance costs.
14. WorkCover WA intends to undertake further research into the market share of approved insurers and trends in premiums in the industry class relevant to thoroughbred horse trainers.

WORKCOVER WA POSITION

15. While WorkCover WA understands the RWWA's desire to have all thoroughbred trainers commit to their proposed scheme there is no indication that such an arrangement will deliver reduced premiums or a more efficient and effective claims management service. Thoroughbred trainers have a right to make a decision on their individual insurance needs, based on full information and disclosure.
16. WorkCover WA can see no difficulties with the RWWA entering into an arrangement with a selected insurer and seeking to market a workers' compensation service to thoroughbred trainers. Participation in such a facility should be optional. If the RWWA supported arrangement delivers lower premiums and a more efficient and effective claims management service it is likely the thoroughbred trainers will embrace it and agree to participate

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