

Gaming and Wagering Commission of Western Australia  
P.O. Box 6119  
EAST PERTH WA 6892

## **RE: Review on Fees Paid to Charity Lottery Service Providers**

### **Our Requests**

FIA aligns this submission with the responses provided by its Members to the proposed policy change. Several issues are raised in this submission, and the following requests are made of the WA Gaming and Wagering Commission (GWC):

1. FIA requests that the GWC should consult the sector meaningfully, fairly, and transparently.
2. FIA requests the GWC to provide its assessment of the philanthropic and economic impact of the proposed policy change.
3. FIA requests the GWC to provide its assessment on the costs involved in conducting lotteries that facilitate charitable causes.
4. FIA requests the GWC to review its interpretation of Sections 51 & 104 GWC Act 1987.

### **I About Fundraising Institute Australia (FIA)**

FIA is Australia's national peak body for the \$12.5 billion charitable sector. We are an industry body with over 7000 Members who are charities, not for profits, suppliers of fundraising services, and individual fundraising professionals. FIA, among its other professional fundraising activities, champions and facilitates best practice fundraising with a self-regulatory Code of conduct for the sector, the FIA Code.

We also play an important role in engaging regulators on behalf of our Members. We note that the Gaming and Wagering Commission of Western Australia (GWC) has reached a preliminary view on the fees charitable organisations pay service providers for assisting them in conducting lotteries towards charitable purposes. Lotteries are an important fundraising strategy of several FIA Members across Australia, thus, the conduct of lotteries by FIA Members comes within our advocacy and self-regulatory remits.

## **II The Impact of the Proposed Policy Change**

Charity lottery service providers that assist charitable organisations in conducting lotteries have been instrumental to the growth of lotteries as a mainstream fundraising strategy. Most Charities use external providers to assist in conducting raffles because they do not have the capacity to do this independently.

As an important point to note, the GWC's proposed policy change, if implemented, affects not only charitable organisations in Western Australia that currently use lotteries as a fundraising strategy. If implemented, it would limit the options available to all charities who may wish to use lotteries as a fundraising strategy in the future across Western Australia. Further, it would eliminate the business models of charity lottery service providers who are suppliers to the sector.

In the event that the proposed policy change is implemented, many charitable causes would be adversely affected, as it would stifle the availability of funds for several charitable causes from fighting cancer, to protecting animals, protecting against abuse of children, to the prevention of drowning etc. Moreover, the proposed policy change would negatively impact the economy by eliminating jobs for charity lottery service providers.

It is our contention that if any regulatory changes are contemplated by the GWC in this area, such change should be designed to facilitate the activities of the charity sector rather than hinder them. The consequences of implementing this policy will be dire.

## **III Consultation Needs to be Meaningful, Fair, and Transparent**

We consider the manner in which the GWC has invited feedback to this review as an unfair process that has not been transparent.

The GWC is yet to communicate why it is reviewing this area, why the amount paid by charitable organisations for a service that facilitates a charitable cause is coming under scrutiny, and what the GWC is seeking to achieve with the proposed change. If the GWC wishes to conduct a fair consultation involving a major policy change of this nature, it must provide sufficient information regarding the proposed change so that those to be affected by the change are well-informed and can provide appropriate feedback.

Further, in August 2022, we provided a letter of support to our Members in particular professional fundraisers (charity lottery service providers) in Western Australia. This was in response to the GWC inviting feedback from select professional fundraisers on the Commissions policy review around fees charged in assisting charitable organisations to conduct lotteries. Upon this development in August 2022, we expected that, at this point, the Commission would initiate meaningful consultation with all the stakeholders across the charitable fundraising sector.

On 12th January 2023, FIA was informed by its Members that the GWC had formed a preliminary view and was inviting a final round of feedback. The GWC now considers it cannot satisfy itself under Sections 51(b) and 104(1)(a) of the GWC Act in granting a standard lottery permit if more than 20% of ticket sales (not including prizes) are spent on commercial or private goods. But the GWC originally gave just over two weeks for feedback to this significant development, this time and for the first time, inviting feedback from Charitable organisations. Several Charities to be impacted by this proposed policy change were unaware of this review since the GWC did not individually invite them to provide feedback (the approach adopted by the GWC) and since the GWC did not publicise its request for feedback. There is concern among these Charitable organisations about the rapid pace of this development and the way that the GWC has approached consultation.

Due to the significant implications of the Commission's proposed changes, the GWC should have given the sector adequate time to respond. Mindful also of the fact that at the start of the year and in view of the original two-week deadline for feedback, many organisations had not yet resumed work for the year or were only just getting back from the Christmas and New Year break.

The approach taken by the GWC in inviting feedback exemplifies a hastened process carried out merely for the sake of completing due process. In response to FIA's request for a blanket extension for feedback, the GWC agreed to grant extensions on a case-by-case basis, although this time has been insufficient for the sector to effectively respond. Given that no clear reasons for the policy review have been communicated, the GWC's approach remains alarming. We would like to request not only for more time but for proper dialogue to transpire between the GWC and all stakeholders through a measured process.

#### **IV Misconstrued Application of Sections 51(2) & 104(1) GWC Act**

There is a perceived flaw in the GWC's interpretation and application of Sections 51 & 104 of the GWC Act 1987. It appears that from these sections, the GWC intends to interpret the act of remunerating service providers for services that are essential to the conduct of lotteries for charitable purposes - as an activity of 'private gain' or a 'commercial undertaking'.

Section 51(2) provides - **The Commission shall not approve a person as eligible to hold a permit unless - the Commission is satisfied that the applicant is, or has as the principal object of the proposed gaming, the raising of moneys in good faith for the active promotion, support or conduct of any sporting, social, political, literary, artistic, scientific, benevolent, charitable or other like activity detailed in the application;**

Section 51(2) (b)(ii) provides – **The Commission shall not approve a person as eligible to hold a permit unless the Commission is satisfied that - the gaming is not to be promoted or otherwise conducted for the purposes of private gain or any commercial undertaking**

Section 104(1)(a) provides - **A permit authorising the conduct of a lottery may be issued — where the Commission is satisfied that it is not to be conducted for the purposes of private gain or any commercial undertaking**

The purpose of the above sections are to define that **an applicant for a standard lottery permit that intends to conduct a lottery for private gain will not be granted the permit where the intention of the applicant is to make profit from the lottery.** These sections should only apply to the extent of the applicant being able to demonstrate to the GWC that they would conduct the lottery for a charitable or benevolent purpose.

Accordingly, since the standard lottery permit holder is a Charitable organisation, any contention that the permit will be used for private gain or a commercial undertaking at any point should not arise since charities do not pursue private gain nor have a profit making objective. Charities are legally recognised as having the status of not-for-profit organisations, and all their activities including remunerating its service providers are towards achieving its charitable purposes.

In order for the GWC to grant a standard lottery permit under these sections, it must be satisfied that the applicant is conducting a lottery in its entirety for charitable cause. To propose a condition that the GWC can no longer satisfy itself to grant a permit if more than 20% of ticket sales is put towards services that facilitate the conduct of the lottery would be inconsistent with the purpose of the sections. The GWC grants a standard lottery permit under these sections of the GWC Act simply because the reasons the applicant seeks the permit are towards a charitable end. This proposed policy change would essentially imply that 20% of ticket sales could be used for private gain, but this is not the intention of those sections. Any conditions attached to the permit based on considerations of the permit being used for private gain or commercial undertaking would undermine the entire validity of Sections 51 and 104 GWC Act.

Moreover, some charity lottery service providers that assist Charities in conducting lotteries are themselves Charitable organisations with benevolent causes, and not private or commercial entities.

In the absence of further information from the GWC on what is driving this review, the GWC's interpretation and application of Sections 51 & 104 GWC Act 1987 seems to be flawed.

## **V Cost of Charitable Fundraising**

The proposed policy change seems to discourage a Charitable organisation from incurring expenses in the pursuit of fundraising for charitable or benevolent causes. It appears that the GWC considers it a matter of concern when a charity that holds a standard lottery permit pays for services essential to conducting a lottery.

The reality is that it costs a lot of money for Charities to achieve their cause. It is widely acknowledged, **including by the ACNC**, that **for Charitable organisations to deliver** a service towards their cause, significant amounts can be spent on costs because **costs are vital to the cause a charitable organisation delivers**. We find the GWC's proposal to limit the costs associated with services that assist charities to raise funds through lotteries to be an overreach and a misperception of how charitable fundraising actually works.

As a matter of fact, both **Section 51(2)(b)(iii) GWC Act 1987** and **Regulation 38 GWC Regulations 1988** take into consideration that proper expenses need to be deducted from the proceeds of the lottery. **In our letter of support from August 2022, we stated that fundraising supplier costs should reflect market conditions and fair market value for services provided**. Ideally, regulations should lay out a framework within which activities may be conducted, but not specify how they must be conducted in terms of expenses as is now proposed by the GWC.

In summary, we are making four requests which we have outlined at the start of this document. If you would like to discuss this further please get in touch with us.