

SUBMISSION FOR ECONOMIC REGULATION AUTHORITY

Inquiry into reform of state government business and occupational licensing in Western Australia

ORGANISATION MAKING SUBMISSION

WA TAB Agents Association (the "Association").

Representing Assignable Business Licensees.

Who are we?

There are 81 SL1 TAB Agencies in the Western Australian TAB Network all owners of Assignable Business Licences ("ABL")¹, issued by RWWA, and members of the Association.²

The majority of Agencies have 2 separate operators (both parties are Agents) and usually work on a week on/week off basis of a minimum of 72 hours per week, sharing the income earned over a 2week period evenly between the two parties. We therefore represent 120 Agents, who are small business owners.

The structure of the entities who are party to an ABL can also have various mutations. For instance, there is a mix of sole traders, partnerships and incorporated companies. (Staff who work for both operators in the one agency for instance, could, and do, work under different awards when working for a sole trader one week and a company the next).

The Agencies are generally bought and sold on the open market.

RWWA initiated the market and has been active in the sale of TAB's since the market began.

New Agencies and thus ABLs are created and have been created in the past, when RWWA has established a new TAB, has operated it for a year or so (to establish the earning capacity of the agency) and then sells it.

The ABLs have been purchased for varying values dependent upon the earning capacity of each ABL.

The price paid for agencies can therefore vary. Provided as an indication, Agencies have values of "between" \$500,000 to \$1,400,000 an agency (based on sales data of half shares).

RWWA is the final arbiter as to who can hold an ABL and hence, impacts to whom an Agent can sell an Agency.

Revenue derived through SL1 Agencies provides approximately 31% of RWWA's income stream, which RWWA is responsible for distributing to the WA racing industry³

SL1 Agencies provide cash income streams to RWWA and receive a Commission based on their turnover which is 'finessed' by the Aggregated Pool system, which is a principle term of the ABL (more information about the remuneration model and its' shortcomings are contained later within this document).

The ABL defines the responsibilities of RWWA and the Licensee (the Agents).

The current ABL is due to expire in August 2031 and was entered into in August of 2016 in circumstances that created much angst for Agents at the time.

PROBLEMS WITH ABL

The Agent is restricted to merely operating the Agency, with RWWA determining how each agency is run, including upkeep, promotions and the presentation of Agency, to the extent of what may and may not be fitted to the walls. This leaves very little room for agencies to provide a unique selling point to distinguish themselves in the market.

The remuneration model (being the “Aggregated Pool”) of the 2016 ABL forces larger agencies with higher revenues to forgo part of their commission to support smaller, lower grossing agencies. This creates a situation where every Agency provides income to RWWA, yet not every Agency provides a sustainable income to Agents.

This has left Agents susceptible to RWWA’s actions, as it is the Agents that keep the network of agencies propped up and bear the cost of keeping the retail network of SL1 Agencies operating for RWWA’s benefit.

The remuneration model is not sustainable in a declining retail market and yet was the model that RWWA insisted on continuing with for inclusion in the 2016 ABL, notwithstanding it’s evident shortcomings.

There are numerous reasons which could affect an Agency’s profitability; the first four listed below have had a particularly large negative effect on Agencies:

1. The proliferation of SL3s in the proximity of SL1s, competition that RWWA has created and benefitted from whilst disturbing the SL1s revenue stream. (It is noted that the ABL offers no right to territory);
2. The proliferation of digital wagering platforms;
3. More specifically: agents being precluded from commissions on accounts opened via the internet with RWWA, resulting in RWWA being in direct competition with SL1s in trying to capture the wagering dollar.
 - a. The Association had sought that RWWA include in the internet sign up process, a box that the punter could tick if they wanted their TABTOUCH account to be ‘connected’ to an Agency. RWWA did not agree.
4. RWWA’s budget for promotions in the digital market far exceeds the amount provided to encourage retail customers into SL1s.
5. The number of Pub Tabs that have been fitted with race walls (the newest technology in providing information to punters) whilst SL1s make do with setups that can be many years old, making it more attractive for punters to frequent more modern facilities and bypass tired SL1s;
6. The shopping centre it is located in, has become shabby and uninviting;
7. The tab agency itself has become shabby but RWWA has not prioritised investment in upgrading the facilities, over many years;

8. The demographic in the area has changed over the years, yet RWWA has been tied to lease agreements that it appears they are loath to sublet or negotiate out of, meaning agents are stuck in poor locations due to RWWA's reticence to relocate the agency.

All the above point to a clear assessment that Agents are controlled by an organisation (RWWA), that also acts as these Agents competitor, and actively makes decisions that undermine the profitability of these agencies.

In other jurisdictions this is not a problem for TAB Agents as the Agents in other States and Territories are not required to outlay capital in order to receive commission on turnover of wagering dollars. Instead they are required to provide a bank guarantee of between \$12,000 to \$20,000. The value is determined by either Tabcorp or Tatts ('Interstate Operators') (depending on the State or Territory) and determined to ensure that their revenue is protected should the Agent abscond with their weekly takings.

We are informed that Eastern States' agents receive 0.1% more than WA Agents, without having to make any capital investment.

Further, RWWA has Bonded Agents who are receiving a commission that is less than Eastern States Bonded Agents (around 2.25%) under conditions that are similar hence valuing the revenue earnings of the capital invested in SL1 Agencies by Agents at only 0.5% of commission.

Agents who own the greater revenue earning Agencies ("Large Agencies") are actually in a position of paying for the privilege to run an Agency, to receive a lesser commission than what RWWA has seen fit to pay Bonded Agents in WA, (they receive far less than the 2.71% which is the total commission payable under the Aggregated Pool and less than the 2.25% paid to Bonded Agents in WA).

RWWA has pursued a remuneration model for Large Agencies, (who by definition have made greater capital investments in order to run a higher revenue earning Agency), that has resulted in them receiving a far lesser percentage commission than either their Eastern States' counterparts *and* the WA Bonded Agents, due to the Aggregated Model.

The declining retail market has shown that the Aggregated Model cannot continue to prop up the retail sector and changes need to be made.

The 2016 ABL contains a section⁴ which allows RWWA to vary almost any term of the ABL through the Manual. RWWA presents major changes to what is in effect a subcommittee of the Association, however this has proven to be a session of being 'advised' as opposed to representing a consultative process.

Further, the Aggregated Pool model allows RWWA to change the remuneration each Agent receives (more detail is provided further within this submission).

If the TAB (Wagering arm of RWWA) is sold, the Association believes that this is the most opportune time for the government and RWWA to rid themselves of a structure that is inherently faulty.

PROPOSED RESOLUTION OF PROBLEMS IDENTIFIED

Although the ABLs are contract based and may be considered to push the boundary of the terms of reference of this Committee, the WA Tab Agents Association considers that nonetheless we operate within the terms of a Government Licence and whilst the present State Government has stated that it is now a matter of *when* and *how* the TAB will be sold, as opposed to *whether* it will be sold, it is the time to do something about this unsustainable model.

The Aggregated Pool system of remuneration is not workable in a reducing retail market.

The sale of the TAB refers solely to the Wagering section as it is anticipated that RWWA will continue to be responsible for all duties associated with running Racing in WA. The funding of which will come from the deal struck by the State Government with the successful party to the acquisition of the TAB.

RWWA has noted the 'stickiness' of TAB customers who have signed onto the RWWA digital offering, meaning that these customers are more loyal to the brand. Further, the retail presence is a strong distinguisher for the RWWA brand. Both of these attributes add to the value of the Wagering aspect of RWWA.

However, the Aggregated Pool system of remuneration is not sustainable in a diminishing retail market and the problems this creates detracts from the attractiveness to a potential purchaser.

Potential purchasers of the WA TAB are aware of this model of remuneration and have expressed clearly to members of the Association that it is not an attractive set up and they can see difficulties in pursuing this model.

If the WA TAB is to be sold, it is very opportune for the State Government to resolve this unworkable structure by ensuring the sale price includes a value that could compensate each ABL licensee, at the current market rate, for the value of their business to resolve the problems associated with this outdated model.

The TAB Agents could continue to provide the service as bonded agents, which is the model followed in the Eastern States, which provides a myriad of benefits to the operator, most of all being those of flexibility benefits and motivated staff.

RWWA could then continue to operate the Racing Industry as it does currently with Agents being Bonded to the new operator rather than under an Assignable Business Licence. (This is how the majority of other jurisdictions within Australia operate.)

The above process would make the path to privatisation of the TAB far easier as it would assure the new operator of a system that is familiar and avoids the numerous hurdles that are enumerated in this document.

The above solution would remove the inequities that have been described here

Governance Issues

The Association believes that for good governance, future legislation should not allow the one party who is the operator to also be the regulator.

BACKGROUND

- RWWA is represented in the retail sphere by 3 levels of retail provider, being SL1, SL2 and SL3s. An SL3 is a set up involving the fitting of Self Service Terminals to a Sporting Club's wall or that of a Hotel. SL2 is what is known as a Pub Tab, where the Hotelier's staff serves drinks and punters, their bets. An SL1 Agency is the only dedicated retail face of RWWA and is the only retail outlet for which a capital outlay is required in order to operate it. An SL1 is described as a Full Service Agency, it provides the highest service level to RWWA's customers in the retail environment, and the operation is strictly controlled by RWWA through the ABL, and the Manual.
- The ABL allows for the Manual to vary many aspects of the operational requirements of SL1s and extends the reach of the ABL substantially.

- Recent Sale prices attained are generally around the 2.1 to 2.5 times Annual Commission... e.g. an Agency with an Income of \$200,000pa would sell for between \$420,000 and \$500,000. The average sale multiple is 2.1- 2.5 times Gross Revenue excluding GST. RWWA has reduced this average sales multiple on occasions through selling of TABs when RWWA had many agencies to sell, and at times on behalf of family members in cases where an agent has died or on occasions when an agent has had to be removed from the business due to a fundamental breach of the ABL terms. All RWWA sales should be excluded from any calculations so as to achieve an average attained from private sales.

2016 ABL Negotiation

- The current ABL came into effect on a date in August 2016
- Agents had the choice of either signing the 2016 ABL (the contract) or walking away from their agencies, without receiving any recompense.
- The ABL was negotiated in 2015-16 at a time
 - when the government of the day was publicly considering selling the TAB, without any information being released to Agents as to the anticipated impact this would have on the ABL Licence Holders.; and

- when the 2006 ABL which agents had been operating under since 2006 was about to expire in 2016.
- The Association established a Negotiating Committee comprised of 4 members of Representatives of Agents and RWWA provided 4 members of staff, the composition of which changes over the months.
- This 'negotiation' took over 18 months to complete and involved a Mediation session at a point in time when both parties recognised that remuneration was not going to be a resolved issue.
- The Negotiating Committee sought meetings with the Minister of Racing in order to find a resolution to the stalemate however the Minister's position was that the legislation which set up RWWA precludes the Minister from directing RWWA on any issue.
- A Meeting was sought with the Board to explain the Agents' proposed remuneration model designed to overcome the limitations evident in the existing 2006 Model which RWWA had wished to continue with in the new 2016 ABL.
- Having no success in changing RWWA's position, and having nowhere else to go, parties agreed to attend an independent Mediation at which time we were informed that our options were non-existent, if a new ABL was not agreed upon. Further, given talk of Privatisation of the TAB being high on the Barnett Government's Agenda, not having signed a contract before the current one's expiry in August 2016, would leave us further exposed, moving into an unknown market. The point regarding our position should we not have a new Contract post August 2016 was further raised at meetings with RWWA as the Expiry date became closer.

We were left with no alternative, other than to hand back our keys and lose our Capital or sign a Contract that was virtually unchanged from our previous Agreement except for 3 key points:

1. The removal of a Buyout Clause which was included in the 2006 ABL and was included to protect Agents should RWWA want to close an Agency down due to Network Requirements OR if they lost a Lease and were unable to relocate the displaced Agent. This buyout clause was tabled in parliament Friday 20 August 2004 (Hansard Extract p5378b-5378b), by the Hon Nick Griffiths the then Racing & Gaming Minister. (see Appendix A below)

This clause was removed against the wishes of the Agents Negotiating Committee and now 2 years later RWWA are reintroducing a NON-Contractual buyout (End of Contract payment) for Agents unable to make an Income out of their Agency.

This payment in the 2006 was set at 2.5 Times Net Commission or in the case of our Lowest Turnover sites a payout of around \$250,000

RWWA have now reintroduced an “End of Contract “ payment of no more than \$100,000, so the removal of this Clause in the 2016 was not a result of it not being needed, it was purely to reduce the cost of this to RWWA, once again to the detriment of all Agents.

The Agents Group proposed an alternative End of Contract/Exit Strategy for Low Turnover sites, but this was not accepted by RWWA’s Executive, and although it was sent as an Appendix to the February RWWA Board Meeting, there was little, or no possibility of a Board opting against the recommendation of its own Executive.

2. The split of Fixed and Variable Remuneration was changed from 80/20 to 70/30
3. We were given access to Digital Sales from Accounts opened within our Retail shops only.... All Online Accounts opened are RWWA owned and as such no Commission is payable to any Agent

These last 2 points are discussed in more detail later

- 13 Agents operate their business under what is known as the “Connect Contract”. In addition, there are two Bonded Agents whom did not have to pay a large lump sum in capital to be the agent.
- Total SL1 Agency Sales for Years 2013-2017 are show below along with Commissions received

There has been a steady drop in SL1 Agency Sales and along with this Agent’s Commissions and Incomes have been reduced whilst the cost of maintaining our businesses continue to rise. (Wages, Electricity costs etc)

The Table below shows the Percentage of Total TAB Sales that are generated by the 81 SL1 Agencies, of note the slow decline since 2013 is evident

Channel	Service Level	2013	2014	2015	2016	2017
Retail - SL1	2016 ABL	32.50%	31.90%	30.15%	28.16%	26.03%
	Bonded/Managed	2.55%	2.62%	2.49%	2.94%	3.07%
	Connect	7.80%	6.48%	5.75%	5.27%	4.73%
Retail - SL1		42.84%	41.00%	38.39%	36.37%	33.83%

The Table below shows the penetration of Digital Sales into the Sales arena

Electronic Sales	Internet	13.92%	13.54%	12.17%	10.17%	9.15%
	Mobile Wagering	4.12%	8.21%	13.67%	18.13%	24.08%
	Percentage of Total Sales	21.68%	24.91%	28.43%	30.54%	35.05%

So this clearly shows how there has been a transition from Retail Sales to Digital Sales. Whilst it is accepted by SL1 Agents that this is the way the world is moving and that RWWA needs to be competitive in this space due to increased Corporate Bookmaker activity in the Digital Space, there has been very little done by RWWA to ensure that some of this growth is distributed amongst its Retail Network to keep it buoyant as well.

Digital Sales assigned to Agencies was introduced in 2016 and whilst this sounds a positive step, and for some it has been, the reality is that it is far easier to open a RWWA TAB Account online and as such there have been limited opportunities within the Retail stores to capture some of this business..... currently only 2% of Digital Betting Accounts are opened in SL1 Retail Agencies

- With no provision for SL1 Agents to receive any of this Electronic medium commission until 2016, and the significant limitations on accessing digital customers in the 2016 ABL, incomes for SL1 Agents have been significantly impacted upon. In effect RWWA has been the biggest competitor to SL1 agents and at the same time acts as our Principal.
- Expenditure on digital promotions has far outweighed anything spent to promote the retail businesses.

So how are we paid?

This is a unique set up and is known as an Aggregated Pool.

This is how it Works:

All SL1 Sales are paid Commission at 2.71% by RWWA

This amount is known as the Aggregated Pool.

So on \$8 Million of Sales, 2.71% would be paid into the Pool (in this case \$216,800)

This \$216,800 is now used to pay all Agents .

The Aggregated Pool is divided into 2 Parts.

1. A Fixed Component of 30% of this Pool (in this case 30% of \$216,800 or \$65,040)

This Fixed Component is used to provide an Opening Hourly Fee for every Agent for every hour they are open. Let us assume 68 Agencies each open 70 hours per week. This would equate to 4760 hours in total that all 68 Agencies are open.

If we divide \$65,040 by 4760 hours we see that the Opening Fee per hour is \$13.66 per hour.

2. A Variable Component of 70% of this Pool (in this case 70% of \$216,800 or \$151,760)

This Variable component is distributed by paying a Commission rate for every Sale.

Currently it is set as this:

Sales below \$160,000 in a week attract a 1.75% Commission payment

Sales above \$160,000 in a week attract a 1.32% Commission payment.

Examples:

An Agent who is open 70 hours per week and has Sales of \$80,000 would be paid:

Opening Fee	70 hours X \$13.66 per hour =	\$956.20 pw
Commission on Sales	\$80,000 X 1.75% Commission =	\$1400.00 pw
TOTAL COMMISSION		\$2356.20 pw

Or **2.94%** out of a Pool that RWVA pays 2.71% into

An Agent who is open 70 hours per week and has Sales of \$250,000 would be paid:

Opening Fee	70 hours X \$13.66 per hour =	\$956.20 pw
Commission on Sales	\$160,000 X 1.75% Commission =	\$2800.00 pw
Commission on Sales	\$90,000 X 1.32% Commission =	\$1188.00 pw

(Above \$160,000 get 1.32% Commission)

TOTAL COMMISSION		\$4944.20 pw
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Or **1.97 %** out of a Pool that RWVA pays 2.71% into

So you can see that as your Sales go over \$160k in the week, so your Return on each additional dollar reduces..... this is a disincentive. The excess of Commission above \$160k is used to support Low Turnover sites, thus enabling the below 80K Commission rate to be relatively higher as Lower Turnover sites really achieve Sales above \$80K in a week

In times of growth this Pool works well, however as Retail Sales decline there is increasing pressure to maintain a sustainable level of Income for all Agents associated with it.

Modelling has shown that if Sales continue to decline at the current rate the Fixed Opening hourly rate could easily be reduced to \$8-00 per hour within 5 years.

This is clearly unsustainable as there is no allowance for any CPI in our Agreement and our costs are increasing Annually (Wages and Electricity)

Whilst we introduced a completely new model with a new approach at our 2016 Contract Negotiations discussions RWWA opted to stay with the current model, even though it was clearly unsustainable over a 15 year Agreement.

Pressure on the Pool is already evident with only 2 years of the 15 year Agreement being completed.

RWWA has made it clear that it is not interested in Capital costs of Businesses, the issue with that is that RWWA has received Capital Payments from Agencies that they have sold, some as recently as 2011.

RWWA argue that they are not involved in this Goodwill process, yet clearly they have received money from Sales of all Agencies at some time but are now not prepared to accept this money is Goodwill received from the Incoming Agent. If this payment is not for Goodwill, then what is it for? RWWA either owns or leases the TAB buildings that SL1's operate in. The agents do not pay any rent or lease costs.

RWWAs Annual growth figures do not reflect the real issues affecting a large percentage of Agents in the Network.

We have looked at RWWA's Annual Reports and focussed on the 2007 year (the first full year after the 2006 ABL contract was negotiated) and last year 2017 to try and draw comparisons.

RWWA's Total Sales for 2007 were \$1,458,745 M

RWWA's Total Sales for 2017 were \$1,974, 585 M (Up 26% on 2007)

Internet/Mobile Sales were \$238,000,000 in 2007.

Internet/Mobile Sales were \$601,000,000 in 2017 (Up 152% on 2007)

The recent talk of Privatisation has highlighted the need for us as an Agents Group to ensure that the issue of our Investment in the TAB is highlighted and understood by those closest to the decision makers.

We are not against the sale of the TAB, however we need to protect our capital Investments and to continue on as agents post privatization (should that eventuate).

This Investment is the money that each Agency initially paid to RWWA when the current system of Assignable Business Licenses was initiated. This is money that RWWA has used as they have seen fit at the time of each Sale, some as recently as 2011.

We see ourselves as a key component in the Privatisation debate and feel we should be consulted as with all other sectors of the Industry.

This is a significant amount of Investment from over 120 Small Business Owners (including all of the agents that own 50% of a single TAB) and we need to ensure that our Interests in any Privatisation discussions are addressed. Agents' life savings and retirement benefits are at stake here.

COMPARISON WITH TAB AGENTS IN EASTERN STATES AUSTRALIA

We are the only TAB Agents in Australia that pays a Capital value for operating their Agency.

In Eastern States TAB's the Agent is Bonded . This means that they provide a small sum of money as a surety (usually \$15-20K) and they operate their Agencies under that arrangement.

Commissions are better in the Eastern States as detailed to RWWA on various occasions and they do not have to factor in the Opportunity cost of having several thousand dollars tied up in the Goodwill of a TAB Agency.

They are also paid on a per shop basis (i.e. not in a pool system), so the more Sales you generate the more you earn in its entirety. In WA Sales above \$160,000 are paid at lower rates of Commission, with this difference used to subsidise lower turnover Agencies, that clearly should be RWWA's responsibility, not the Agents .

We are simply having our money used to subsidise Lower turnover Agencies that should be better supported by RWWA.

Appendix A

Extract from *Hansard*

[COUNCIL - Friday, 20 August 2004] p5378b-5378b

Hon George; Hon Nick Griffiths

TAB, AGREEMENTS WITH AGENTS

630. Hon GEORGE CASH to the Minister for Racing and Gaming:

- (1) Will the minister table a copy of the 1996 TAB standard agreement that sets out the contractual obligations on remuneration and other relevant matters pertaining to the TAB and TAB agents, and a copy of the proposed ABL agreement between the TAB and prospective agents who are considering purchasing a currently managed TAB agency?
- (2) What are the relevant differences between each of these agreements? **Hon**

NICK GRIFFITHS replied:

(1)-(2) I thank the member for some notice of this question.

I table the relevant documents and I seek leave to have incorporated in *Hansard* a table that sets out the relevant differences.

Leave granted.

The following material was incorporated in *Hansard*.

	1996 Agreement	ABL
Term	10 Years	5 years with 5 year option
Agreement	Collective	Non-collective
Remuneration - Rate	2.64 % Aggregated Turnover	1.80% Pari-mutuel bets 1.50% Sportsbet
Base Fee	No	Yes \$400 p.w. Indexed
Hourly Fee	Yes	No
Terminal Charge	Yes	No
Network Fee - Part Funding Buyouts	No	Yes - 1.00% Gross weekly commission
Pubtab Compensation Scheme	No	Yes - first 2 years after establishment.
Buyout Provisions - Payment to Agent as result of annual network review	No	Yes - 2.5 times annual commission less costs
Performance Reviews	No	Yes - KPI's - 6 monthly reviews

[See paper No 2480.]

¹ Appendix 1: Copy of the current 2016 Assignable Business Licence

² Appendix 2: WA Tab Agents Association Incorporated Constitution and Rules

³ Racing and Wagering Western Australia Act 2003

s 50. Functions of RWWA in relation to gambling

- (1) Without limiting the functions and powers of RWWA under Parts 3 and 4, the functions of RWWA in relation to gambling include the following —
- (a) to ensure that on-course wagering by bookmakers and racing club totalisators is conducted in accordance with the *Betting Control Act 1954* and the rules of wagering;
 - (b) to carry on —
 - (i) the business of operating an off-course totalisator wagering service on races and certain sporting and other events;
 - (ii) the business of operating an on-course totalisator wagering service on behalf of racing clubs where it has been engaged to do so;
 - (iii) the business of setting, accepting and making fixed odds wagers in relation to races and certain sporting and other events;
 - (iv) any other business related to gambling authorised under this Act to be carried on by RWWA;
 - (v) any other business considered by the board to be conducive to the success of or incidental to the business of gambling carried on by RWWA, but so that such other business is not conducted to the detriment of the business of gambling carried on by RWWA or in a manner which confers an unfair commercial advantage;
 - (c) to develop and implement a scheme for the distribution of net profits and to negotiate funding arrangements with individual racing clubs.

[(2) deleted]

⁴ s4.8 of 2016 ABL: Comply with Manual

- (a) The Agent must at all times operate the Agency strictly in accordance with the Prescribed standards and requirements including:
 - (i) the General Agency KPIs;
 - (ii) the FOI Policy;
 - (iii) the Surveillance Policy; and
 - (iv) the Transaction Reporting Policy.

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- (b) All of the provisions of the Manual are incorporated into and form part of this Agreement as if they were fully set out in this Agreement but if there is any conflict between a term of this Agreement and a provision in the Manual then the terms of this Agreement will prevail.

 - (c) Subject to clause 20.2, RWVA may amend the Manual, without limitation, at any time but amendments must not contravene the Act or its regulations or the terms of this Agreement. No amendment will be effective until RWVA has given the Agent written notice of it.
