



WATAB Agents' Association Inc.

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30 November 2009

Mr John McGrath MLA
Chairman
Joint Standing Committee
Review of the Racing and Wagering Western Australia Acts
Parliament House
Perth, WA. 6000.

Dear Mr McGrath

REVIEW OF THE RACING AND WAGERING WESTERN AUSTRALIA ACTS

Attached is this Association's Submission to your Committee's Review.

This Association seeks permission from your Committee for a representative of the WA TAB Agents' Association to give oral evidence at a hearing in support of the written submission.

Yours faithfully

A handwritten signature in black ink, appearing to read 'R Morgan'.

Robert Morgan
President

SUMMARY

- There are no express provisions in the Act that deal with the appointment of Agents and the terms that apply to their licences. It is considered to be an issue that needs to be addressed given the role of RWWA as both the Licensor and a competitor.
- Agents do not have any rights over a designated territorial area. Consequently, the location of alternative outlets is entirely at the discretion of RWWA. In practice there appears not to have been any geographical criteria applied which has resulted in alternative outlet types being established within a short distance of an existing Agency.
- The licence issued by RWWA is for a limited life and at the expiration of the period, there are no guarantees that it will be renewed and if it is renewed, what terms will be offered. Agents are faced with the prospect that, even though they have committed substantial funds and effort in operating the business, there may not be a business left for them to operate.
- To adequately fund the Western Australian Racing Industry, RWWA must have a viable wagering business that has sufficient revenue to invest in the retail network and build customer and wagering interest via adequate spending on marketing and new products. RWWA needs to be able to introduce new products and Licences that can assist Agents in securing new customers as has occurred in Victoria by way of simulated racing such as "Trackside". This type of product would provide RWWA with the ability to continue to generate turnover at times when racing is not available such as when meetings are abandoned in winter, due to the weather, or programming is impacted by animal diseases such as recently occurred with equine influenza.
- New products such as Keno may attract an audience more interested in numbers games.
- Wagering taxation rates must be competitive to ensure that RWWA can compete with corporate and low taxed totalisator regimes such as Tasmania.
- This Association generally supports the RWWA model. The continuation of RWWA's retail licence exclusivity is of vital importance to our members. A vibrant retail wagering business in Western Australia is the cornerstone of the prosperity of the racing industry.

WA TAB AGENTS' ASSOCIATION

SUBMISSION ON THE REVIEW OF THE RACING AND WAGERING WESTERN AUSTRALIA ACTS

Received 30/11/2009

SUBMISSION TO THE JOINT STANDING COMMITTEE ON THE REVIEW OF THE RACING AND WAGERING WESTERN AUSTRALIA ACTS

The WA TAB Agents' Association (the Association) was incorporated on 10 October 1963. Since that time it has represented the interests of RWWA's Agents (previously known as TAB Agents) on all areas impacting on the operation of their Agencies.

The objects of the Association are -

- To protect, guard, foster and promote the interests of its Members.
- To facilitate, in co-operation with Racing and Wagering Western Australia, the Administration of the Racing and Wagering Western Australia Act 2003 in a manner equally satisfactory to the Western Australian Government, the Public and the Members.

Currently, the Association membership is made up of all 83 of the 2006 Assignable Business Licence Agreement Agencies operating in Western Australia and 3 bonded Agencies. Bonded Agents are contracted on a month to month basis and have no tenure. They do not have the capital costs of purchasing the interest in the Licence referred to later in this section. All operate in locations that are geographically distinct from the venues for racing.

The contractual relationship is between RWWA and the Agent and not with the Association. However, it has been recognised by RWWA and its predecessor that the Association represents the interests of the Agents and it acts on their behalf.

There is no express power in the Racing and Wagering Act 2003 providing for RWWA to enter into the Licence arrangements in place. The Board of RWWA appears to rely on its general powers to enter into arrangements with other parties for the provision of its wagering products. Agents argue that the Act should contain a framework for the terms that can be offered in Licenses to ensure that the vastly superior position of RWWA does not operate to the detriment of the Agents.

The relationship between the Agents and RWWA is primarily governed by the terms of the licence given by RWWA to Agents to operate dedicated outlets providing a comprehensive wagering service to clients. They are to be distinguished from other outlets such as "SL3" self service facilities and PubTABs by the significantly higher level of services provided.

The buildings from which the Agents operate are owned or leased by RWWA. The Agency furnishings are owned by RWWA with the exception of personal items brought in by Agents such a fridge and television sets. RWWA at its expense determines the design of the "fitout" for an Agency and meets the cost of installing it. RWWA also provides the equipment to operate the Agency such as betting terminals, printers and wall sheets. These matters will be revisited later in the submission.

(In 1996, the Association negotiated an agreement on behalf of its Agent members that had a life of ten years. Prior to the expiration of the 1996 agreement, Agents commenced negotiations for a new agreement. The final terms of the new 2006 Assignable Business Licence agreement were settled after the expiration of the 1996 Agreement and are to operate under the terms of the licence until 31 August 2016.

The bulk of Agencies have been purchased by the Licensees on the open market. In many instances, the Agencies are operated in a partnership where each partner owns half of the Licence and conducts the affairs of the Agency for half of the time. The way in which that is implemented is determined by agreement between the partners.

(Agents are able to sell their interest in the Licence whether it be the whole of the Licence or a half, on the open market. The vendor of a half share does not require the agreement of the partner in order to sell the interest.

In order to buy into an Agency, a person will ordinarily pay a capital amount to the vendor of 3.4 times the net profit of the Agency (or the share). Net profit is usually considered to be Gross Commission minus approx. \$20,000 to \$30,000 in agency running costs. The capital investment is substantial given that some Agencies would involve a purchase price over a million dollars (for the full Licence).

The 1996 Agreement provided for the election of four Agents to an Advisory Committee which had an equal number of TAB representatives (who became RWWA representatives

SUBMISSION ON BEHALF OF

2

when the new Act was introduced). The 2006 Assignable Business Licence Agreement also provides for the election of four Agents on an Advisory Committee. As suggested by its name, the role is strictly advisory and RWWA is not bound by any outcomes from the Committee.

FUNDAMENTALS OF THE SUBMISSION

Agents support the RWWA model in principle but see that there are aspects that require attention. Agents are acutely aware of the changing environment and to the challenges to the exclusive licensing arrangements for each State that were enshrined in the Act. Those challenges are most evident in the corporate bookmaking businesses operating out of other lower cost jurisdictions and targeting Western Australian customers to the detriment of RWWA.

It is evident that the corporate competitor activities will impact on the industry in Western Australia with resulting pressure on margins and consequently on the funds available for distribution and to fund growth.

A significant part of the argument put by Agents is that the constraints that are now placed on their activities are counterproductive because they constrain the Agent's capacity to grow the business by innovation.

There are no express provisions in the Act that deal with the appointment of Agents and the terms that are to apply to their licences. It is considered to be an issue that needs to be addressed given the role of RWWA as both the Licensor and competitor.

Agents believe that they are able to make a more significant contribution to RWWA if they are able to move to a model that allows greater discretion in the operation of their businesses and what they are able to do to grow it.

Agents maintain that a viable wagering business, in the form of RWWA, is essential to the maintenance of the industry as a whole and that it is therefore essential to allow wagering the opportunity to compete and to grow. Agents say that can be addressed by a new approach to the relationship of the Agencies with RWWA, freeing up the products that RWWA can offer and by allowing Agencies to pursue growth options.

SUBMISSION ON BEHALF OF

3

WA TAB AGENTS' ASSOCIATION INC. - 30 NOVEMBER 2009

ASPECTS OF THE LICENCE AFFECTING AGENTS

This section deals with the major areas of concern. It demonstrates the constraints that are built into the Licensing arrangements. It proceeds from the basis that there are significant improvements that can be made to address the imbalance of power between the Licensee and the Licensor.

Agents' rights under the Licence are limited. RWWA as the Licensor has an advantageous position as it is a competitor operating alternative wagering outlets in its own right and having the power to establish alternative outlets that are the direct competitors to the Agent - two prime examples being the PubTABs and SL3 self service outlets.

Agents do not have any rights over a designated area. Consequently, the location of alternative outlets is entirely at the discretion of RWWA. In practice there appears not to have been any geographical criteria applied which has resulted in alternatives being established within a short distance of an existing Agency.

A recent example is a clear illustration of the detrimental impact of such decisions. The Agent is recognised as having worked hard to grow the business of the Agency over several years. As a consequence the value of the goodwill (or potential selling price) increased proportionately and RWWA enjoyed the benefit of greater revenue. RWWA has decided that it will install an SL3 in the hotel almost immediately across the road. The decision was taken notwithstanding the recognition that a significant component of the Agency's business was drawn from the hotel.

It is inevitable that the Agency will be adversely affected by RWWA's decision and its growth will be stunted. Attempts to reverse the decision by an approach to RWWA were not successful. That is hardly surprising as the appeal to reconsider was reviewed by the decision maker in the first instance. It is recognised that the matters require approval from the Office of Wagering and Gaming but this historically has been routine.

Recently, there were indications that RWWA will revisit the decision to install the competitive SL3 in the hotel across the road from the Agency. That does not however, derogate from the principles raised by the Association.

For clarity, The Association makes it clear that there are some circumstances where an SL3 may be an appropriate form of retail outlet given the reduced costs of establishing and operating the outlet. An obvious example being remote areas with limited populations where full agencies would not be viable. It must be recognised that the service to the community from an SL3 in that case is limited and it falls significantly short of the scope and standard of service provided by the Agencies represented by the Association.

There are limited compensation schemes (2 years) available in some (within 2 km) but not all circumstances. These however, miss the point. The major impact of such decisions is on the value of the Agency and is magnified to the extent of the multiple of net profit used to determine sale price. Separately, it operates as a disincentive to Agents who are prepared to put in the additional effort to develop and grow their business.

(RWWA as the Licensor and Landlord enjoys the additional advantage of being a direct competitor to the Agents. For example it operates telephone betting and internet betting as an option to betting through an Agency with the obvious but unquantifiable impact on the Agency's growth and turnover. Agents are not able to offer that service to clients at all.

In fact, Agents are contractually constrained from offering anything other than the RWWA model which means that they are not able to offer any additional incentives to individuals who form a major part of the business such as dedicated facilities or areas.

(A term of the current contractual arrangements is that Agents are not able to make changes to the fit out of the shop without the approval of RWWA. As Licensor, RWWA is responsible for making any changes and meeting the cost. An element of the fit out is the provision of security for the staff who operate the Agency. The dilemma is that the Agent is the entity responsible for the workers compensation and is liable in negligence if the security measures are inadequate and yet, the Agent is not able to adopt industry best practice because of the terms of the contract with RWWA. This becomes an issue where RWWA is aware that the security does not meet industry standards but does not have the funds allocated to address the issue.

The Licence issued by RWWA is for a limited life and at the expiration of the period, there are no guarantees that it will be renewed and if it is renewed, what terms will be offered. Particularly in the latter part of the Licence, Agents are faced with the prospect that, even though they have committed substantial funds and effort in operating the business, there

may not be a business left for them to operate. Agents say that this is a disincentive to those who might enter the industry and to those who already own an Agency.

This submission has referred to and inferred that RWWA exercises a powerful influence over the Agencies. Agents maintain that the level of control is so substantial that they do not have any real way in which they can develop their Agency - the hours of opening are set by RWWA, the form and style of the displays are set, the products are determined by RWWA and there is a substantial manual that dictates the way in which things are to be done.

Agents are not able to operate more than one site as a matter of RWWA policy and that is reinforced by operative conditions in the Licence. This, combined with the lack of any identified geographical area of operation limits the incentive for Agents to be innovative. There are a substantial number of other industries where licensees are encouraged to operate multiple sites generating advantages to both parties.

CHANGES SOUGHT WITHIN THE STATUTORY FRAMEWORK

Agents argue that the Act should expressly deal with the terms and conditions for the operation of Agencies and the issues raised in the previous section of the submission. Agents envisage that this would take the form of amendments to the Act that would establish a framework for the operation of Agencies.

Agents maintain that they ought to be able to provide other services and products through their Agencies that are not in conflict with and do not derogate from the primary purpose of the Agency. Without being prescriptive, obvious areas of expansion to be considered would include other gambling products/games and the sale of sports memorabilia on commission.

Agents would argue that they ought to be able to operate in a real business sense and, for example acquire additional space at their premises and they ought to be able to do that at their expense. There is at least one precedent for this interstate where the Agent acquired additional space in the adjoining premises and expanded the facilities available to clients.

Agents consider that without the freeing up of the operation of their businesses, both the Agent and RWWA are unable to reach the potential of the Agencies. They envisage that the statute or subsidiary legislation should allow them to look at opportunities that compliment the primary business including conduct of their business from venues outside of the premise

provided by RWWA including entering into agreements with third parties to provide services through the facilities operated by the third party.

The current climate mandates that all sectors of RWWA operate to protect and to expand the client base. Restrictions, some of which are policy rather than statutory, such as the inability to hold an interest in more than one Agency and the requirements for personal presence in an Agency mitigate against Agents making greater commitments to the development of their business. Experiences such as the introduction of alternative outlets in a hotel in the immediate vicinity act as a disincentive and impact negatively on the morale of Agents where such initiatives are introduced by RWWA.

OTHER MATTERS

Agents see that there is a need to provide a greater dedicated representation of wagering at Board level. The current structure in the Act gives emphasis to racing and reserves three positions for other expertise relevant to the Board's functions. Agents believe that with the current challenges from competitors in the retail component of the business, the argument for a greater dedicated recognition of wagering at Board level is strong.

Experience has shown that Agents are completely reliant on the good will of RWWA management to put their case on issues to the Board. To date, the established good will has generally seen that happen.

There are limitations on the presentation of a first party view or argument by a second party to a third party. Agents argue that the turnover figures as well as the comments of RWWA show that they are a substantial component of RWWA's operations. Their representation on and access to the ultimate decision making entity does not reflect their role in the business and ought to be addressed. The appropriate measure would be for representation at Board level.

THE FUTURE

To adequately fund the Western Australian racing industry, RWWA must have a viable wagering business that has sufficient revenue to invest in the retail network and build customer and wagering interest via adequate spending on marketing and new products. RWWA needs to be able to introduce new products and Licenses that can assist Agents in securing new customers as has occurred in Victoria by way of simulated racing such as "Trackside". This type of product would provide RWWA with the ability to continue to

generate turnover at times when racing is not available such as when meetings are abandoned in winter, due to the weather, or programming is impacted by animal disease as recently occurred with equine influenza.

New products such as Keno may attract an audience more interested in numbers games.

Wagering taxation rates must be competitive to ensure that RWWA can compete with the corporate and low taxed totalisator regimes such as Tasmania.

The continuation of RWWA's retail licence exclusivity is of vital importance to our members. A vibrant retail wagering business in Western Australia is the cornerstone of the prosperity of the racing industry.

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ROBERT MORGAN

President

WA TAB AGENTS' ASSOCIATION INC.

30 November 2009

SUBMISSION ON BEHALF OF

8

WA TAB AGENTS' ASSOCIATION INC. - 30 NOVEMBER 2009