



FUTURE OF THE WESTERN AUSTRALIAN TAB

Discussion Paper

Department of Treasury
29 June 2018



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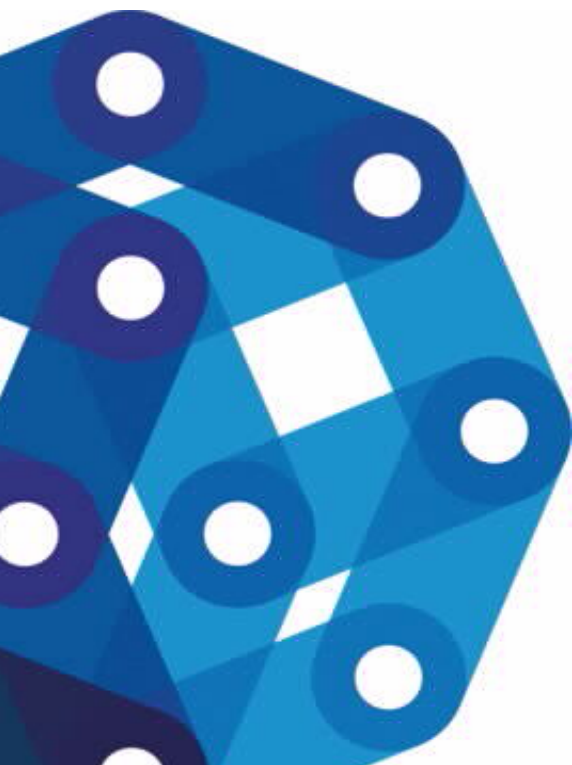


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1. Introduction

1.1 Purpose

The local racing industry relies heavily on the Western Australian TAB for funding. However, the TAB faces a number of challenges, including intense competition from larger operators, growth in online betting, and customer preferences shifting from the TAB's traditional strengths.

The Government recognises the importance of achieving the long-term sustainability of the racing industry in a fast-changing landscape.

To this end, the Government is working constructively with the racing industry to inform a sensible and responsible decision on the future of the TAB.¹ Importantly, a decision to sell the TAB will only be made if it is in the best interests of the State and the racing industry.

This document provides an overview of how a potential sale of the TAB could be structured to benefit the racing industry in Western Australia. Its purpose is to facilitate discussion and analysis of the key issues and enable the racing industry and other key stakeholders to provide input and feedback.

The Government has engaged constructively with racing industry representatives to-date and is committed to consulting with the broader industry prior to making a final decision about the future of the TAB.

1.2 The Western Australian TAB

The TAB was established in 1960 to be the sole provider of off-course betting services in Western Australia. It was established to address the rise in off-course betting shops and enable revenue from wagering to be directed back to racing. Since then, the operations of the racing industry have been dependent on revenue from the TAB.

The TAB currently operates as part of Racing and Wagering Western Australia (RWVA), which is also the principal racing authority (PRA) for Western Australia, making RWVA responsible for the governance and integrity of all three racing codes (thoroughbred, harness and greyhound). RWVA's functions and powers are defined by the *Racing and Wagering Western Australia Act 2003* (the RWVA Act).

The operating context of the TAB has evolved significantly since its establishment. In the last 30 years there has been a transformation in the wagering industry in Australia as State-based TABs in all other jurisdictions have been sold and online corporate bookmakers have emerged, taking a significant amount of market share from the TABs. A more recent trend in the wagering market has seen the consolidation of a number of the corporate bookmakers and State wagering licence holders into a reduced number of larger and well capitalised players.

¹ Parliament of Western Australia Hansard, 6 Sep 2017, p3427-3428, Racing Industry Statement

1.3 Racing Industry contribution to the State's economy

The racing industry is a strong contributor to employment, participation and economic development within Western Australia, particularly in regional areas. RWWA's 2017 Annual Report states that the Western Australian racing industry is responsible for generating more than \$821 million in economic contribution to the State, including:

- more than \$682.3 million in direct expenditure, with more than half that expenditure occurring in regional areas;
- in excess of 823,000 racegoers attendance at thoroughbred, harness and greyhound race meetings in Western Australia each year; over 57% of these attendances occur at country racecourses, with Peel and the South West representing the largest regions;
- more than 24,400 individual participants in the Western Australian racing industry (as an employee, participant or volunteer); and
- an estimated contribution of 7,360 full-time equivalent positions in Western Australia.²

1.4 Recent Debate over the Future of the TAB

The potential sale of the TAB has been a matter of public discussion for over four years. On 8 May 2014, then State Treasurer, the Hon Dr Mike Nahan MLA, announced as part of his Budget Speech that the Government's continuing ownership of the TAB was under review.³

Since that time, there has been an ongoing debate amongst the racing industry and broader community about the merits of a sale and the conditions upon which it could be supported. The local racing industry has actively participated in the discussion, notably forming the Western Australian Racing Representative Group (WARRG) and commissioning a report on the potential sale of the TAB prepared by Ray Gunston in November 2014 (the Gunston report).^{4,5}

The Gunston report recommended the adoption of the "no worse off" principle in relation to the racing industry's funding level, and set out the industry's views on various aspects of the potential sale and post-sale operating model. The Gunston report was later supplemented by a second commercial-in-confidence report that canvassed the racing industry's requirements in more detail.

Following the election of the McGowan Government, the Minister for Racing and Gaming (the Minister) announced in September 2017 that the Government was commencing due diligence to inform a sensible and responsible decision on the future of the TAB.⁶ The Minister noted the importance of achieving the long-term sustainability of the industry in a fast-changing landscape.

² [Racing and Wagering Western Australia 2017 Annual Report](#), p. 14

³ 2014-15 State Budget, [Budget Paper No. 1 – Budget Speech](#)

⁴ Western Australian Racing Representative Group [Media Release, 26 November 2014, "Gunston Report Released"](#)

⁵ [Report to Western Australian Racing Representative Group on the Potential Privatisation of the Western Australian TAB](#)

⁶ Parliament of Western Australia Hansard, 6 Sep 2017, p3427-3428, Racing Industry Statement

On 6 March 2018, the Minister and the Treasurer confirmed that a scoping study report on the future of the TAB had been completed.⁷ The report found that it is possible for a transaction to be structured in a way that meets the interests of both the State and the racing industry. The Minister and Treasurer also announced the commencement of a two-staged consultation process.

On 10 May 2018, in his Budget Speech, the Treasurer reported that consultation with the racing industry was proceeding well and that he expects that a path forward for the future of the TAB will be agreed later in 2018.⁸

1.5 Scoping Study Report

On 25 August 2017, Treasury appointed Investec Australia Limited (Investec) as Commercial Adviser to provide advice on the potential sale of the TAB.

Investec was tasked by Treasury with advising on the feasibility of a potential sale, as well as developing a proposed post-sale operating and governance framework. The framework was to include options for commercial terms and transaction structures that balance the interests of the racing industry and the State Government, while being sufficiently attractive to potential new operators.

Investec consulted closely with RWWA in the preparation of its advice, with RWWA providing extensive information about its business to inform the report. Investec also conducted market soundings to garner the views of prospective new operators of the TAB.

A final report was delivered to Treasury on 9 January 2018 and subsequently submitted to Cabinet. This report remains confidential as it includes commercially sensitive information about RWWA and is part of a deliberative Cabinet process. However, summary information and analysis from the report is included within this Discussion Paper to facilitate input from other stakeholders.

1.6 Approach to Consultation

The Government has consistently emphasised that it would only proceed with a sale of the TAB if it is in the interests of the racing industry and the State.

To this end, the Government has tasked Treasury and RWWA with consulting with the racing industry and other stakeholders to identify the priority issues, with a view to refining the proposed framework and building consensus for the proposed pathway forward.

The consultation process continues to focus on the potential impact of a sale on the State's racing industry, given the importance of the TAB to the funding of the local racing industry and the future relationship the racing industry would have with a new operator of the TAB. Nevertheless, the process also provides opportunities for other interested groups to participate.

⁷ www.mediastatements.wa.gov.au/Pages/McGowan/2018/03/Consultation-with-racing-industry-to-begin-on-TAB-future.aspx

⁸ 2018-19 State Budget, [Budget Paper No. 1 – Budget Speech](#)

The consultation process has been divided into two stages:

1. direct consultation with the RWWA Board and its three racing code-specific subcommittees (Code Sub-Committees); and
2. public consultation via the release of this Discussion Paper and targeted forums.

Stage one was conducted from February to April 2018 and involved a series of presentations and workshops with the RWWA Board and the Code Sub-Committees, which culminated in written submissions from each of these bodies that were used to further refine the proposed sale framework.

A letter signed by each of the three Code Sub-Committees chairs indicating support for the continued consultation process and noting the potential funding benefit to the racing industry of a sale is provided in Appendix 1.

The publication of this Discussion Paper marks the commencement of the second stage of consultation. The Discussion Paper has been developed to provide the general public an overview of the potential sale and post-sale operating and governance framework that has been refined as part of the direct consultation with racing industry representatives. Interested parties are invited to provide feedback on the proposed framework.

This Discussion Paper provides guidance on matters relevant to:

- the proposed commercial structure and contractual agreements;
- the governance model;
- racing industry guarantees and protections;
- the legislative framework; and
- related policy matters.

Matters that are not within scope of the Discussion Paper include:

- the State's wagering tax arrangements, including the implementation of the Point of Consumption wagering tax, which has been subject to a separate consultation process; and
- issues around the existing operations and governance of the three racing codes, which should be referred to RWWA in the first instance.

RWWA will schedule a series of stakeholder forums to present details of the proposed framework to interested groups, particularly involving RWWA's 'eligible body' racing industry groups that were not directly involved in stage one.

As well as providing an opportunity for stakeholders to raise their concerns, these forums will assist in providing them with a better understanding of the issues, benefits and risks of the proposal, which will assist parties in developing formal responses to the Discussion Paper.

The outcomes of these forums will be reported back to Government, along with the formal responses to the Discussion Paper, in September 2018.

Table 1 provides an outline of key dates.

Table 1. TAB consultation timetable

Milestone	Timing
Discussion Paper Release	29 June 2018
Forums	9 July – 27 July 2018
Submissions Due	6 August 2018
Final Report on Consultations to Government	September/October 2018

1.7 Making a Submission

Treasury invites written submissions on this Discussion Paper. Submissions are due by 2:00pm (Perth time) on 6 August 2018. Early submissions are welcomed.

Electronic copies of submissions are preferred and should be emailed to info@treasury.wa.gov.au.

Alternatively, submissions can be sent to:

Attn: Commercial Advisory
 Department of Treasury
 Locked Bag 11
 Cloisters Square WA 6850

In the interests of transparency and to promote informed discussion, submissions will be made publicly available, unless the submitter requests otherwise. Accordingly, stakeholders should clearly specify if information they provide is confidential, and, where possible should separate confidential information from non-confidential information.

Any claim for confidentiality should be clearly noted on the front page of the submission and the relevant section(s) of the submission should be marked as confidential, so the remainder of the document can be made publicly available. Where a submitter claims confidentiality over only part of a submission, it would be appreciated if a complete version and redacted version of the submission could be provided.

Persons making any claim for confidentiality should familiarise themselves with the provisions of the *Freedom of Information Act 1992 (WA)*, which imposes obligations on Treasury in respect to the release of documents.

Submissions will be available for public review at:

www.treasury.wa.gov.au/Economic-Policy/TAB-Consultation/

All enquiries may be directed to:

Commercial Advisory
 Department of Treasury
 (08) 6551 2777
info@treasury.wa.gov.au

2. The Case for Selling the TAB

The TAB has served the Western Australian racing industry well for many years under public ownership. However, the sale of the TAB represents a unique opportunity to secure the future funding of the industry and to establish a racing infrastructure fund through a share of the sale proceeds.

Whilst a sale would come with reduced control and some risks for the State and the racing industry, there are competitive challenges if the TAB is to remain as the only standalone State-owned TAB in Australia. The key challenges for the TAB with its current operating model include:

- intense competition from larger domestic and international corporate wagering operators with strong economies of scale;
- customer preferences shifting from TAB's traditional strengths as wagering activity is trending away from:
 - retail venues to online channels;
 - pari-mutuel to fixed odds wagering; and
 - racing to sports wagering.
- reduced scale relative to competitors that can constrain the TAB's investment in marketing and technology.

RWWA has managed these risks well to date and has strategies in place to continue to do so. However, the scoping study report found that a larger scale private operator would likely be better placed to address these challenges over the longer term, thereby ensuring a more reliable revenue stream for the racing industry.

Whilst overall funding to the racing industry has been growing in recent years, this has primarily been driven by the growth in revenue received from the Racing Bets Levy. The Racing Bets Levy is a fee paid by all wagering operators (including in other jurisdictions) for the right to offer wagers on Western Australian races and is unrelated to the operations of the TAB.

If the TAB's market share was to decline, there could be less funding for the racing industry and the potential sale value of the TAB to a private operator could also decline. Consequently, a decision not to progress with a sale comes with risk for the State and the racing industry. The potential sale is an opportunity for reform – if structured correctly, it could help address these risks and protect future funding to the Western Australian racing industry.

Finally, a sale of the TAB is an opportunity for the racing industry and the State to realise the value it has together built in this business. With the racing industry set to share in the sales proceeds of the TAB via the establishment of a racing infrastructure fund, a sale provides an opportunity for the industry to access significant additional funding.

3. Proposed Framework

3.1 Key Objectives

The proposed framework detailed below has been developed in the context of the following key objectives:

- **Support an independently sustainable and competitive racing industry**

The TAB plays an important role in supporting our local racing industry and should continue to do so post any sale. The structure and commercial terms of the arrangement should help the racing industry to be independently sustainable and competitive with minimal residual risks for the State. Importantly, the industry should expect to receive at least the equivalent level of funding from the TAB as it would receive if the TAB remained in public ownership.

- **Optimise value for both the State and the racing industry**

A sale should be structured in a way to realise optimal value, with the sales proceeds to be shared between the State and the racing industry.

- **Ensure the integrity of racing and wagering activities in WA are maintained**

Post-sale racing integrity and governance arrangements must ensure proper oversight and management of all racing codes. The wagering licence and regulatory framework must provide appropriate oversight of wagering activities in Western Australia.

- **Conduct a fair and robust process**

Conduct a fair and robust reform and transaction process in accordance with appropriate probity and accountability standards.

3.2 Racing Industry Funding Models

Under the existing framework, the TAB is the wagering function of RWWA with RWWA directing profits from its wagering operations towards funding the racing industry. If the TAB is sold, RWWA would no longer conduct wagering activities, and alternative arrangements would be required to replace the revenue stream related to the wagering function.

As other TABs have been sold across Australia, four key types of racing industry funding models have emerged.

1. **Separation model** – no formal relationship between the operator and the racing industry, with the industry funded directly by the relevant state or territory government (Tasmania, ACT and NT);
2. **Contractual model** – the operator and the racing industry have a clearly defined contractual arrangement in place on funding and racing program processes, but otherwise separately pursue their respective responsibilities (QLD and SA);
3. **Joint venture model** – the operator and the racing industry are jointly responsible for decision-making and operating activities, and involve profit-share arrangements (VIC. NSW has elements of both the contractual and joint venture model); and
4. **Integrated ownership model** – the government / racing industry controls the TAB and makes decisions in regards to racing industry funding (New Zealand).

In Australia, racing industries in the larger racing jurisdictions that are capable of supporting commercial wagering operations (including NSW, VIC, QLD and SA) have historically adopted either the contractual or joint venture models, while smaller racing jurisdictions (including TAS, ACT and NT) have adopted the separation model.

3.2.1 Proposed Contractual Model

Based on analysis in the scoping study, feedback from consultation with the racing industry and market soundings, the Government proposes to adopt the contractual model for the TAB if a sale is pursued.

The contractual model involves the wagering operator and racing industry having contracts in place on funding and racing program determination processes. However, both entities are independent and operate separately on their respective operations. Under this model, the racing industry enters into a **Racing Distribution Agreement (RDA)** with the new operator who pays a RDA product fee typically calculated as a percentage of the operator’s gross margin (or gross wagering revenue) in return for the racing program.

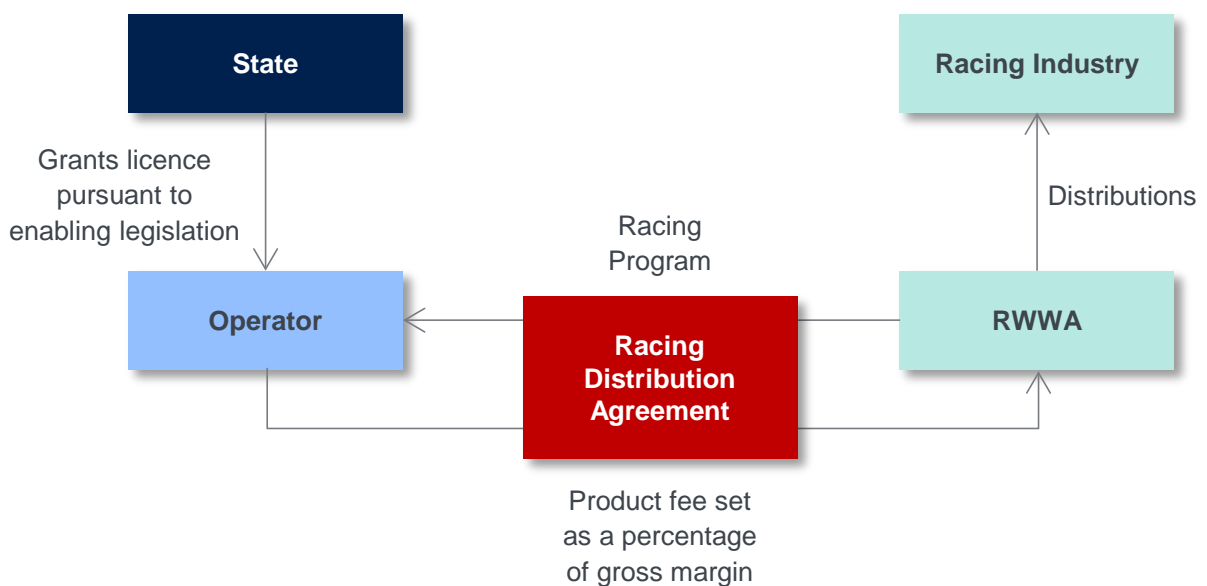
Under this model, a wagering licence is granted by the Minister to the new operator. A condition of this licence is the operator must enter into a Racing Distribution Agreement with the PRA (i.e. the revamped RWWA) for:

- funding arrangements with the racing industry; and
- production of the annual racing program.

Figure 1 below illustrates the structure of a contractual model including:

- the relationship between the State, the new operator, RWWA (as the PRA) and the racing industry; and
- funding flows between these entities.

Figure 1: Illustrative Contractual Model



Under a contractual model the racing industry would continue to receive a significant proportion of its funding from TAB revenues. Compared to a joint venture model, the advantages of this approach are:

- it provides greater certainty for both parties as funding arrangements, obligations and responsibilities of each party are contracted from the start and clearly defined; and
- it removes racing industry’s exposure to the operator’s operating costs and capital expenditure.

3.2.2 Role of RWWA as the Principal Racing Authority

Under this approach RWWA would continue in its important role as the PRA. It would likely be renamed to take into account that it would no longer have a wagering function. RWWA would be a party to the Racing Distribution Agreement and continue to distribute funding to the racing industry.

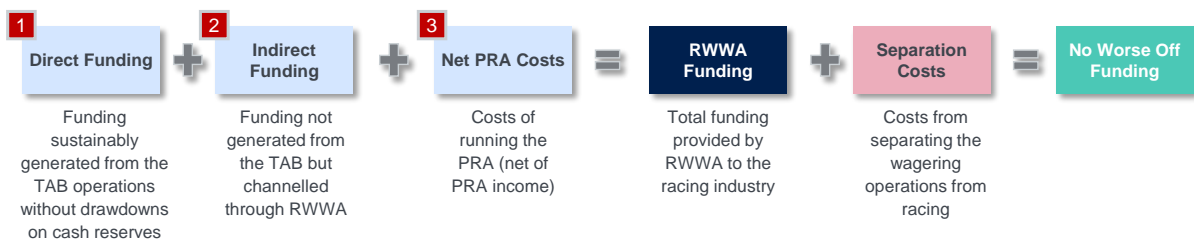
3.3 ‘No worse off’ Funding for Industry

A key tenet in the development of the proposed sale framework is the “no worse off” principle in relation to racing industry funding. In other words, this principle requires that the racing industry can expect to receive at least the equivalent amount of funding from the TAB as it would if the TAB remained in public ownership, with appropriate mechanisms put in place to support this outcome.

If the TAB was sold, revenue generated from the TAB operations would flow to the new operator rather than RWWA. To account for this, it is proposed that there would be a payment from the TAB operator to the racing industry to achieve the “no worse off” level of funding. This funding level would be based on an estimate of the equivalent level of funding RWWA would have otherwise generated from the TAB if it remained in public ownership, while also providing an additional payment to the industry for the costs associated with separating the wagering and racing functions and removing drawdowns on cash reserves (as these represent retained profits from previous periods).

Figure 2 below illustrates the “no worse off” funding equation, which is derived from elements of the current funding arrangements.

Figure 2. “No Worse Off” Funding Equation



Calculation of the “no worse off” funding equation would occur in consultation with RWWA upon the commencement of the sale process, as it would need to take into account the most up-to-date information and likely view on future TAB performance at the time of the transaction process. Setting the funding level now would mean that it would be out-of-date by the time any sale process commences.

The resulting payment to the racing industry by the operator would be referred to as the **RDA product fee**. The majority of the RDA product fee would be set as a percentage of gross margin (or gross wagering revenue) generated from the TAB.

Once the “no worse off” funding level is calculated, the RDA product fee would be set at a percentage of gross margin to achieve this outcome. As a percentage, the actual dollar figure of funding will vary year to year subject to the performance of the wagering market over time (as is the case with the status quo funding model). However, to provide additional assurance to the racing industry, a number of “protections” are proposed to be built into the funding model, which will act as obligations on the operator.

3.4 Current Funding Arrangements

As the PRA for all three codes of racing in WA, RWWA is responsible for the distribution of funding to the racing industry. As part of this obligation, RWWA provides three sources of funding.

- **Direct funding** – funding generated directly through the operation of the TAB;
- **Indirect funding** – funding not generated by the TAB but instead directed through RWWA to the racing industry; primarily comprised of the Racing Bets Levy collected by the Gaming and Wagering Commission (the Commission) and then passed onto RWWA (net of administration costs) and other government grants and subsidies; and
- **Net PRA costs** – costs of operating the PRA functions including racing operations and integrity (net of PRA income).

The racing industry also generates its **own funding** from the operation of on-course wagering, owners contributions and other race club revenue, e.g. broadcast commission (Perth Racing), hospitality sales, membership fees, etc.

3.4.1 Direct Funding

Direct funding represents funding that is generated directly through the operation of the TAB, and comprises both direct distributions from RWWA to the racing industry, as well as RWWA infrastructure grants and industry subsidies.

- **Racing distribution** – this represents the direct distributions made to the racing industry and is funded from wagering revenues generated by the TAB (excluding the Racing Bets Levy).
- **RWWA grants** – this represents the infrastructure grants provided by RWWA to the race clubs for maintenance and renewal of racing and public facilities.
- **Industry subsidies** – in addition to direct distribution and infrastructure grants, RWWA also bears a number of costs that otherwise would be borne by the racing industry, primarily in relation to on-course wagering cost of sales and the capture of racing vision.

3.4.2 Indirect funding

Indirect funding represents funding for the racing industry not generated by the TAB, but is directed through RWWA to the racing industry from the Commission and the Government. The Racing Bets Levy is the primary source of indirect funding, which represents a fee charged to all wagering operators for offering wagers on WA races.

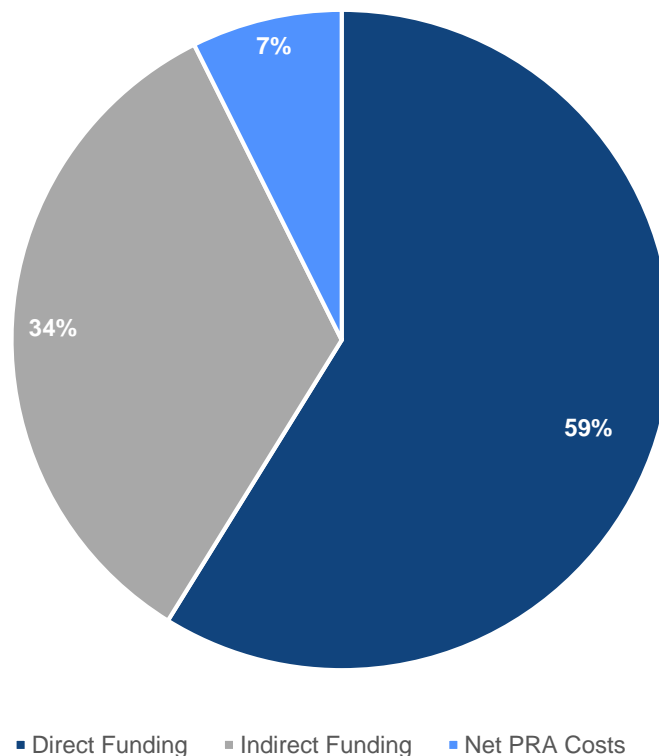
- **Racing Bets Levy** – the Commission is responsible for collecting the Racing Bets Levy from interstate TABs and corporate bookmakers as well as intrastate wagering operators. It is then distributed to the racing industry via RWWA, net of the Commission's administrative costs. It is proposed that the administration of the levy would change and be handled directly by the PRA if the TAB was sold.
- **Government grants** – in addition to infrastructure grants provided by RWWA to the racing industry, the Government also, from time to time, provides one-off infrastructure grants.

3.4.3 Net PRA Costs

As part of its role as the PRA for all three codes of racing in WA, RWWA is also responsible for the costs associated with racing operations and racing integrity, including scheduling, race day operations, and maintaining the racing integrity functions, including providing stewards, swabbing and testing the jockeys, horses and dogs. The costs of the PRA are partially offset by income from the racing operations including registration and licensing fees, and broadcast revenue.

The relative size of these funding components are set out in figure 3 below, based on actual funding in 2016-17.

Figure 3: Proportional sources of racing industry funding (based on FY17A)



3.4.4 Own Funding

In addition to funding provided by RWWA, the racing industry also generates its own funding which comprises:

- on-course wagering revenue from on-course bets offered by race clubs, which do not attract any wagering tax (revenues excludes associated operating expenses);
- gross revenues (prior to cost of sales and expenses) generated by the race clubs from venue ticket sales, hospitality (food and beverage), racing broadcast revenue, membership fees and other services; and
- implicit funding borne by the owners of the horses and dogs who receive only a partial return on their investment in the racing animals, breeding and training, from stakes, bonuses and training funds.

3.5 Operator Obligations

As outlined above, a new TAB operator would enter into a Racing Distribution Agreement with RWWA as a condition of the wagering licence. The RDA would include a number of protections to ensure that the interests of the local racing industry are protected. The key protections are outlined below.

- **Funding Guarantee Period** – a guarantee on the minimum level of funding provided by the TAB operator to the racing industry for the initial years of the arrangement. Racing industry representatives consulted to date have expressed a view that this should be for three years set at the equivalent level of funding as if the TAB remained in public ownership (as per methodology outlined above).
- **Positive obligation for the operator** – an obligation for the operator to ‘act in the best interests of the TAB’, thus maximising funding flowing to the racing industry.
- **Contractual mechanisms to prevent licence arbitrage** – contractual mechanisms to prevent the operator from “transferring” customers (and revenue) to other jurisdictions.

These provisions will be further developed with RWWA and the State’s advisers if a sale process proceeds.

3.6 Contract Term

A term for the initial wagering licence and associated RDA with the racing industry needs to be decided. The Government proposes setting the same term for the funding arrangements, licence, retail exclusivity and operation of an off-course totalisator. As part of the initial phase of consultation, racing industry representatives expressed support for a term of 25 years, or longer if this can result in higher sales proceeds.

A term of 25 to 30 years appears to be sufficient to align the interests of the operator to invest in and operate the TAB for the long-term growth and prosperity of the three racing codes in Western Australia. A significantly shorter term may dis-incentivise an operator from investing in the business, which may then limit returns generated for the racing industry. A significantly longer term may not necessarily result in materially higher sales proceeds due to the time value of money (i.e. the diminishing value of future returns due to discounting) and the uncertainty of the operating environment beyond 30 years.

The agreement terms in other jurisdictions are summarised in table 2 below.

Table 2. Agreement terms in other jurisdictions

Jurisdiction	Terms
New South Wales	<ul style="list-style-type: none"> • Licence term of 99 years (licence expires in 2097) • Exclusivity expires in 2033 (initial 15 year term + 20 year extension)
Victoria	<ul style="list-style-type: none"> • Licence term of 12 years (licence expires in 2024) • Exclusivity expires in 2024 (12 year term)
South Australia	<ul style="list-style-type: none"> • Licence term of 99 years (expires in 2100) • Exclusivity expires in 2032 (initial 15 year term + 15 year extension)
Queensland	<ul style="list-style-type: none"> • Licence term of 99 years (expires in 2098) • Exclusivity expires in 2044 (initial 15 year term + 30 year extension)
ACT	<ul style="list-style-type: none"> • Licence term of 50 years (expires in 2064) • Exclusivity expires in 2064 (50 year term)
NT	<ul style="list-style-type: none"> • Licence term of 20 years (expires in 2035) • Exclusivity expires in 2035 (20 year term)
Tasmania	<ul style="list-style-type: none"> • Licence term of 50 years (expires in 2062) • Exclusivity expires in 2027 (15 year term)

3.7 Simulated Racing

In order to help meet the interests of both the State and racing industry, the Government has agreed to consider the inclusion of ‘virtual’ or ‘simulated’ racing products as part of the Western Australian wagering licence. Such products would be restricted to TAB outlets and pub-TABs and would not be offered online.

Simulated racing products are a common feature in other States’ wagering licences. For example, Trackside is a simulated racing product that is authorised under the wagering licences issued to Tabcorp in NSW, Victoria and ACT. These simulated racing products are designed to complement live racing at TAB outlets and are predominately provided during periods between live races. In this regard, they are intended to be ancillary to live race betting, with mandatory minimum periods between simulated races.

Consistent with the long-standing bi-partisan policy position in Western Australia, the Government will not consider the addition of products that go beyond those that are directly ancillary to racing. The Government will not consider allowing ‘poker machines’ in the State, or other games such as Keno, to be played outside their current restrictions at the Burswood Casino.

3.7.1 Licence conditions on simulated racing products

If simulated racing products were included within the Western Australian wagering licence, a number of conditions would be imposed to regulate the operation of the products.

- **Restricted to simulated thoroughbred, harness and greyhound racing** – the simulated races would be restricted to representations of the three racing codes.
- **Restricted to TAB outlets and pub-TABs** – the inclusion of simulated racing products within the Western Australian wagering licence would be restricted to TAB outlets and pub-TABs and would not be offered online.

- **Regulated time interval between simulated races** – regulations would also be imposed on the time interval that simulated racing products can be offered to ensure they are only provided as ancillary products. For example, in Victoria, simulated races are required to be a minimum of 20 seconds long and must be separated by a minimum of 3 minutes.⁹
- **Regulated hours of operation** – the hours of operations will be aligned to the standard trading hours for TAB outlets and pub-TABs.

3.7.2 Agreement with Crown Resorts

Currently, as an authorised game under the *Casino (Burswood Island) Agreement Act 1985* (Burswood Casino Agreement), simulated racing products can only be offered in Western Australian at the Burswood Casino. In order to facilitate the inclusion of simulated racing products within the Western Australian wagering licence, amendments are required to the authorised games and exclusivity provisions under the Burswood Casino Agreement to allow the TAB operator to include simulated racing products at TAB outlets.

3.8 Racing Infrastructure Fund

The racing industry has previously called for a portion of the sales proceeds from a sale of the TAB to be set aside to establish a racing infrastructure fund. The Government has listened to the industry and has agreed to establish a racing infrastructure fund equal to the amount of 35 percent of the net sale proceeds from the sale of the TAB.

The Government considers that allocating a one-off portion of the sales proceeds to the racing industry in the form of an infrastructure fund has merit and is justified on the following grounds.

1. It recognises that the racing industry is the key beneficiary of the TAB under current legislation, and plays a large part in the leadership and development of the business via its representation on the RWWA Board. An infrastructure fund remunerates the industry for changing these arrangements.
2. It would assist in ensuring race tracks are of sufficient quality and condition to meet the racing industry's commitments to supply quality racing products under the Racing Distribution Agreement with the operator (a view expressed by WARRG).
3. It aligns the interests of the State and racing industry to optimise sales proceeds.

The administrative details for how infrastructure requirements are assessed, funding requests considered and expenditure prioritised, would be developed in consultation with RWWA.

In accordance with general best-practice, it is expected that expenditure from the infrastructure fund will be subject to business case assessments to ensure the money is well spent and provides the maximum benefit to the three racing codes.

⁹ Victoria Government Gazette, No. S 93 Monday 27 March 2006, Gambling Regulation Act 2003, Approved Betting Competitions

3.9 Enabling Legislation

The State's current legislative framework does not include a licensing framework for a privately operated TAB. As such, legislative change is required before any sale process can commence. This is necessary to:

- establish a new wagering licence regime to allow for the replacement of the existing wagering functions of RWWA;
- amend the existing wagering regulatory framework, including revising the regulatory functions of the Commission; and
- provide the authority to undertake the transaction.

3.9.1 Key legislative principles

The key principles informing the structure of the potential sale are:

1. Minimise institutional change

The current framework comprises:

- RWWA as the PRA for all three codes;
- racing and wagering activities being operationally separate within RWWA; and
- the Commission as the primary wagering regulator.

Wholesale changes to this framework are not required.

2. Realign roles and functions as appropriate for a privately operated TAB

There are some roles and functions currently undertaken by RWWA and the Commission that do not align to similar institutions in other states and territories, and are not suitable if the TAB is privately operated. These include:

- RWWA's ability to make rules of wagering, which are better placed with the wagering regulator (in this case, the Commission), rather than the PRA; and
- the Commission's administration of the Racing Bets Levy – in other states and territories, race field fees are generally controlled and administered directly by the PRA. The Racing Bets Levy has so far been administered by the Commission in WA due to the unique circumstance of RWWA having responsibilities for both PRA and wagering functions. This would be transferred to RWWA, if it no longer has a wagering function.

3. Establish an appropriate licencing and regulatory regime

Establish a robust licencing and regulatory regime with the appropriate level of oversight by government and providing operational certainty and transparency for a private operator of the TAB.

The figures provided in Appendix 2 provide further details as to the existing framework and the proposed amendments.

4. Transaction and Implementation Process

4.1 Transaction Process

Subject to the enactment of legislation and approval by Government, it is proposed that the transaction would follow a standard three staged open market process as follows:

1. release of Request for Expressions of Interest (to seek interest in the TAB from potential bidders);
2. release of Request for Indicative Offers (to seek initial offers from bidders against the State's key commercial terms, including the proposed RDA product fee mechanism); and
3. release of Request for Binding Offers (to seek final binding offers from bidders on the basis of a draft Racing Distribution Agreement).

If, out of this process an arrangement can be agreed that is suitable for the State and racing industry, the Government would enter into a legally binding agreement with the successful bidder to implement the transaction conditional on a Racing Distribution Agreement being agreed with RWWA (as the PRA). Once the Racing Distribution Agreement has been executed, the Minister would then issue a wagering licence to the successful bidder.

4.2 Project Governance

A project plan detailing governance arrangements would be prepared in the planning phase of any sale. Treasury would be responsible for the management of the process and would work closely with RWWA in doing so. It is envisaged this would include:

- the RWWA Board nominating two representatives to be appointed to the project steering committee, which would report and make recommendations to Government; and
- representatives of RWWA being part of the project team throughout the planning and transaction process.

The State Solicitor's Office and the Department of Local Government, Sport and Cultural Industries would also hold important roles in this process and be represented on the steering committee.

The project would be supported by a team of commercial, legal and other specialist advisers.

4.3 Ongoing Consultation with the Racing Industry

If a sale process proceeds, RWWA would be responsible for keeping the racing industry informed of the process through the Code Sub-Committees. At key points the Government's project team, including advisers, would present to the RWWA Board and Code Sub-Committees on the progression of the transaction and key issues.

4.4 Stakeholder Engagement

Beyond the consultation process with the racing industry, other key stakeholder groups would be engaged to ensure they are kept fully informed of developments that affect them.

- **Employees** – RWWA would be responsible for communication with its employees and the relevant unions regarding the potential changes that will impact the structure of the organisation. All employee rights and entitlements would be managed in accordance with the existing terms of employment and relevant statute.
- **TAB Agents** – RWWA would be responsible for communication with TAB agents. A forum would be arranged to discuss agent-specific issues that relate to the proposed sale.

4.5 Post-Implementation Review

Government is supportive of maintaining RWWA as the tri-code PRA for racing, as it supports strategic coordination between the three codes, is less costly than having separate racing authorities and is preferred by potential operators of the TAB.

Nevertheless, some racing industry stakeholders have called for this arrangement to be reviewed. In light of this, the Government proposes that RWWA be maintained as the tri-code PRA immediately after any sale to assist with a smooth transition to the new arrangements. Then, within three years of a sale, there would be a review of:

- the outcomes of the new TAB arrangements; and
- the PRA structure and functions.

In their written submissions, the RWWA Board, Greyhound Racing Committee and Harness Racing Committee called for a legislated review of the PRA governance structure and outcomes of a sale within three years. The Thoroughbred Racing Committee called for this to happen within two years of a sale.

The Government is of the view that a review would be best completed three years post a sale so that at least two full years of performance data would be available before the review is completed.

Appendix 1 – Letter from Code Sub-Committee Chairs



RACING AND WAGERING WESTERN AUSTRALIA

7 May 2018

Hon. Paul Papalia CSC, MLA
Minister for Racing and Gaming
10th Floor
Dumas House
2 Havelock Street
WEST PERTH WA 6005

Dear Minister,

RE: POTENTIAL PRIVATISATION OF THE WATAB

The purpose of this letter is to provide feedback from representatives of the Racing Industry regarding the potential privatisation of the WATAB in the lead up to the 2019 State Budget.

The review process undertaken over recent months by the State Government has been constructive and provided a clear understanding of the issues and potential solutions should privatisation prove to be in the best interests of the Racing Industry.

We are pleased to have been actively involved as members of the newly formed Racing Committees under the auspices of Racing and Wagering Western Australia (RWAA) in the work undertaken to date.

We concur that independent analysis has highlighted that if structured correctly, privatisation can theoretically deliver similar outcomes to the existing operations of the WATAB under RWAA's management and potentially deliver funds for the Racing Industry that might not otherwise be available to meet its longer-term needs.

Whilst early into the process and recognising the detail of any potential transaction is yet to be finalised, we are encouraged by the approach being taken and progress reached to date with this important issue.

We look forward to the next phase of determining the commerciality of a transaction and to validate that privatisation will be superior to existing arrangements.

Signed for and on behalf of the Respective Racing Committees:

Gary Gliddon
Chairman
Greyhound Racing Committee

Bob Fowler
Chairman
Harness Racing Committee

Bob Pearson
Chairman
Thoroughbred Racing Committee

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Appendix 2 – Summary of Proposed Legislative & Regulatory Changes

Figure 1: RWWA’s Current Legislative Framework

Betting Controls Act 1954 (BC Act)	Racing Restrictions Act 2003 (RR Act)	Racing and Wagering Australia Act 2003 (RWWA Act)	
<ul style="list-style-type: none"> Controls and regulates gaming and wagering activities in WA <ul style="list-style-type: none"> Authorises, regulates and controls, betting and bookmaking on racing and on sporting events; Regulate the assessment, collection and allocation of race field fees (or Racing Bets Levy); and Authorises, regulates and controls the use of totalisator and betting with, or through, RWWA. General prohibition on betting unless authorised to operate under the BC Act or a written law <ul style="list-style-type: none"> Wagering activities conducted by RWWA are exempt, being authorised under the RWWA Act. 	<ul style="list-style-type: none"> Regulates thoroughbred, harness and greyhound races and race meetings; and Provides that thoroughbred, harness and greyhound races for a stake or prize must not be held unless both the race and the racehorse are licensed by RWWA under the RWWA Act. 	<ul style="list-style-type: none"> Established RWWA as a body corporate with perpetual succession; and Responsible for controlling, regulating and supervising racing in WA and conducting certain wagering in WA. 	
		Racing Activities (Part 4)	Wagering Activities (Part 5)
		<ul style="list-style-type: none"> Establishes RWWA as the PRA for all 3 codes of racing in WA; and Responsible for controlling, regulating and supervising racing in WA. 	<ul style="list-style-type: none"> Authorises RWWA to conduct both pari-mutuel and fixed odds off-course wagering in WA; and Authorises RWWA to conduct any other business related to authorised wagering activities.
		Rules of Racing (s45 of RWWA Act)	Rules of Wagering (s120 of RWWA Act)
		<ul style="list-style-type: none"> RWWA may make rules of racing with respect to the control, regulation and supervision of thoroughbred, harness and greyhound racing; and Includes rules in relation to the conduct of race meetings, breeding, naming, prizes, powers of stewards and other officers, etc. 	<ul style="list-style-type: none"> Subject to the approval of the Commission, RWWA may make rules of wagering, including in relation to: <ul style="list-style-type: none"> On-course totalisator wagering; Off-course wagering; and Fixed odds wagering. Applies to RWWA, racing clubs authorised to conduct on-course totalisator wagering and bookmakers.
		RWWA Tax Act 2003	Financial Management Act 2006
		<ul style="list-style-type: none"> Provides specifically for taxes to be imposed upon money paid in respect of wagers made to or through RWWA; and Taxes apply to both totalisator and fixed odd wagers. 	<ul style="list-style-type: none"> Requires RWWA to prepare an annual report for the Minister of Sports and Recreation, Racing and Gaming; and Report to include financial statements for the financial year, key performance indicators, and any other information prescribed by the Treasurer’s instructions.
Racing Bets Levy Act 2009	Sports Wagering Account (s107 of RWWA Act)		
<ul style="list-style-type: none"> Provides specifically for race field fees to be imposed on betting operators. 	<ul style="list-style-type: none"> Provides for certain amounts from wagering on sporting events to be paid to the Sports Wagering Account. 		
Gaming and Wagering Commission Act 1987 (GWC Act)			
<ul style="list-style-type: none"> Establishes the Gaming and Wagering Commission (the “Commission”) as a body corporate with perpetual succession; Responsible for administering the law relating to gaming and wagering (subject to the BC Act and RWWA Act), and to administer all matters relating to any casino (pursuant to the Casino Controls Act 1984); and Responsible for administering the Racing Bets Levy account and Sports Wagering Account. 			

Figure 2: RWWA’s Current Regulatory Framework

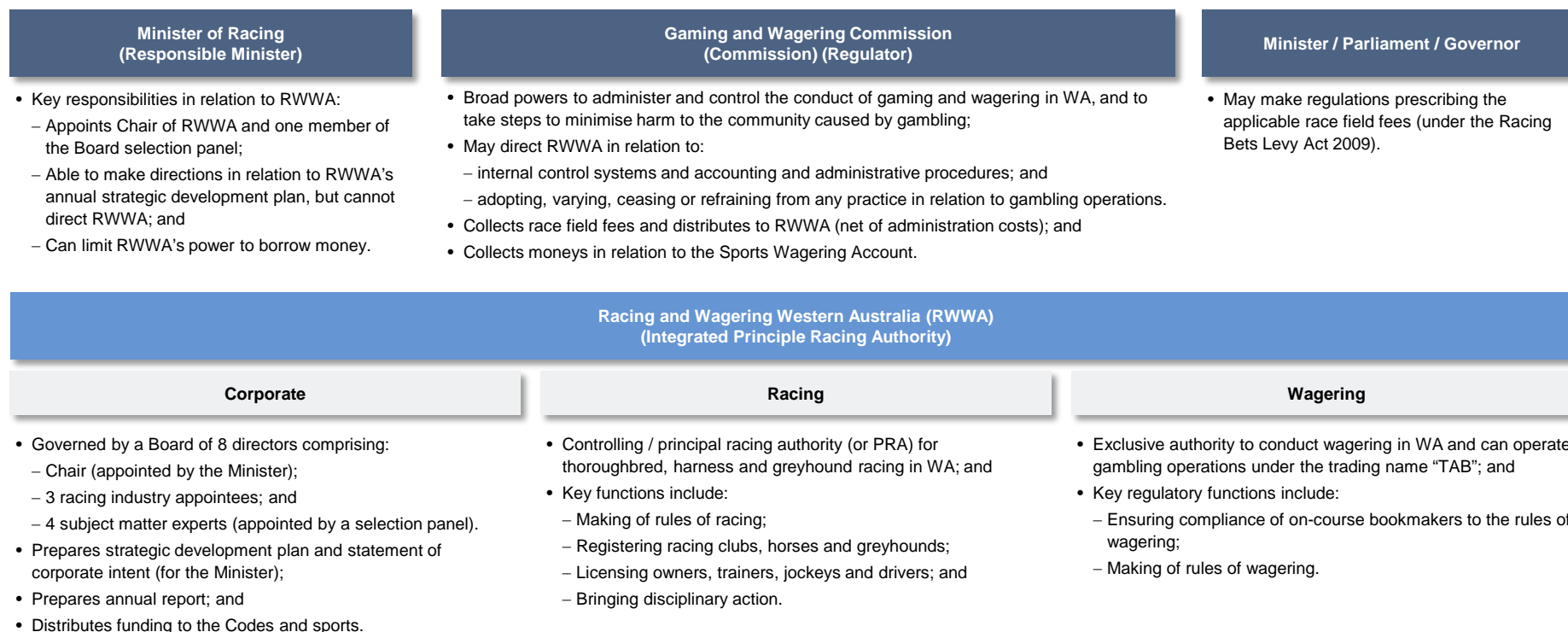


Figure 3: Post-Sale Institutional Framework

