

PREMISES AS AT END JUNE 2001									
PUBS, TAVERNS & BARS	AUST	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
Premises with Gambling Facilities	3,114	1,310	370	697	459	*134	121	14	8
Premises without Gambling Facilities	1,513	96	574	328	86	310	88	10	20
<b>TOTAL PUBS, TAVERNS &amp; BARS</b>	<b>4,627</b>	<b>1,406</b>	<b>944</b>	<b>1,025</b>	<b>545</b>	<b>444</b>	<b>209</b>	<b>24</b>	<b>28</b>
CLUBS									
Premises with Gambling Facilities	2,057	1,159	233	468	71	NP	38	27	NP
Premises without Gambling Facilities	1,064	*64	220	101	218	NP	113	11	NP
<b>TOTAL CLUBS</b>	<b>3,121</b>	<b>1,223</b>	<b>453</b>	<b>569</b>	<b>289</b>	<b>NP</b>	<b>151</b>	<b>38</b>	<b>NP</b>
* Estimate has a relative standard error of between 25% and 50% and should be used with caution NP Not available for Publication but included in totals where applicable unless otherwise indicated									
Source: ABS Clubs, Pubs, Taverns & Bars. 6687.0. 200									

In NSW electronic gaming machines are owned and operated by the registered clubs and hotels in which the machines are located. This differs significantly from other States, such as, for example, Victoria where TABCorp and Tattersalls own and operate all electronic gaming machines.

Gaming tax rates applicable to revenue from electronic gaming machines are significantly lower in NSW than in other States and Territories.

Originally NSW hotels were permitted to operate only "approved amusement devices" – a form of electronic gaming machine which plays only draw poker and has significantly lower turnover, subject to a maximum of 10 machines per hotel. From April 1997, the *Liquor Act 1982 (NSW)* was amended to permit hotels to operate up to 15 poker machines and 15 approved amusement devices, subject to certain restrictions. Further legislative amendments in 1998 provided hotels with greater flexibility in terms of the mix of electronic gaming machines within their overall limit of 30 machines per hotel.

With the introduction of the *Gaming Machines Act 2001 (NSW)* with effect from April 2002, a new regime was introduced under which:

- legislated ceilings were imposed on the total number of poker machines in NSW hotels (25,980) and registered clubs (78,020);
- the maximum number of poker machines in hotels remained at 30 and a limit imposed on the number of poker machines in registered clubs;<sup>25</sup>
- NSW hoteliers and registered clubs received poker machine "entitlements" based on the number of poker machines they had at a specified date;
- Poker machine entitlements became tradeable between hotels and between registered clubs.

Media reports suggest that hotel entitlements are trading for over \$350,000 for a block of three entitlements, of which one must be forfeited to the Government on transfer and the purchaser receives only the remaining two entitlements. Extracts of relevant reports are attached in Annexure TAB D.

<sup>25</sup>

Subject to exceptions for clubs who had more than 450 machines (who are subject to obligations in relation to the reduction of their machine numbers), the cap for clubs is 450 machines.

**Tab Limited's Wagering Business**

Tab Limited is Australia's largest wagering organisation.

It conducts:

- totalizator wagering on Australian and international racing and on the National Rugby League competition;
- fixed-odds wagering on a range of sporting events including rugby league, cricket, soccer, rugby union, golf, tennis, boxing, Australian Rules Football, motor sports and basketball;
- fixed-odds wagering on major racing events.

Tab Limited has pursued opportunities to enhance the availability of racing events on which its customers can bet. In part this has involved liaising with NSW racing industry representatives in relation to more efficient race scheduling. Additionally, in conjunction with Sky Channel Pty Limited, Tab Limited has actively explored opportunities for wagering on international races.<sup>26</sup>

These initiatives have resulted in the number of race meetings on which Tab Limited conducts wagering increasing significantly since privatisation. In the financial year ended 30 June 2002, Tab Limited conducted wagering on a total of 5,467 race meetings, representing approximately 54,000 individual races, across the three racing codes – thoroughbred, harness and greyhound racing. This represents a 42% increase on the 3,854 race meetings conducted in the financial year ended 30 June 1998.

The following table shows the growth in the total number of race meetings on which Tab Limited conducts wagering and the location of the relevant meetings.

Location of race meeting	FY00	FY01	FY02
NSW	1,573	1,623	1,641
Victoria	1,508	1,575	1,657
Qld	965	985	1,024
Other States and Territories	763	896	1,075
International	32	73	70
<b>Total</b>	<b>4,841</b>	<b>5,152</b>	<b>5,467</b>

<sup>26</sup> To make wagering on international product viable for Tab Limited, racing information and telecasts of the relevant races needs to be made available to Australian customers. In addition to Tab Limited entering into arrangements, including payment of product fees, with international racing bodies, to make racing on international events viable Sky Channel Pty Limited also needs to acquire the right to include coverage of the relevant races in its racing telecasts in Australia.

**Wagering Turnover and Revenue**

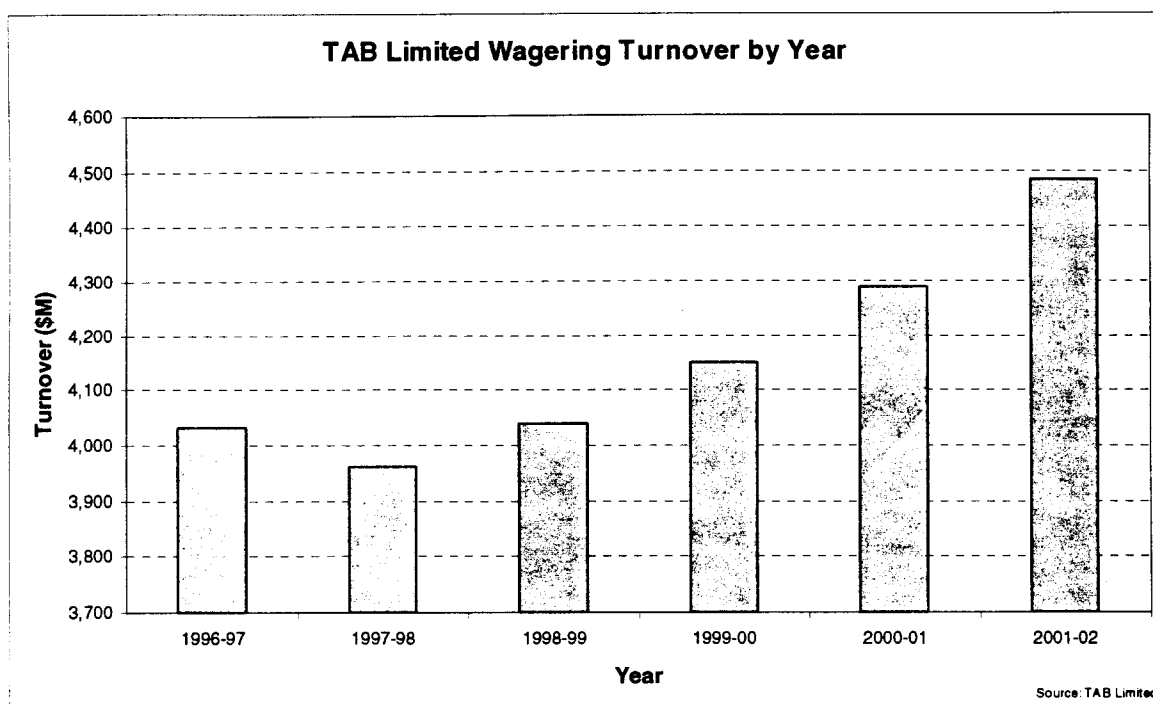
In the financial year ended 30 June 2002, with total wagering turnover of \$4.485 billion (of which \$4.225 billion was off-course wagering) and total wagering revenue of \$739 million.

Over 95% of Tab Limited's total wagering turnover was derived from totalizator wagering.

Since the financial year ended 30 June 1997, Tab Limited's wagering turnover has increased from approximately \$4 billion (adjusted to include on-course totalizator wagering).<sup>27</sup> This represents a compound annual growth rate of 2.3% p.a. over that five year period.

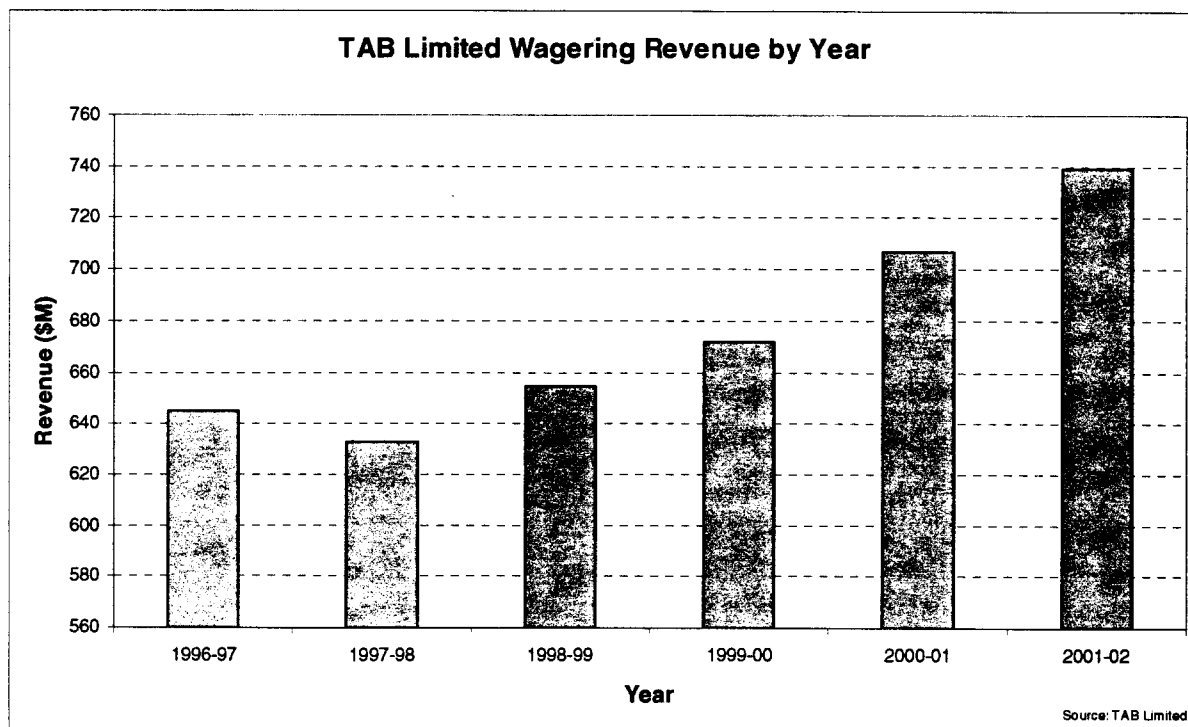
A significant proportion of Tab Limited's turnover growth has been derived from fixed-odds wagering on sporting events, which Tab Limited conducts under the brand "SportsTAB". Tab Limited began offering fixed-odds wagering on sporting events in July 1998. Since then turnover has grown significantly, reaching \$197.5 million in the financial year ended 30 June 2002.

Although fixed-odds wagering on sporting events is still comparatively small, comprising less than 5% of total turnover in the financial year ended 30 June 2002, it has contributed 38% of Tab Limited's turnover growth since 30 June 1998. Excluding turnover from fixed-odds sports wagering, the compound annual growth rate in relation to turnover over that five year period ended 30 June 2002 reduces from 2.3% p.a. to 1.4% p.a.



<sup>27</sup> Tab Limited's wagering turnover in the financial year ended 30 June 1997 was approximately \$3.62 billion. However under the previous legislative regime, which applied until the introduction of the Totalizator Act on 6 March 1998, on-course totalizators were conducted by racing clubs. Under the Totalizator Act, where a NSW racing club conducts an on-course totalizator on an event on which Tab Limited conducts a totalizator, the racing club is deemed to take the bets on the on-course totalizator as agent for Tab Limited. Accordingly to enable comparisons which are not distorted due to the change in the regulatory regime it is necessary to adjust turnover in respect of the period prior to 6 March 1998 for turnover on NSW on-course totalizators. In respect of the year ended 30 June 1997, on-course totalizator turnover was approximately \$390 million.

<sup>28</sup> For the reasons outlined in footnote [27], the figures shown in the graph have been adjusted to include on-course turnover of approximately \$390 million in the financial year ended 30 June 1997 and of approximately \$273 million in respect of the period from 1 July 1997 to 5 March 1998.



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**Initiatives**

Since privatisation, Tab Limited has undertaken a range of major initiatives to enhance the efficiency of its wagering operation and improve the quality and range of wagering products and services provided to customers.

These initiatives have included:

- expansion of its product offering through the introduction of fixed-odds wagering on sporting events in July 1998 and certain major racing events in February 2001;
- introduction of new totalizator products such as "Flexi"<sup>30</sup> – a world first - and "First 4";
- introduction of non-wagering products (e.g. scratch lotteries) into TAB agencies;
- increasing the number and geographic scope of retail distribution outlets, while rationalising inefficient branches and agencies;
- extensive programme of refurbishing agencies and other retail outlets;
- introducing electronic delivery of race lists, form guides and scratchings service to retail outlets;
- standardisation and improvement in the display and availability of racing information
- the introduction of new "state of the art" wagering terminals;

<sup>29</sup> The figures shown in the graph have been adjusted to include revenue from on-course totalizators in the financial year ended 30 June 1997 and the period from 1 July 1997 to 5 March 1998. The figures shown in the graph represent turnover less the amount paid to customers in respect of winning bets. They do not include miscellaneous income derived by Tab Limited in its wagering business.

<sup>30</sup> Flexi is a new product which allows the customer the flexibility to make trifecta (select first 3 placegetters), First 4 (i.e. select first 4 placegetters) and superfecta (i.e. select first 6 placegetters) with multiple combinations while also choosing the total amount they wish to bet.

- enhancing and relaunching internet betting facilities (branded "SportsTAB" in relation to wagering on sporting events and "RaceTAB" in relation to wagering on racing)
- improved race scheduling to provide greater race coverage;
- enhancement of the telephone betting facilities (branded "PhoneTAB") through:
  - IVR (keypad) betting
  - Natural Language Speech Recognition technology (Tabatha) – the first usage of natural language speech recognition technology on this scale anywhere in the world.

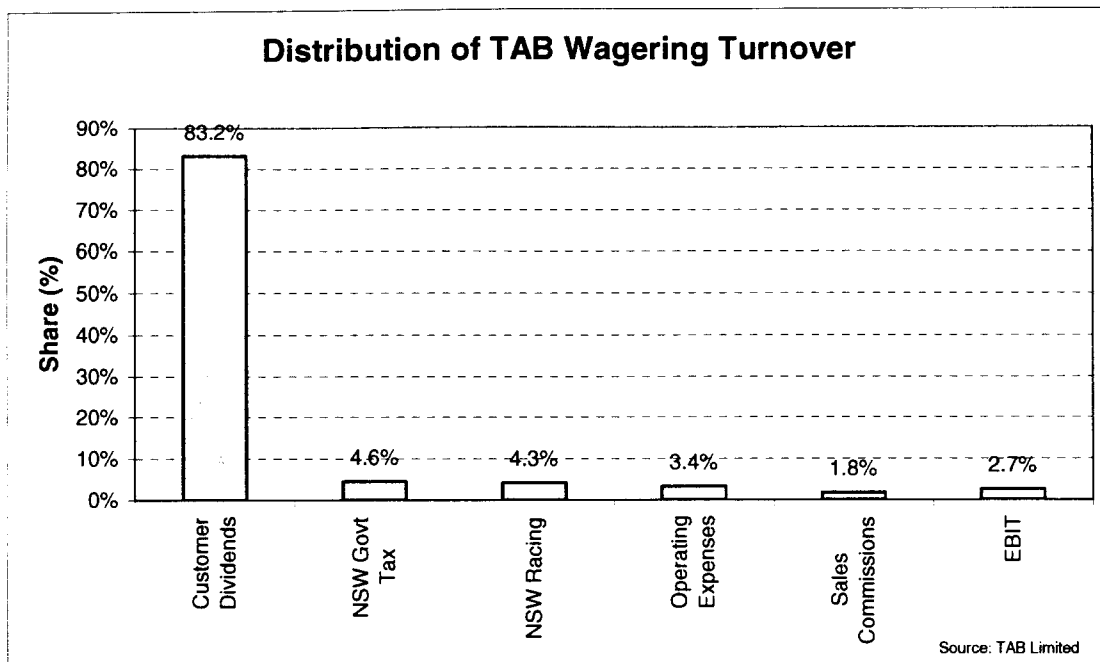
These initiatives have required significant capital investments, with the result that Tab Limited has incurred capital expenditure in excess of \$100 million in relation to its wagering business in the four years since privatisation.

**Margins and Cost structure**

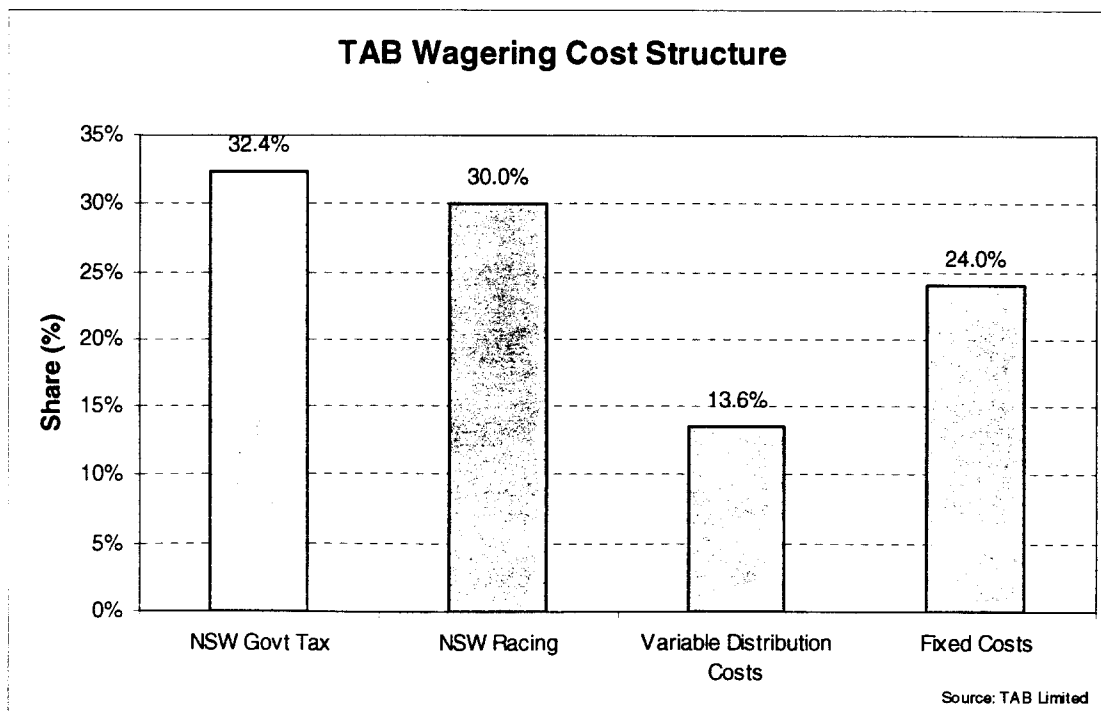
Wagering is a business which operates on very high volumes but very low margins.

In the financial year ended 30 June 2002, from total wagering turnover of \$4.485 billion, wagering revenue of \$740 million and miscellaneous income from its wagering business of \$13 million, Tab Limited's earnings before interest and tax ("**EBIT**") from its wagering business was \$115 million. A copy of Tab Limited's annual report for the year ended 30 June 2002 is attached as Annexure TAB E.

The following table illustrates in summary form the distribution of Tab Limited's wagering turnover:



The following table illustrates in summary form Tab Limited's wagering cost structure for the year ended 30 June 2002.



**Margins**

While wagering turnover growth has been limited, Tab Limited has increased its EBIT margins from the wagering business since privatisation from 3.46% of turnover in the financial year ended 30 June 1999 to 3.86% in the financial year ended 30 June 2002.

This margin improvement has been derived through a combination of efficiency improvements, including as a result of the initiatives referred to above, and changes to the average annual commission rate.

**Variable Costs**

Variable costs represented approximately 76% of total wagering costs.

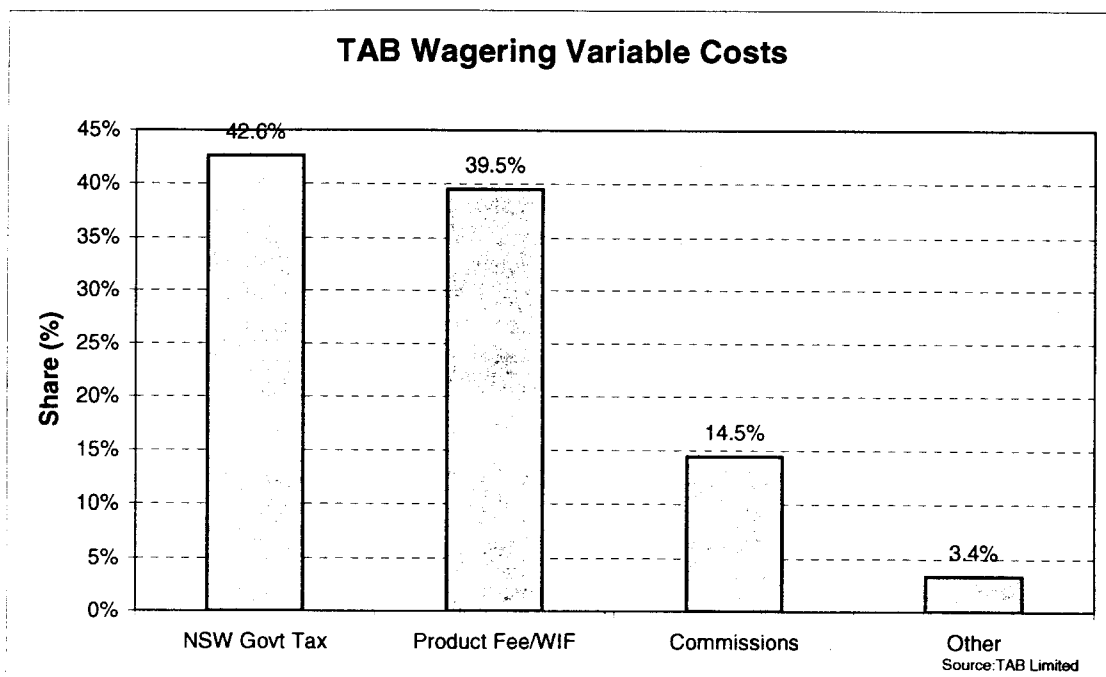
Two major costs of Tab Limited's wagering business are:

- NSW wagering tax of 28.2% of totalizator revenue and 20% of revenue from fixed-odds wagering. In total Tab Limited paid \$206.6 million in NSW wagering tax in the financial year ended 30 June 2002;
- fees payable to NSW under the RDA, which as noted above comprise a Product Fee of 21.64% of revenue from totalizator wagering under Tab Limited's NSW licence and a Wagering Incentive Fee of 25% of Wagering Earnings (determined by reference to both totalizator and fixed-odds wagering) from operations under Tab Limited's NSW wagering licences. In respect of the financial year ended 30 June 2002, these fees were more than \$190 million.

Aside from these costs, the other major variable costs from Tab Limited's wagering operation are costs relating to the operation of its distribution network. These are principally:

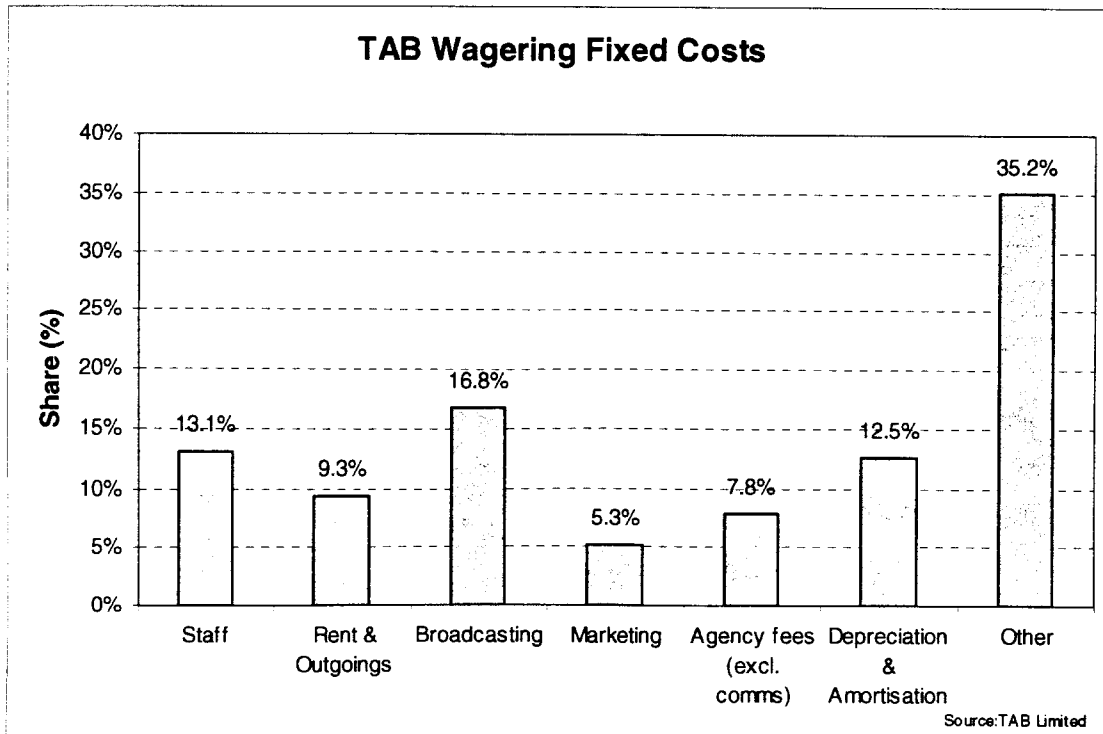
- commissions to agents and PubTAB/ClubTAB operators which vary in proportion to turnover;
- variable communications costs of its telephone and internet betting facilities which vary based on the volume of bets received through these channels; and
- Consumables and variable communications costs associated with agencies and PubTAB/ClubTABs which vary based on the volume of bets received through those channels.

Variable costs of the distribution network differ depending on the distribution channel through which a bet is received. Further details are set out below.



**Fixed Costs**

Fixed costs of Tab Limited's wagering business in the financial year ended 30 June 2002 amounted to approximately \$153.3 million or 24% of the costs of Tab Limited's wagering business.





### Distribution Network

Tab Limited's wagering distribution network comprises:

- **Agencies:** An agency is a dedicated TAB retail outlet operated by an independent agent on behalf of Tab Limited. Agents employ their own staff. Tab Limited pays the agent fees including:
  - a fixed fee for managing the outlets;
  - a commission based on wagering turnover and sales of lottery products;
  - a ticket processing fee; and
  - a fee for opening PhoneTAB accounts and processing account transactions.

Tab Limited uses a standard form agreement in relation to Agencies. The standard form agreement has changed over time, and some Agents continue to operate under older form agreements. Approximately 40% of Agencies are operating under the current standard form agreement, which has been used by Tab Limited since May 2002. The remaining 60% of Agencies operate under one of two older versions of the standard form agreement. Tab Limited expects that over time most Agents will transfer onto the new form of agreement. Details of the fee structure under the current version of the standard form agency agreement are set out in Annexure TAB F.

- **PubTAB/ClubTAB:** PubTABs and ClubTABs involve Tab Limited providing wagering services in NSW licensed venues - hotels (in the case of PubTAB) or registered clubs (in the case of ClubTAB). The wagering facilities are provided in the hotel or club as part of the venue's entertainment package and the venue acts as Tab Limited's agent in relation to wagering services. Tab Limited applies a standard form agreement for PubTAB and ClubTAB outlets, with identical forms of agreement used for both hotels and registered clubs. Annexure TAB G contains a copy of the standard form agreement for PubTAB and ClubTAB outlets.<sup>31</sup>
- **Telephone betting (PhoneTAB):** PhoneTAB is a telephone wagering service providing customers a choice of placing their bets through operator assisted service, a keypad facility where bets are placed using the telephone keypad or a natural language speech recognition system. Customers using PhoneTAB place bets drawing on funds deposited in special purpose accounts which they maintain with Tab Limited. PhoneTAB uses a Telstra "13" service so customers are charged only the cost of a local call, with Tab Limited responsible for the balance of the call costs if any.
- **Internet betting (RaceTAB and SportsTAB):** In 1997, Tab Limited became one of the first organisations in the world to offer totalizator wagering through the internet. As with PhoneTAB, customers place bets drawing on funds deposited in special purpose accounts maintained with Tab Limited. The RaceTAB and SportsTAB sites offer customers a range of information, news and audio coverage of races.
- **On-course:** Where Tab Limited conducts an off-course totalizator on a racing event, under the Totalizator Act any amount bet on an on-course totalizator conducted by a racing club on that racing event is received by the racing club as an agent for Tab Limited. NSW racing clubs have traditionally contracted out the operation of the on-course totalizators to third party service providers. At the time Tab Limited was privatised there were two on-course operators in NSW, Racecourse Totalizators and AWA. Both of those operations were acquired by Tab Limited.<sup>32</sup> Tab Limited now operates the on-course totalizators for all NSW racing clubs in accordance with amendments to the Racing Distribution Agreement, which provide for minimum service levels and that, subject to limited exceptions, the services are provided without charge. Tab Limited previously operated branches which were dedicated TAB retail outlets operated by Tab Limited employees. Tab Limited ceased to operate branches from 1998 when the remaining branches were converted into agencies.

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<sup>31</sup> Attached to the application to the Commission by the AHA is a document which purports to be a copy of the standard form agreement used by Tab Limited for PubTAB and ClubTAB outlets. The document attached to the AHA's application is in fact a draft document provided by Tab Limited to the AHA as part of the consultation process referred to below. It is not the final form of the agreement which is as set out in Annexure TAB G to this submission.

<sup>32</sup> Racecourse Totalizators experienced financial difficulties and Tab Limited, as a major creditor, bought the business rather than have the company enter some form of external administration. Jupiters wished to exit AWA's on-course business after completion of its takeover of AWA. Tab Limited held discussions with the Commission regarding the proposed acquisition of the AWA on-course totalizator business.

**Wagering Outlets**

It is important to note that Tab Limited **only has wagering outlets in NSW**. While, there are outlets which operate under a "TAB" brand or are referred to as "PubTABS" or "ClubTABS" in other States and Territories, these outlets are operated by the authorised off-course totalizator operator in the relevant jurisdiction and have no connection whatsoever with Tab Limited.<sup>33</sup>

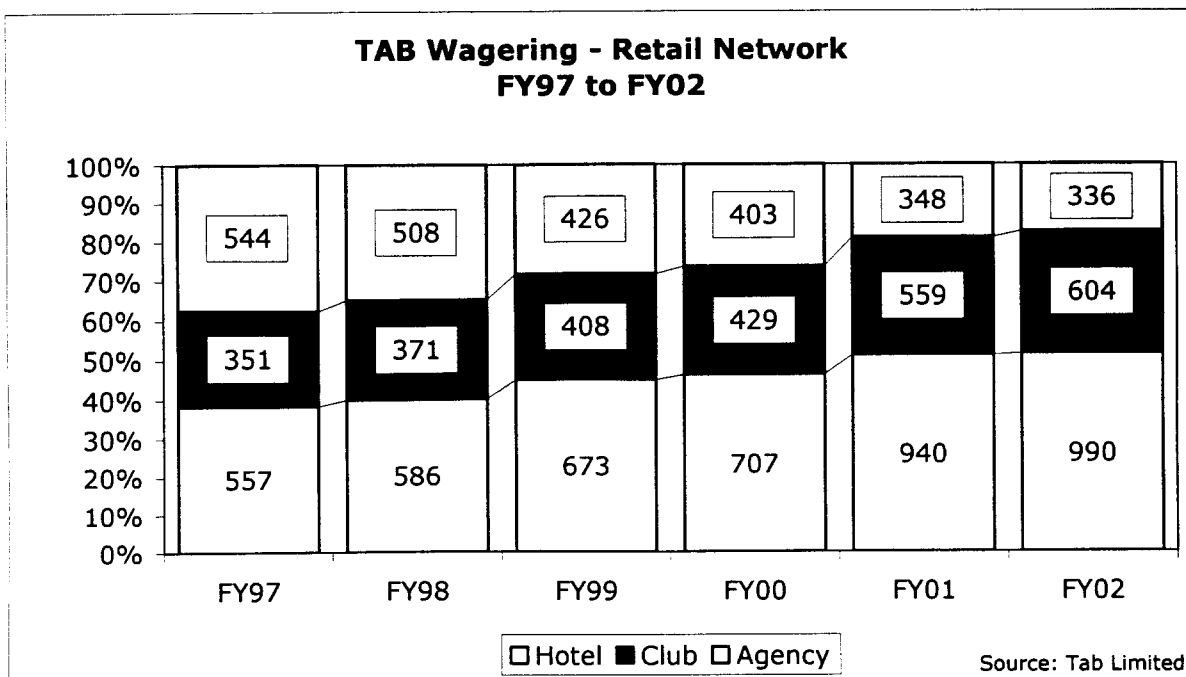
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<sup>33</sup> The usage of the brand "TAB" by different entities in various States and Territories is a legacy of all States and Territories having established a statutory authority as the sole provider of off-course wagering in the relevant jurisdiction and each State and Territory designating that statutory authority as "the Totalizator Agency Board".

Prior to 6 March 1998, regulatory restrictions constrained Tab Limited's ability to establish or close outlets or to change the terms on which it dealt with its agents and PubTAB/ClubTAB operators. Those restrictions were removed with the introduction of the Totalizator Act, providing Tab Limited with an opportunity to review its distribution network.

While the total number of outlets has increased by approximately 32% since privatisation, the mix of outlets has also changed substantially with the closure of all branches, a rationalisation of agencies and a substantial increase in the number of PubTAB and ClubTAB outlets.

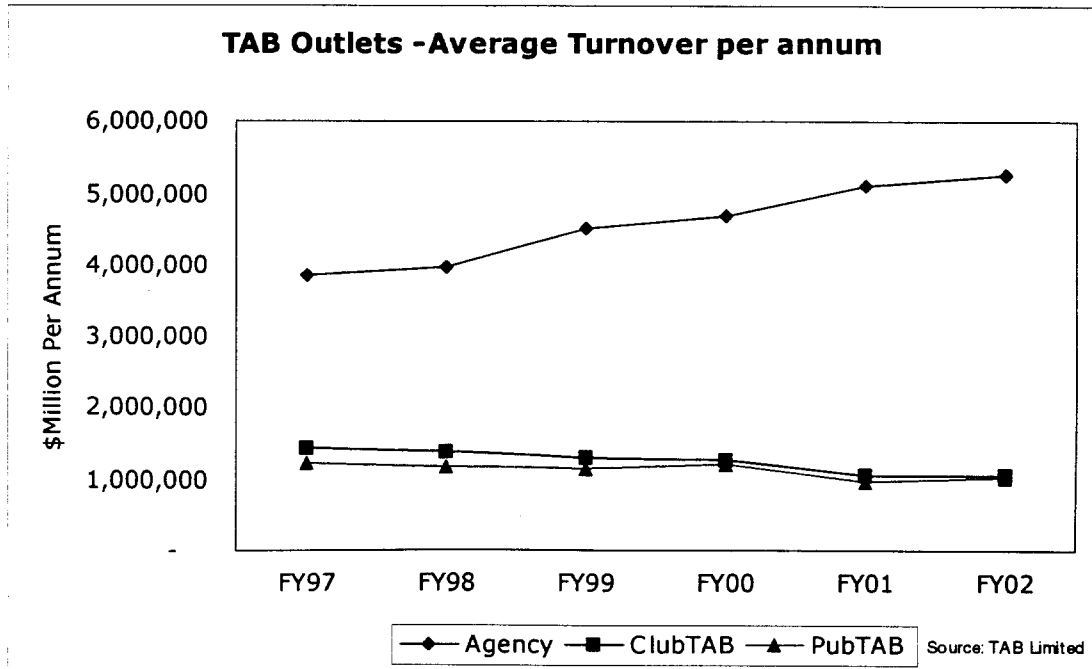
The following table and graph illustrates the changes in the number of each type of off-course wagering outlet in NSW since 30 June 1997.



Total Outlets				
FY	Agency	Club	Hotel	Total
FY97	544	351	557	1,452
FY98	508	371	586	1,465
FY99	426	408	673	1,507
FY00	403	429	707	1,539
FY01	348	559	940	1,847
FY02	336	604	990	1,930

Changes in the number of various types of outlet have also impacted in the average turnover per outlet.

- Closure of poorly performing agencies, particularly since the introduction of the Totalizator Act, has resulted in a substantial increase in the average turnover per agency.
- By contrast, increases in the number of PubTAB and ClubTAB outlets has resulted in comparatively smaller or lower turnover outlets, with a resulting reduction in the average turnover per outlet.<sup>34</sup> This trend has been more significant in ClubTABs given significant differentials in the size of NSW registered clubs.



<sup>34</sup> The decline in turnover per outlet in hotels is due to comparatively lower turnover derived through new PubTAB outlets. Of the 586 PubTAB outlets operating as at 30 June 1998, 547 of those outlets continue to operate their PubTAB facilities. The average turnover per outlet for those 547 PubTAB facilities has increased from \$20,251 per week in the financial year ended 30 June 1998 to \$22,213 per week in the financial year ended 30 June 2002, an increase of approximately 9.7% over the four years. For PubTAB outlets opened since 30 June 1998, the average turnover per outlet in the financial year ended 30 June 2002 was \$15,882 per week.

**Distribution Mix**

The variable cost of Tab Limited receiving bets differs across the various distribution channels.

In general terms, the internet is the most cost-effective distribution channel. Agencies, on-course and operator bets have the lowest margin for Tab Limited.

Since privatisation the proportion of Tab Limited's turnover derived through these lower margin distribution channels has reduced, with the largest improvement in Tab Limited's total margin due to the growth in the proportion of turnover derived through electronic means.

The following graphs illustrate changes in the proportion of turnover derived through the various distribution channels.

In addition to the enhancement of internet and telephone betting facilities, the introduction of fixed-odds wagering on sporting events has contributed to the growth since privatisation in the percentage of turnover being derived through the internet and telephone betting channels. While still small in aggregate, fixed-odds wagering on sporting events has been responsible for much of the turnover growth since privatisation. Wagering on sporting events has significantly different characteristics in the marketplace from wagering on racing. One of the manifestations of those different characteristics is a greater propensity for customers to bet using the internet or telephone. Approximately 33% of Tab Limited's total turnover on fixed odds wagering on sporting events is derived through Internet and telephone betting, nearly double the proportion of Tab Limited's turnover through those channels on racing.

## PubTABs

Wagering in hotels and registered clubs is conducted as an ancillary activity to the main business activities of the hotel or registered club. PubTAB facilities and Sky Channel assist in attracting and retaining customers in a hotel. This in turn benefits the hotels other activities such as the sale of food and beverages and gaming.

A PubTAB or ClubTAB is operated in the licensed premises from which the hotel or registered clubs conduct their ordinary business activities.

The fittings and fixtures within the premises for the PubTAB or ClubTAB are provided by the hotel or registered club. Given potential impacts on Tab Limited's regulatory requirements, branding and reputation, Tab Limited has right to approve the proposed fixtures and fittings. However the scale and nature of fittings and fixtures for PubTABs and ClubTABs are determined by the relevant hotel or registered club. As a result the size and structure of PubTAB and ClubTAB outlets differ markedly, from large self-contained rooms to relatively small areas not distinguished from the bar and other areas of the hotel or club.

Tab Limited supplies and maintains all of the equipment necessary to conduct a wagering service, including wagering sales terminals, tickets and other related consumable items, signage, point-of-sale, formguides, and communications. In late 2000, Tab Limited introduced electronic delivery of race lists and formguides (Referred to as the Daily Form Service or "DFS") to all TAB outlets, which has enhanced efficiency for the outlets and their operators.

## Penetration of PubTABs in NSW

Prior to privatisation, despite constant and strong demand from hotels for PubTABs, the availability of PubTABs was restricted, with only moderate growth in the number of PubTABs. This was effected by factors including:

- TAB being a government authority;
- Government controls;
- restrictions, as a government authority, on capital investment in new wagering sales terminals and additional network capacity;
- prevailing policy considerations (including a policy of maintaining branches and Agencies as the primary distribution channel).

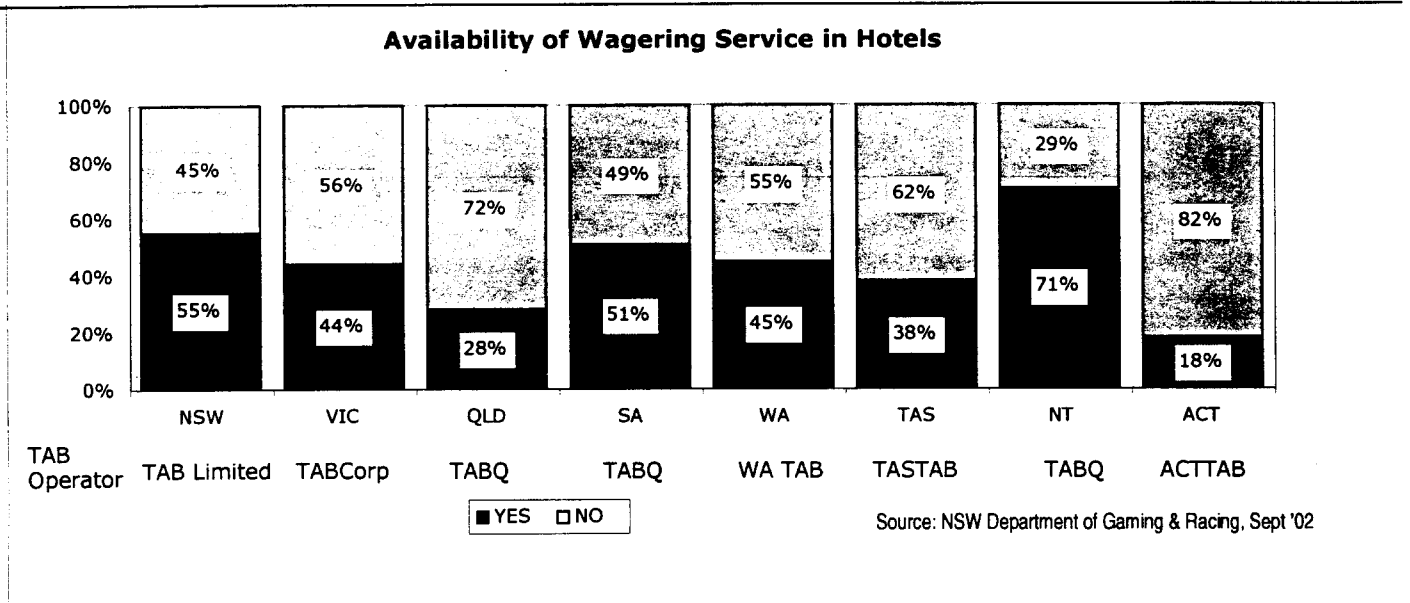
That approach attracted criticism and complaint from the hoteliers, the AHA and others.

Privatisation provided Tab Limited with greater flexibility. Following privatization, Tab Limited increased network capacity, increased the availability of wagering sales terminals and invested in new state-of-the-art terminals.

As a result of this additional flexibility and investment, combined with continued strong demand from hotels for PubTAB facilities, Tab Limited has substantially increased the number of PubTABs in NSW.

Between 30 June 1998 and 30 June 2002, Tab Limited commissioned 464 new PubTABs. In that time, 60 hotels have ceased their PubTABs, a nominal number of which have ceased their PubTABs as a result of failure to properly account to Tab Limited for amounts owing to Tab Limited in respect of the PubTAB operation and the balance have elected to relinquish their service usually as a result of a change in ownership or management of the relevant hotel. Details of increases in the total number of PubTABs is set out in above.

As a result, NSW has a higher penetration of PubTABs in hotels than any other State and the ACT. Only the Northern Territory, where figures are impacted by the very small number of hotels, has higher PubTAB penetration.



Despite this expansion, Tab Limited continues to receive on a continual basis requests from hotels for PubTAB facilities. These requests indicate that there is still significant demand for PubTABs from NSW hotels.

Despite this demand, Tab Limited anticipates that the growth in the number of PubTAB outlets in NSW will be relatively limited under the current arrangements and cost structures.

Given the capital investment by Tab Limited required for a PubTAB outlet, an outlet requires turnover of approximately \$7,500 per week to provide Tab Limited with a satisfactory return based on the current commission structures, capital and operating costs.

Given the demand, Tab Limited is considering a number of potential options which may enable it to economically provide wagering facilities through outlets which generate lower turnover. See below for further details.

**Selection criteria in relation to hotel applications for a PubTAB service**

On receipt of an application from a hotel for a PubTAB, a TAB Sales Manager conducts a formal on-site assessment of the hotel. The purpose of the assessment is to assess the suitability of the hotel for a PubTAB facility.

In conducting the assessment, the Sales Manager considers factors such as:

- the trading profile of the hotel (including bar trade, the number of gaming machines in the hotel, meals served);
- facilities available in the hotel and the hotel's proposed configuration of the PubTAB;
- the hotel's customer base;
- location.

As part of the assessment, Tab Limited considers its expectations as to the level of turnover it anticipates can be achieved from the new outlet. One consideration in this regard, is proximity to other Tab Limited wagering outlets and assessments as to the extent which the grant of the new PubTAB will give rise to additional turnover or simply divert turnover from other nearby outlets.

While Tab Limited does not limit the number of outlets in specific areas as policy matter, each new outlet requires investment by Tab Limited which needs to be commercially justifiable. Diversion of turnover from established outlets has limited commercial value for Tab Limited. This is taken into account in assessing potential new sites.

### **Contractual arrangements in relation to PubTABs.**

Tab Limited uses a standard form agreement for all PubTAB outlets. The agreement used for PubTABs is identical to that used for ClubTABs.

For a large numbers of outlets, a standard form agreement is important. This is particularly so in a highly regulated industry such as wagering, where uniformity of terms is an important compliance issue.

Following privatisation, Tab Limited continued to use the same standard form of agreement for its PubTABs and ClubTABs as it had used for many years as a government authority.

The terms of the standard form agreement were revised in 2001.

Tab Limited has actively sought good relations with the Australian Hotels Association (NSW) ("AHA") and consults with the AHA on numerous issues effecting the NSW hotel industry.

Tab Limited also considered that endorsement by the AHA would assist Tab Limited in having individual hotels accept the new form of agreement. Accordingly Tab Limited engaged in an extensive consultation process with the AHA over many months.<sup>35</sup> Copies of correspondence reflecting the consultation process is set out in Annexure TAB I.

As is apparent from the correspondence in Annexure TAB I, Tab Limited made a number of changes to the structure and terms of the new agreement as a result of comments and discussions with the AHA.

During that process, the AHA expressly acknowledged and accepted that Tab Limited would apply standard form of agreement to all PubTAB outlets.<sup>36</sup>

A copy of the current standard form agreement used by Tab Limited for PubTAB and ClubTAB outlets is contained in Annexure G. This agreement was publicly endorsed by the AHA to its membership. A copy of a circular published by the AHA to its members in April 2001 is attached as Annexure TAB J.

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<sup>35</sup> Tab Limited has consulted with the AHA and other industry bodies such as ClubsNSW (an association body for NSW registered clubs) and the TAB Agents' Association of NSW. While these consultation processes provide useful discourse, it is essential that Tab Limited retain its flexibility in relation to its distribution network. Any consultation therefore must be a voluntary process with Tab Limited retaining its freedom, having heard the views of the industry body, to make its own commercial assessment as to the terms on which it deals with its agents, PubTAB and ClubTAB outlets (as the case may be).

<sup>36</sup> This acknowledgment is recorded in a letter from Brian Ross, Chief Executive of the Australian Hotels Association (NSW), to Tab Limited dated 14 March 2001. A copy of that letter is contained in Annexure TAB I.



The following table illustrates the respective components of the PubTAB wagering facilities which are provided by Tab Limited and the hotel under the standard form agreement:

TAB Wagering vs Venue Obligations		
	Hotel	
	Hotel Pays	TAB Pays
Selling Terminals		•
Communications		•
Personal Computer		•
Laser Printer		•
Equipment Maintenance		•
Tickets and Stationery		•
Internal/External Signage		•
Point-of-Sale		•
Ticket Bins		•
Fittings/Fitout	•	
Staff Costs	•	
Televisions	•	
Electricity	•	
Paper & Toner	•	

Source: Licenced Agency Agreement

PubTAB and ClubTAB operators receive a commission based on turnover. Commission structure and rates are identical for all PubTAB and ClubTAB outlets.

Unlike Agencies, which are a dedicated wagering outlet, PubTABs and ClubTABs are conducted in the licensed premises from which the hotel or registered clubs conduct their ordinary business activities as an adjunct to those other activities. Agencies typically conduct significantly higher turnover and volume of transactions than PubTAB or ClubTAB outlets.

Accordingly the commission structure in Agencies differs from that applicable to PubTABs and ClubTABs. The following table compares the current commission structure for Agencies and for PubTAB/ClubTAB outlets.

Comparative Commission Rates			
Agency		Hotel	
Weekly Sales	Rate	Weekly Sales	Rate
< \$50,000 per week	1.95%	< \$7,500 per week	1.075%
\$50-80,000 per week	1.55%	> \$7,500 per week	2.075%
\$80-130,000 per week	1.45%		
> \$130,000 per week	1.40%		
Extended Hours Sales	2.00%	Fixed Odds	1.35%
Weekly Management Fee	\$762.00		

Source: Agency Agreement Source: Licenced Agency Agreement

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The Weekly Management Fee for Agents referred to in the table is the fee applicable for those Agents who have entered into the new standard form agency agreement. Agents who remain on older standard form agreements receive lower opening fees.

Prior to privatisation, commission was paid to PubTAB and ClubTAB outlets at a rate of 2% of turnover regardless of the level of turnover. Commission rates have been revised on three occasions since privatisation, and in each case Tab Limited has consulted with the AHA and considered its views in the course of Tab Limited's determination of the changed commission structure:

- In the year ended 30 June 2001, there were a number of PubTAB outlets achieving turnover of less than \$7,500 per week. It was not commercially economic for Tab Limited to retain these low turnover outlets on the basis of the then existing commission structure. Rather than close these outlets, the commission structure was revised to pay no commission for PubTAB and ClubTAB outlets averaging turnover of less than \$7,500 per week.
- Commission rates was changed in the new standard form of agreement. This commission structure is set out in the standard form agreement. Under this new structure turnover attracted commission of 1.125% where average turnover was less than \$7,500 per week and 2.125% if average turnover was more than \$7,500 per week. Of the 0.125% increase in commission rates:
  - 0.05% was expressly provided to offset the costs of consumables for the Daily Form Service which hotels and clubs are responsible for under the new agreement;
  - 0.05% was expressly provided to offset an increase in fees for the Sky Channel commercial service. It was expressly stated that this 0.05% would be deducted if there was a reduction in Sky Channel fees;
  - the remaining 0.025% was not expressly attributed.<sup>38</sup>
- Following a reduction in Sky Channel fees in May 2002, Tab Limited reduced commission rates for PubTABs and ClubTABs by 0.05% with effect from 1 July 2002 consistent with the basis on which the commission was revised with the introduction of the new standard form agreement. Annexure TAB K is a copy of a letter from Tab Limited's Chief Executive Wagering to Mr John Thorpe, President of the AHA, dated 6 June 2002 advising the AHA of the change to the commission rates. Tab Limited also circulated letters to all PubTAB and ClubTAB operators notifying them of the changes to the commission rate. A copy of the letter circulated in respect of the Harbord Beach Hotel (in respect of which Mr John Thorpe is a principal) is attached to the supplementary material provided to the Commission by the AHA.

In addition to commissions, Tab Limited also provides a number of benefits which are not required under the agreement with PubTAB and ClubTAB operators. These benefits, including incentive schemes, are made available by Tab Limited on a non-discriminatory basis.

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<sup>38</sup> This allocation and expression of the basis on which Tab Limited proposed to increase commissions is recorded in a letter from the managing director of Tab Limited to Mr Brian Ross, Chief Executive of the Australian Hotels Association (NSW), dated 26 March 2001 and followed by a letter from the managing director of Tab Limited to Mr John Thorpe, President of the Australian Hotels Association (NSW), dated 4 April 2001. Copies of these letters are contained in Annexure TAB I.



That PubTAB outlets have benefits in terms of attracting and retaining customers and therefore flow-on benefits for other aspects of the hotel's operation is amply demonstrated by:

- the hotels with turnover of less than \$7,500 per week retained their PubTABs through the period in which no commissions were paid to those hotels;
- the desire for hotels with turnover of less than \$7,500 per week to retain their PubTABs. Tab Limited provides considerable assistance and advice to these hotels to assist them to increase their turnover to a level which makes it economic for Tab Limited to maintain their PubTAB facility;<sup>39</sup>
- continued demand by hotels for new PubTAB outlets even where anticipated turnover would not make those outlets commercially viable for Tab Limited;
- demand from hotels for additional terminals in circumstances where the capital investment in those terminals is not commercially justified from Tab Limited's perspective. Tab Limited recently introduced arrangements for circumstances where Tab Limited did not consider it commercially justifiable for Tab Limited to incur capital investment required to provide additional terminals to a PubTAB outlet, which enable the PubTAB operator to lease the additional terminal. Participation is completely voluntary and Tab Limited has not curtailed the provision of terminals to outlets where Tab Limited considers its investment in additional terminals is commercially justifiable. While the programme has not been actively publicized pending receipt of additional terminal stock, Tab Limited has already received orders from PubTAB operators to lease 39 terminals at \$211 per month (plus GST).

Due to the desire for hotels with low turnover to retain their PubTAB facilities and the continued demand from hotels for new PubTAB facilities, Tab Limited has been reviewing mechanisms which may enable Tab Limited to provide PubTAB and ClubTAB facilities to low turnover venues on a commercially viable basis. Tab Limited is currently examining a range of alternatives in this regard, including:

- reduction or elimination of commissions in low turnover outlets;
- hotels paying for additional elements or facilities required to provide the service;
- potentially using different facilities to reduce the capital costs of a PubTAB outlet. As part of this examination, Tab Limited will be commencing trials on 18 October 2002, in a small number of hotels of an alternative form of wagering sales terminal which has less capacity and functionality than the current terminals but a significantly lower cost.

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<sup>39</sup>

A copy of a standard form letter sent by Tab Limited to PubTAB outlets with turnover of less than \$7,500 per week is attached as Annexure TAB L.

## Glossary

### Dividends

a term used for the amount won by a customer on a winning bet placed on a totalizator;

### Fractions

amounts resulting from the rounding down to the nearest five cents (or other minimum unit prescribed by the rules of the relevant wagering activity) of the amount payable to customers in respect of winning bets;

### Greyhound Racing Authority

a statutory authority constituted under the *Greyhound Racing Authority Act 1985 (NSW)* which is responsible for the administration of greyhound racing in NSW;

### Harness Racing New South Wales

a statutory authority constituted under the *Harness Racing New South Wales Act 1977 (NSW)* which is responsible for the administration of harness racing in NSW;

### NSW Racing Pty Limited

the entity nominated as the "racing industry" for the purpose of section 21A of the *Totalizator Act 1997 (NSW)*. NSW Racing Pty Limited acts as an agent for the NSW Thoroughbred Racing Board, Harness Racing New South Wales and the Greyhound Racing Authority in connection with dealings with Tab Limited on behalf of the NSW racing industry;

### NSW Thoroughbred Racing Board

a statutory authority constituted under the *NSW Thoroughbred Racing Board Act 1996 (NSW)* which is responsible for the administration of thoroughbred racing in NSW;

### On-course totalizator

a totalizator wagering operation in which bets on the totalizator can only be placed by people physically located at a racecourse.

### Off-course totalizator

a totalizator wagering operation in which bets on the totalizator can be placed by people who are not physically located at a racecourse;

### Racing Distribution Agreement

the "Racing Distribution Agreement" dated 11 December 1997 between Tab Limited (then the Totalizator Agency Board), NSW Racing Pty Limited, the NSW Thoroughbred Racing Board, Harness Racing New South Wales and the Greyhound Racing Authority as amended. The Racing Distribution Agreement is the agreement entered into between Tab Limited and the NSW racing industry consistently with the required under the Totalizator Act for a licensee to have and give effect to commercial arrangements with the NSW racing industry. A copy of the Racing Distribution Agreement is attached as Annexure TAB C;

### Revenue

in respect of wagering or gaming, is turnover less the amount paid to customers in respect of winning bets;

### Totalizator

a form of wagering in which the wagering operator pools all bets, deducts a commission, with the remainder available to customers with winning bets;

### Turnover

the total amount bet by customers in a wagering event or gaming activity.