

16 November 2015

The Hon. Barry O'Farrell
Chairperson
Impact of Illegal Offshore Wagering Review
Department of Social Services

By email: wageringreview@dss.gov.au

Impact of Illegal Offshore Wagering Review



Dear Mr O'Farrell,

Tabcorp Holdings Limited (**Tabcorp**) makes this submission (**Submission**) in relation to the Impact of Illegal Offshore Wagering Review (**Review**).

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Tabcorp made a submission in August 2015 in relation to the Review of the Australian Communications and Media Authority (**ACMA**). That document addresses some of the legislative, enforcement and process issues that are raised in this Review. A copy of that document is enclosed with this Submission for ease of reference.

About Tabcorp

Tabcorp is a leading Australian gambling entertainment company and a top 100 public company listed on the Australian Securities Exchange. Tabcorp is one of the world's largest publicly listed gambling companies.

Tabcorp is diversified across three businesses: Wagering and Media, Gaming Services and Keno.

Tabcorp is Australia's largest wagering operator by market share and holds the retail and totalisator wagering licences in Victoria, New South Wales and the Australian Capital Territory. Tabcorp distributes its fixed odds and totalisator wagering products through a network of retail outlets, racecourses and stadiums, as well as telephone, online and mobile channels. Tabcorp also owns the Northern Territory-licensed corporate bookmaking business Luxbet.

Tabcorp wholly owns Sky Sports Radio and the Sky Racing television network, which broadcasts into 2.4 million Australian homes and over 5,400 retail outlets, with coverage of more than 95,000 races per year. Sky Racing also exports vision of Australian and New Zealand racing to more than 100 countries around the world.

Tabcorp is the largest contributor of funding to the Australian racing industry. In the 2014/15 financial year Tabcorp returned \$770 million to the Australian racing industry, and also paid \$460 million to governments through gambling taxes.

Tabcorp is recognised as a global industry leader in responsible gambling. Tabcorp has been named the global gambling industry leader in the annual assessment for

the Dow Jones Sustainability Index in 10 out of the last 11 years. In the most recent assessment, Tabcorp once again received a 100% score in 'Promoting Responsible Gaming'.

Tabcorp employs more than 3,000 people. In November 2015, the company was recognised by the Federal Government's Workplace Gender Equality Agency as one of Australia's leading promoters of workplace diversity. Tabcorp was one of 90 organisations to be named an 'Employer of Choice for Gender Equality', and the only one in the gambling entertainment industry to make the list.

Summary of Tabcorp's Submission

Tabcorp's position is that the most appropriate way to reduce the impact of illegal offshore wagering and protect Australian consumers is for the Commonwealth and the States and Territories (as applicable) to adopt the following measures:

- All wagering operators who take bets from Australian residents should be licensed in Australia;
- All regulatory bodies responsible for wagering must proactively and fairly enforce gambling laws and regulations, including investigating those potentially in breach of the law and imposing appropriate penalties (which also need to be strengthened);
- A nationally consistent approach should be implemented across areas such as credit betting, advertising, responsible gambling, product availability and wagering taxation; and
- A clear and unambiguous position must be adopted in relation to the legality of online live betting on sport.



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Background

Australians have enjoyed wagering for entertainment and leisure since the first official thoroughbred horse race meeting in 1810 at Sydney's Hyde Park. Around 70 per cent of Australians will gamble each year¹.

a) Strong regulatory and other oversight required

While a very popular activity, wagering can lead to integrity issues in sports and racing and gambling problems for some. To maintain integrity and responsible gambling standards, it is appropriate that key stakeholders such as government, sports controlling bodies and racing organisations have oversight of wagering operators.

Australian wagering operators should comply with Australian laws, offer their services responsibly and return a benefit to the community. They should do this by paying appropriate levels of tax and fees to government and the Australian sports controlling bodies and racing organisations that supply content.

b) Increased competition and changing market dynamics

Over the past decade the wagering sector in Australia has undergone significant change. Increased competition from online corporate bookmakers and unregulated

¹ Productivity Commission Report into Gambling, 2010.

offshore wagering operators, in addition to the introduction of new technologies such as the 'smartphone', mean that the public can readily access a significant volume of wagering products at any time of the day. This dynamic market has become increasingly complex, with different regulations in each Australian jurisdiction. Digital betting, however, bypasses traditional state and territory borders. It is the fastest growing channel and accounted for almost 30 per cent of Tabcorp's TAB wagering turnover in 2014/15.

c) Inconsistent regulation comes at a significant cost

Australian States and Territories are typically responsible for gambling laws, however the laws related to the online environment are primarily the responsibility of the Commonwealth. There are also various State laws dealing with interactive gambling. This creates inconsistencies, particularly with issues that extend beyond jurisdictional borders.

Online wagering licences from a jurisdiction such as the Northern Territory allow online operators to pay less tax and have different consumer protection and credit betting regulations to wagering operators in other states. This comes at a significant expense to state governments, potentially exposes vulnerable consumers, erodes racing industry funding and puts at risk the financial viability of hotels and community clubs. A nationally consistent and fair approach is required.

d) Uneven playing field

Different regulations and approval processes in each Australian State and Territory jurisdiction have led to an unfair playing field in the Australian wagering market. For example, approvals of wagering products in the Northern Territory can take as little as three days, compared to a year or more in some other jurisdictions.

As a result, wagering operators licensed in the Northern Territory can offer more products than wagering operators licensed in other jurisdictions. This puts state-licensed operators at a significant disadvantage because all wagering operators go to market on the same digital channels, such as smartphones, yet cannot offer the same suite of products.

e) Lack of enforcement

Australian online gambling legislation has not kept pace with the changes in the wagering sector. Regulators have also failed to enforce existing legislation and regulations, which has resulted in many wagering operators flouting laws and taking advantage of slow bureaucratic processes. This enables illegal activities to continue without sanction.

An example of the above is the Australian Federal Police's (AFP) recent failure to investigate potential breaches of the Interactive Gambling Act (IGA) in relation to 'in play' betting products being offered by three online operators due to 'case prioritisation issues'. We have elaborated further on this in sections 3 and 8 of this submission. If regulators fail to effectively enforce laws, potentially illegal activities will continue and possibly increase.



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What is an illegal offshore wagering operator?

Offshore wagering operators that offer wagering products to Australian residents are arguably not currently acting in breach of the IGA (see Question 3 for further on this).

Therefore, where this Submission refers to 'an illegal offshore wagering operator', it is a reference to a wagering operator who takes bets from Australian customers but who is not licensed in an Australian jurisdiction. Such wagering operators:

- are not subject to regulatory oversight;
- do not pay any local Australian taxes;
- do not pay any fees to Australian sports controlling bodies (i.e. race fields and product fees); and
- are not able to be held to account for responsible gambling standards.



Our response to Question 3 sets out Tabcorp's proposed solution.

1. What are the factors that lead people to use illegal offshore wagering operators?

Customers utilise illegal offshore wagering operators for a variety of reasons, including the following:

- better odds and rebates offered to customers, including professional punters;
- easy access to online credit; and
- secrecy (that is, people who are prohibited from betting or do not want their betting habits subjected to any regulatory scrutiny).

a) Better odds and rebates/ high value punters

Our experience suggests that the majority of people who use illegal offshore wagering operators are high value punters or syndicates who wager more than \$100,000 per annum. High value punters get better returns when they bet with illegal offshore wagering operators because the operators do not pay tax, do not pay industry fees and do not have additional responsible gambling and compliance costs, which means they can offer better odds as well as rebates for repeat business.

It is well understood in the wagering industry that professional punters report that their bets are often not accepted or their accounts are closed when they bet with some licensed onshore wagering operators. This practice, which has attracted widespread media coverage, is sometimes a result of high value professional punters having a higher win-rate that erodes the wagering operators' profit margin. The absence of government taxes, industry fees and additional compliance costs allows offshore operators to retain this type of customer.

Further, some online wagering operators have business models that rely solely on high volume, high frequency transactions on major events (e.g. Melbourne Cup, NRL State of Origin, AFL Grand Final). These online wagering operators do not wish to be exposed to the margin risk of high value punters, which also leads to some high value punters going offshore.

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b) Access to Credit

Another factor which leads to people using illegal offshore wagering operators is access to online credit. People who want to bet online and require access to a credit facility not issued by an accredited financial institution can easily access a line of credit from offshore wagering operators, because they are not subject to Australian laws or regulatory oversight.

Access to lines of credit increases the potential for harm for 'at risk' and problem gamblers who bet unsupervised over the internet with legal and illegal wagering operators. (Lines of credit issued online by wagering operators should not be confused with the use of credit or debit cards, which are issued by accredited financial institutions with prudential background checking and ongoing oversight.)

c) Secrecy

Some people may also choose to use illegal offshore wagering providers for reasons of secrecy. Illegal offshore wagering providers are not subject to Australian laws or regulatory oversight, so individuals who are prohibited or excluded from betting on an event (e.g. athletes) can do so undetected. This also applies to high profile individuals who may not want their betting habits subjected to regulatory scrutiny.

d) Broader product range

It should be noted that it has been suggested that lack of product availability is a primary reason that people use offshore wagering providers. While lack of product availability is a likely driver of the illegal use of online poker and lottery games (which are not wagering products, and together with other casino style games account for a much greater financial leakage of illegal offshore gambling), in our view this is not a major driver in respect of wagering on racing or sports with illegal offshore wagering providers.

Lack of product availability drives customers from those wagering operators who are subject to significant levels of fees and taxes, such as Tabcorp, to operators licensed in the Northern Territory, where the product approval regime is much quicker and arguably less onerous.

2. What do you consider are the impacts of illegal offshore wagering and associated financial transactions on the Australian economy, legitimate Australian wagering businesses, sporting organisations and the integrity of Australian sport, and consumers? (Terms of Reference 1)

Tabcorp submits that the following impacts, amongst others, arise as a result of illegal offshore wagering and associated financial transactions:

- loss of Government taxes of up to \$29 million per annum;
- loss of racing industry fees of up to \$65 million per annum;
- lost revenue of up to \$12 million per annum for local hotels and community clubs;
- integrity risks to sport from lack of oversight;



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- increased risks associated with organised crime and money laundering; and
- reduction in consumer protections – especially responsible gambling safeguards.

Australians are estimated to wager around \$1 billion with unlicensed offshore operators².

This leakage has a significant financial impact on government taxes, industry fees, jobs and the viability of local hotels and community clubs.

Unlicensed offshore wagering also threatens the integrity of sports and the integrity of wagering. In Australia, regulators, sports controlling bodies and wagering operators collaborate to reduce integrity risks. Licensed onshore operators enter into comprehensive integrity agreements with sports controlling bodies that strictly govern the bet types that are permitted and the conduct of wagering operators with respect to relevant sporting events. In addition betting rules are required to be approved by State and Territory based regulators.

This collaboration between regulators, sports controlling bodies and wagering operators within Australia also involves sharing information and monitoring behaviours to detect activities that deliberately affect a contest, or that lead to some wagering consumers receiving an unfair advantage. Illegal offshore wagering operators do not share information with regulators or sports controlling bodies, so integrity risks would no doubt increase when consumers bet with them.

Lack of regulatory oversight also increases risks associated with organised crime and money laundering. Strict monitoring, reporting, information sharing and compliance requirements exist for wagering operators in Australia. Since offshore wagering operators are unregulated in Australia (nor potentially in their home jurisdiction), they do not comply with Australian regulations and controls relating to issues such as sports integrity, responsible gambling, anti-money laundering or counter terrorism financing. Such a position puts Australian residents at risk.

Similarly, illegal offshore wagering operators are unlikely to comply with Australian laws in relation to general protection and so consumers are exposed to unfair terms and conditions, and potential criminal activity. There have been circumstances reported where consumers have been unable to withdraw winnings, and where debt collection practices are "swift and brutal"³.

Finally, in an environment where unlicensed offshore wagering can continue to operate in this jurisdiction without sanction, there is a risk that legitimate wagering providers may move offshore to avoid taxes, industry fees and not be subject to regulatory oversight.



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² https://www.dss.gov.au/sites/default/files/documents/09_2015/terms_of_reference_-_illegal_offshore_wagering_review_0.pdf

³ see <http://www.financialcounselingaustralia.org.au/getattachment/Corporate/Home/FINAL-PDF-Duds.-Mugs-and-the-A-List-The-Impact-of-Uncontrolled-Sports-Betting-low-res.pdf>

3. What measures could be implemented to improve the enforcement of the Interactive Gambling Act 2001 and any other relevant legislation (Commonwealth, state and territory) including any enhancements to presently existing prosecution, investigation and complaints handling processes? What legislative, prosecutorial, investigative or complaint handling measures have been implemented in international jurisdictions that may work in the Australian context? (Terms of Reference 2)

Tabcorp's view is that the following measures could be implemented to improve enforcement of the IGA:

- all wagering operators that take bets from Australian residents should be licensed in Australia; and
- all regulators must enforce the gambling laws and regulations, including investigating those potentially in breach of the law and imposing significantly increased penalties.



Tabcorp therefore proposes that:

- (i) the IGA be amended to prohibit the interactive wagering services of overseas operators not licensed to supply the relevant service in Australia; and
- (ii) that a number of changes be made to improve the current enforcement regime to deter wagering operators (whether within Australia or overseas) from breaching Australian interactive wagering laws.

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These points are expanded on further below.

(i) *Prohibition of interactive gambling services being offered by entities not licensed in Australia*

The IGA is currently structured such that it provides a blanket prohibition on the provision of "interactive gambling services" and then carves out exclusions to this prohibition, including an exclusion for all wagering services irrespective of whether they are provided under a licence granted by a regulatory authority of an Australian State or Territory.

Accordingly, the IGA arguably has the effect of allowing wagering services provided by offshore entities not licensed in Australia to provide "excluded wagering services" to Australian residents. This is not consistent with State/Territory regulatory regimes (where entities may only conduct wagering operations under a licence granted by the relevant State or Territory) and is not desirable (for the reasons set out in section 2 above).

Tabcorp recommends that the IGA be amended so that it is compulsory to be licensed by an Australian State or Territory regulator in order to offer wagering services to Australian residents over an interactive gambling service. This could be achieved by limiting the exclusion regarding excluded wagering services in the IGA so that it only applies to persons who hold a licence to conduct the relevant service under Australian State or Territory legislation.

Tabcorp submits that solely requiring overseas operators to obtain race fields approvals from racing controlling bodies is not sufficient, as it does not deal with the numerous other regulatory issues raised in this Submission, including oversight

of those operators by experienced gambling regulators in respect of a range of consumer protections, sports integrity, responsible gambling practices, taxation leakage and anti-money laundering and counter terrorism financing.

(ii) Improvement of ability to enforce provisions of the IGA

Tabcorp also proposes the following additional deterrence mechanisms that largely mirror the recommendations set out in the *Final Report of the Review of the Interactive Gambling Act 2001* (2012) (**Report**)⁴ and are primarily designed to provide the ACMA with additional powers to enforce the IGA:

- a) **Introduce a civil offence and civil penalty regime:** Tabcorp recommends the introduction of a strict liability, civil penalty regime for contravention of the IGA with penalties of a sufficient amount to deter conduct. Such a regime would be overseen by the ACMA which would also be empowered to issue infringement notices to entities that contravene the relevant provisions of the IGA. The Federal Court should be provided with the requisite jurisdiction to award injunctive relief in particular circumstances. The strict liability offences should also extend to directors, principals and other officials of the corporation contravening the IGA.

The AFP's recent decision to not investigate online in-play sports wagering services offered by three online wagering operators due to considerations under its Case Categorisation and Prioritisation Model demonstrates the insufficiency of the current enforcement regime. The AFP's decision was made despite the ACMA's initial investigation and assessment of the conduct of certain wagering operators as "prohibited internet gambling content", prior to the content being found to be hosted in Australia and therefore within the jurisdiction of the AFP.

- b) **Empower the ACMA to serve notices to contravening persons and maintain public register of non-compliant persons:** Tabcorp recommends the introduction of a provision that empowers the ACMA to serve notices on entities which provide prohibited interactive gambling services stating that the entity's conduct is in breach of Australian law and that the entity must immediately cease such conduct. Entities that have been notified, and continue to act in breach of the IGA, should be placed on a public register to be maintained by the ACMA.
- c) **Include directors/officials of non-compliant entities on the Movement Alert List:** Tabcorp supports the inclusion of individuals (including directors, principals and relevant company officials) who provide prohibited internet gambling content on the Movement Alert List (MAL) administered by the Department of Immigration and Border Protection and to notify them of the fact that they have been placed on the MAL.
- d) **Restrict financial institutions from processing transactions to and from illegal wagering providers:** Tabcorp supports the enactment of laws restricting financial institutions from processing transactions to and from wagering providers that are not licensed in Australia. The financial institutions could be provided with a 'blacklist' of wagering operators (provided and maintained by the relevant enforcement agency) and would



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⁴ see <https://www.communications.gov.au/publications/final-report-review-interactive-gambling-act-2001>

be prohibited from allowing transactions to be sent to and received from those operators.

- e) **Interdiction on future licence applications in Australia:** Tabcorp supports enacting provisions in state and territory licensing legislation which prevents persons who are found to be acting in breach of certain key IGA prohibitions from receiving a licence for a period of time in the future, including an extension to an existing licence. It would be an effective disincentive to wagering operators if they knew that their potentially unlawful conduct under the IGA would put their State or Territory wagering licence at risk.
- f) **Penalties for individuals placing bets:** Tabcorp notes that Singapore has recently introduced new laws which impose jail terms and fines on people who place bets with overseas wagering operators when in Singapore. Tabcorp understands the reservations around imposing similar sanctions in Australia, as it may reduce the likelihood of problem gamblers seeking help, could result in penalties being imposed on unsuspecting individuals who were not aware they were transacting with an unlawful operator and it would be resource intensive. However, Tabcorp submits that a mechanism which imposes penalties on repeat offenders could have some merit. For example, if the ACMA has issued an infraction notice to an individual in relation to using illegal overseas services on three occasions, they could be subject to penalties.



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Please refer to Tabcorp's attached submission to the Review of the Australian Communications and Media Authority (August 2015) for further information about enhancements to presently existing prosecution, investigation and complaints handling processes.

4. Are there non-legislative options, such as technological and financial innovations, that could be implemented to limit the access to illegal offshore wagering sites by Australian based customers? What non-legislative measures have been used in international jurisdictions that may work in the Australian context? (Terms of Reference 3)

Tabcorp supports the following options to limit Australian residents' access to illegal offshore wagering services:

- a) **Restrictions on financial institutions:** as set out in 3(ii)(d) above, by restricting the ability of Australians to transfer funds into a betting account with an unlawful overseas provider, the ease with which this type of unlawful activity can be undertaken is curtailed.
- b) **Blocking websites operated by illegal offshore wagering operators:** Online gambling service providers that are confirmed by the ACMA as providing prohibited services in contravention of the IGA should continue to be included on the ACMA's list of prohibited URLs and/or websites that are subject to blocking by certain vendors of PC filters. To the extent this could be expanded to additional persons, such as through the cooperation of Internet Service Providers, that would also be supported.
- c) **Warning message for customers:** In the event that blocking does not occur, Internet Service Providers and vendors of security software could

agree to enable a standard warning page to appear whenever an Australian consumer accesses an unlicensed online gambling website as identified by the ACMA.

5. What approaches could be implemented to encourage offshore wagering providers to comply with Australian laws, and would this require measures to assist in ensuring domestic providers would not be operating at a disadvantage to offshore providers?

Tabcorp considers that overseas operators should be prohibited from offering wagering services directly to Australians. Instead, such services should be offered by an Australian entity, which is licensed in a State or Territory of Australia to conduct online wagering.



6. Are there education and awareness initiatives that could be implemented by industry, consumer groups or government to alert Australians to the risks associated with offshore gambling operators?

Tabcorp considers that information about the risks associated with offshore gambling operators should be published on regulators' websites together with a 'name and shame' list of illegal offshore wagering operators.

Information on regulators' websites could also include:

- case studies of the impacts of betting with illegal overseas operators on individual Australians; and
- the financial impacts of such conduct on our world-class racing industry and the viability of local hotels and community clubs.

Trust marks on the websites of licensed onshore wagering operators, and an associated education campaign could also be helpful.

7. What initiatives could be used to alert offshore gambling providers to Australian interactive gambling provisions?

If the IGA were to be amended to clearly prohibit the offering of wagering services by unlicensed operators (as submitted in section 3), the ACMA could notify unlicensed overseas operators of this change of law. A similar approach was adopted recently by the Singapore regulator when new laws prohibiting overseas wagering operators from offering bets to Singaporeans were introduced and overseas wagering operators were placed on a blacklist.

The efficacy of approaches to protect the consumer (Terms of Reference 4)

Tabcorp submits that the following approaches could be utilised to protect the consumer:

- a nationally consistent approach for credit betting, advertising, responsible gambling, product availability and wagering taxation; and,
- limiting the availability of online live betting on sport to retail venues subject to State and Territory laws.

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The expansion of live betting into digital channels has the potential to harm both the racing industry and licensed venues such as local hotels and community clubs. These stakeholders are significant employers in Australia.

National consistency is needed

To protect consumers, a nationally consistent approach is needed for the following areas:

- a) **Provision of credit by wagering operators:** There needs to be a single rule across the country in relation to the offering of credit by bookmakers. Northern Territory-licensed corporate bookmakers can offer their clients lines of credit, but state-licensed TABs cannot. A sensible way to address this is to introduce a single rule preventing wagering operators from acting as lenders and providing credit to customers.
- b) **Advertising:** Nationally consistent and clear regulations around gambling advertising and inducements are needed. Last year, there was approximately \$89 million spent on wagering advertising across Australia by Australian wagering operators. This advertising spend is up 34% on the prior year. Tabcorp's concern is not only that advertising is regulated differently across Australian States and Territories. We also share the community's view that there is too much gambling advertising in Australia.
- c) **Responsible gambling:** There are various inconsistencies across jurisdictions for harm minimisation measures such as responsible gambling messages and age verification requirements for opening accounts⁵.
- d) **Product availability:** As previously outlined, there are differences across each jurisdiction about what wagering products and bet types can be offered. This creates an uneven playing field for customers and wagering operators.
- e) **Wagering taxation:** There has to be a more equitable structure in relation to the payment of wagering taxes. In FY14 Northern Territory-licensed corporate bookmakers paid around \$6 million in wagering tax on \$8.5 billion in turnover. On the same turnover, Tabcorp would have paid \$170 million back to government - 28 times more. This raises the question as to why the community getting so little out of the substantial wagering activity that is taking place through Northern Territory-licensed corporate bookmakers.

There has been some discussion about a point of consumption wagering tax. If such a tax was introduced, exemptions or credits should be given for state taxes already paid.

Online 'in play' betting on sports

The IGA prohibits the offering of online 'in play' betting on sports. The IGA only permits betting on 'in play' sports in a retail venue such as a local hotel, community club or TAB agency, or over a telephone "wholly by the way of voice calls made



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⁵ see <https://www.communications.gov.au/publications/final-report-review-interactive-gambling-act-2001>

using a standard telephone service". Put simply, to place an in-play bet legally customers are required to place their bet face-to-face or over the phone.

Despite the current law, some online operators are offering 'in play' betting on sports over the internet and on mobile betting apps. This allows consumers to place live bets very quickly over their mobile betting app anywhere, anytime, including at sporting events. Tabcorp considers these activities do not fit within the exception in the IGA outlined above and indeed this is why many of these operators are also lobbying for this conduct to be legalised by amendment to the IGA.

Expanding online live betting into sport by amending the IGA would harm the racing industry, local hotels and community clubs. Early estimates suggest lost revenue of up to \$10 million per annum for the racing industry and licensed venues. This figure does not take into account further consequential migration to other online products, exacerbating the revenue leakage.

High profit margins from online sports wagering is also likely to lead to wagering operators marketing these products at the expense of racing products which will further harm the racing industry and also affect attendances at racetracks, local hotels and community clubs. This impact is likely to be hardest felt in areas of regional Australia.

Tabcorp argues that it is critical to eliminate any ambiguity around the legality of online live betting on sport. A clear framework is required.

Nevertheless, if such conduct is legalised, Tabcorp will have no choice but to consider offering online live betting products, so as to be able to compete effectively.

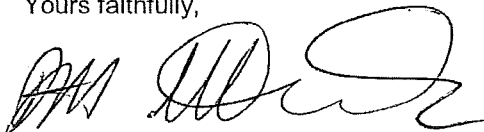
Conclusion

In closing, it is Tabcorp's view that this review is timely and provides the Commonwealth Government with an opportunity to define the type of wagering industry we want to have in Australia and address existing areas of inconsistency and ambiguity.

Wagering is not only a popular activity for many Australians. It provides significant funding to the Australian racing industry and is an important part of the social offer in local hotels and community clubs. As such it is vital that it is effectively regulated and that regulations are enforced.

Thank you for the opportunity to contribute to the review. Please contact Tom Callachor, Senior Manager, Government & Industry Relations on (02) 9218 1229 if you have any queries regarding this submission.

Yours faithfully,



David Attenborough
Managing Director and Chief Executive Officer



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10 August 2015

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Review of the Australian Communications and Media Authority



Dear Sir/ Madam,

Tabcorp makes this submission as part of the public consultation accompanying the review of the Australian Communications and Media Authority ('ACMA').

About Tabcorp

Tabcorp is a leading Australian gambling entertainment company listed on the Australian Securities Exchange. We have more than 3,000 employees and our wagering, media and gaming products are distributed through a network of retail outlets, call centre operations, online, mobile, Pay TV and radio channels.

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Tabcorp wholly owns Sky Racing television and radio which broadcasts into 2.4 million Australian homes, over 5,400 retail outlets with coverage of more than 95,000 races per year. Sky Racing also exports vision of Australian and New Zealand racing to more than 50 countries around the world.

Our interactions with the ACMA relate to its role as the industry regulator of Sky Racing television and radio, and its legislative responsibilities for online gambling activities under the Interactive Gambling Act 2001 (Cth) ('IGA').

Summary of this submission

This submission focuses on the ACMA's role in administering the IGA. In summary, it is Tabcorp's view that:

- Legislation administered by the ACMA which regulates the online gambling entertainment industry has not kept pace with industry changes.
- The IGA should be modernised and the agency responsible for its administration requires stronger powers to prosecute offenders and impose penalties.
- Commonwealth Government regulatory functions in the gambling entertainment industry are spread across multiple agencies which limits effectiveness and wastes resources.
- The regulator needs to be able to adequately resource compliance, industry relations and complaints-handling functions to remain relevant and responsive in the future.

Ability to keep pace with a rapidly changing industry (*Questions 7 and 12*)

The gambling entertainment industry has changed significantly since the ACMA was formed in 2005, and certainly since the IGA became law in 2001.

Increased competition from corporate bookmakers and unregulated offshore wagering operators, in addition to the introduction of new technologies such as the smart phone, means that Australian customers today can consume demonstrably more gambling products anywhere in the world, at almost any time of the day, from multiple providers. This dynamic market has become increasingly complex with different gambling regulations in each Australian jurisdiction.

Legislation administered by the ACMA, such as the IGA, has not kept pace with industry changes of the past 10 to 15 years. Specific to this review, the IGA also does not give the ACMA adequate enforcement powers to impose penalties for breaches. In line with the changing industry and the growth of globalisation, the body tasked with enforcing the IGA may also need new powers to monitor, regulate and possibly restrict gambling providers domiciled outside of Australia from operating in Australia (Question 7).

A legislative framework that has not kept pace with industry changes, accompanied by a less than optimal enforcement regime, has resulted in new market entrants over-stepping legislative boundaries, particularly with new technologies, with seemingly no action being taken by the Australian Federal Police ('AFP') and consequently no penalties being imposed. Organisations are able to take advantage of slow bureaucratic processes which enable illegal activities to continue without sanctions.

The combined effects of an out-dated legislative regime and inadequate enforcement have significant consequences for the community. Protections for gambling consumers, and the broader community, are not as robust as they should be. Operators who acquire customers illegally put at risk the funding of our world-class racing industry and the viability of local hotels and community clubs. In other words, ineffective regulation has real consequences.

Consolidating regulatory functions to fewer agencies will improve effectiveness (*Questions 4 and 14*)

The gambling entertainment industry is complex in Australia as it is principally regulated in each State and Territory. Where the Commonwealth Government has a requirement to regulate, these functions are generally split across multiple agencies; for example, responsible gambling (Department of Social Services), integrity in sport (Department of Health – National Integrity in Sport Unit), enforcement and organised crime (Australian Federal Police), media and the online environment (Department of Communications with the ACMA). This complexity and splitting of functions across multiple agencies can create duplication, inefficiencies and ultimately wastes resources.

Consolidating or re-allocating these functions to fewer Commonwealth agencies will have benefits to the Government, as streamlined service provision delivers cost savings, and will deliver better services and greater certainty to consumers, the racing industry, local hotels and registered clubs (Question 14).



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Priority functions of the regulator (Questions 1, 3, 4, 5, 6 and 14)

The ACMA's function with respect to the gambling entertainment industry is to ensure the online environment is appropriate for Australian consumers, especially with respect to standards of responsible gambling.

The intended purpose of the IGA is to prevent organisations from making available to consumers over the internet products and services that, if provided without adequate supervision, could result in or accentuate problem gambling. Therefore the ACMA's priority function with respect to the IGA should be to investigate, and take action with respect to products and services which are not in accordance with responsible gambling standards, regardless of whether they are hosted in Australia and overseas (Question 4).

Whether it is the ACMA or another agency that delivers this function, to be effective the relevant regulator should have the power and resources to enforce breaches, including by directly launching proceedings and prosecutions against offending organisations.

Structure and governance of the regulator (Questions 9 and 10)

We have no specific views with respect to the structure and governance of the ACMA, except that to be fit for purpose and effective in a dynamic, highly competitive and heavily regulated industry it is important for the regulator to be across the latest industry developments and responsive to change, especially when resolving ambiguity.

Adequate resourcing of industry sensitive functions (Questions 11, 18 and 22)

Given the market forces at play in dynamic, highly competitive and heavily regulated industries, the regulator should place a priority on the efficient turn-around of responses to industry which impact market dynamics. It is therefore important for the regulator to allocate adequate resources towards compliance, industry relations and complaints handling (Questions 18 and 22).

In this regard, we understand that ACMA's has a three month KPI for providing substantive responses to complaints lodged. In our view, complaints should be addressed much more quickly, and these matters should be adequately resourced for a more efficient turn-around (Question 11).

Strengthening enforcement powers (Questions 13 and 20)

It is noted that regulators like the Australian Securities and Investments Commission are effective due to their wide ranging powers which include the ability to launch proceedings to impose financial penalties on companies and directors for breaches of relevant legislation.



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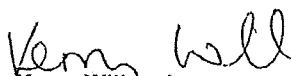
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Thank you for the opportunity to contribute to the review. We are pleased to provide any assistance to ensure the ACMA can be effective and responsive to current and future challenges and priorities. Please contact Tom Callachor, Senior Manager, Government & Industry Relations on (02) 9218 1229 if you have any queries regarding this submission.

Yours faithfully,



Kerry Willdock

Executive General Manager –
Corporate, Legal and Regulatory



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16 November 2015

The Hon. Barry O'Farrell
Chairperson
Impact of Illegal Offshore Wagering Review
Department of Social Services

By email: wageringreview@dss.gov.au

Impact of Illegal Offshore Wagering Review



Dear Mr O'Farrell,

Tabcorp Holdings Limited (**Tabcorp**) makes this submission (**Submission**) in relation to the Impact of Illegal Offshore Wagering Review (**Review**).

Tabcorp made a submission in August 2015 in relation to the Review of the Australian Communications and Media Authority (**ACMA**). That document addresses some of the legislative, enforcement and process issues that are raised in this Review. A copy of that document is enclosed with this Submission for ease of reference.

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About Tabcorp

Tabcorp is a leading Australian gambling entertainment company and a top 100 public company listed on the Australian Securities Exchange. Tabcorp is one of the world's largest publicly listed gambling companies.

Tabcorp is diversified across three businesses: Wagering and Media, Gaming Services and Keno.

Tabcorp is Australia's largest wagering operator by market share and holds the retail and totalisator wagering licences in Victoria, New South Wales and the Australian Capital Territory. Tabcorp distributes its fixed odds and totalisator wagering products through a network of retail outlets, racecourses and stadiums, as well as telephone, online and mobile channels. Tabcorp also owns the Northern Territory-licensed corporate bookmaking business Luxbet.

Tabcorp wholly owns Sky Sports Radio and the Sky Racing television network, which broadcasts into 2.4 million Australian homes and over 5,400 retail outlets, with coverage of more than 95,000 races per year. Sky Racing also exports vision of Australian and New Zealand racing to more than 100 countries around the world.

Tabcorp is the largest contributor of funding to the Australian racing industry. In the 2014/15 financial year Tabcorp returned \$770 million to the Australian racing industry, and also paid \$460 million to governments through gambling taxes.

Tabcorp is recognised as a global industry leader in responsible gambling. Tabcorp has been named the global gambling industry leader in the annual assessment for

the Dow Jones Sustainability Index in 10 out of the last 11 years. In the most recent assessment, Tabcorp once again received a 100% score in 'Promoting Responsible Gaming'.

Tabcorp employs more than 3,000 people. In November 2015, the company was recognised by the Federal Government's Workplace Gender Equality Agency as one of Australia's leading promoters of workplace diversity. Tabcorp was one of 90 organisations to be named an 'Employer of Choice for Gender Equality', and the only one in the gambling entertainment industry to make the list.

Summary of Tabcorp's Submission

Tabcorp's position is that the most appropriate way to reduce the impact of illegal offshore wagering and protect Australian consumers is for the Commonwealth and the States and Territories (as applicable) to adopt the following measures:

- All wagering operators who take bets from Australian residents should be licensed in Australia;
- All regulatory bodies responsible for wagering must proactively and fairly enforce gambling laws and regulations, including investigating those potentially in breach of the law and imposing appropriate penalties (which also need to be strengthened);
- A nationally consistent approach should be implemented across areas such as credit betting, advertising, responsible gambling, product availability and wagering taxation; and
- A clear and unambiguous position must be adopted in relation to the legality of online live betting on sport.



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Background

Australians have enjoyed wagering for entertainment and leisure since the first official thoroughbred horse race meeting in 1810 at Sydney's Hyde Park. Around 70 per cent of Australians will gamble each year¹.

a) Strong regulatory and other oversight required

While a very popular activity, wagering can lead to integrity issues in sports and racing and gambling problems for some. To maintain integrity and responsible gambling standards, it is appropriate that key stakeholders such as government, sports controlling bodies and racing organisations have oversight of wagering operators.

Australian wagering operators should comply with Australian laws, offer their services responsibly and return a benefit to the community. They should do this by paying appropriate levels of tax and fees to government and the Australian sports controlling bodies and racing organisations that supply content.

b) Increased competition and changing market dynamics

Over the past decade the wagering sector in Australia has undergone significant change. Increased competition from online corporate bookmakers and unregulated

¹ Productivity Commission Report into Gambling, 2010.

offshore wagering operators, in addition to the introduction of new technologies such as the 'smartphone', mean that the public can readily access a significant volume of wagering products at any time of the day. This dynamic market has become increasingly complex, with different regulations in each Australian jurisdiction. Digital betting, however, bypasses traditional state and territory borders. It is the fastest growing channel and accounted for almost 30 per cent of Tabcorp's TAB wagering turnover in 2014/15.

c) Inconsistent regulation comes at a significant cost

Australian States and Territories are typically responsible for gambling laws, however the laws related to the online environment are primarily the responsibility of the Commonwealth. There are also various State laws dealing with interactive gambling. This creates inconsistencies, particularly with issues that extend beyond jurisdictional borders.

Online wagering licences from a jurisdiction such as the Northern Territory allow online operators to pay less tax and have different consumer protection and credit betting regulations to wagering operators in other states. This comes at a significant expense to state governments, potentially exposes vulnerable consumers, erodes racing industry funding and puts at risk the financial viability of hotels and community clubs. A nationally consistent and fair approach is required.

d) Uneven playing field

Different regulations and approval processes in each Australian State and Territory jurisdiction have led to an unfair playing field in the Australian wagering market. For example, approvals of wagering products in the Northern Territory can take as little as three days, compared to a year or more in some other jurisdictions.

As a result, wagering operators licensed in the Northern Territory can offer more products than wagering operators licensed in other jurisdictions. This puts state-licensed operators at a significant disadvantage because all wagering operators go to market on the same digital channels, such as smartphones, yet cannot offer the same suite of products.

e) Lack of enforcement

Australian online gambling legislation has not kept pace with the changes in the wagering sector. Regulators have also failed to enforce existing legislation and regulations, which has resulted in many wagering operators flouting laws and taking advantage of slow bureaucratic processes. This enables illegal activities to continue without sanction.

An example of the above is the Australian Federal Police's (AFP) recent failure to investigate potential breaches of the Interactive Gambling Act (IGA) in relation to 'in play' betting products being offered by three online operators due to 'case prioritisation issues'. We have elaborated further on this in sections 3 and 8 of this submission. If regulators fail to effectively enforce laws, potentially illegal activities will continue and possibly increase.



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What is an illegal offshore wagering operator?

Offshore wagering operators that offer wagering products to Australian residents are arguably not currently acting in breach of the IGA (see Question 3 for further on this).

Therefore, where this Submission refers to 'an illegal offshore wagering operator', it is a reference to a wagering operator who takes bets from Australian customers but who is not licensed in an Australian jurisdiction. Such wagering operators:

- are not subject to regulatory oversight;
- do not pay any local Australian taxes;
- do not pay any fees to Australian sports controlling bodies (i.e. race fields and product fees); and
- are not able to be held to account for responsible gambling standards.



Our response to Question 3 sets out Tabcorp's proposed solution.

1. What are the factors that lead people to use illegal offshore wagering operators?

Customers utilise illegal offshore wagering operators for a variety of reasons, including the following:

- better odds and rebates offered to customers, including professional punters;
- easy access to online credit; and
- secrecy (that is, people who are prohibited from betting or do not want their betting habits subjected to any regulatory scrutiny).

a) Better odds and rebates/ high value punters

Our experience suggests that the majority of people who use illegal offshore wagering operators are high value punters or syndicates who wager more than \$100,000 per annum. High value punters get better returns when they bet with illegal offshore wagering operators because the operators do not pay tax, do not pay industry fees and do not have additional responsible gambling and compliance costs, which means they can offer better odds as well as rebates for repeat business.

It is well understood in the wagering industry that professional punters report that their bets are often not accepted or their accounts are closed when they bet with some licensed onshore wagering operators. This practice, which has attracted widespread media coverage, is sometimes a result of high value professional punters having a higher win-rate that erodes the wagering operators' profit margin. The absence of government taxes, industry fees and additional compliance costs allows offshore operators to retain this type of customer.

Further, some online wagering operators have business models that rely solely on high volume, high frequency transactions on major events (e.g. Melbourne Cup, NRL State of Origin, AFL Grand Final). These online wagering operators do not wish to be exposed to the margin risk of high value punters, which also leads to some high value punters going offshore.

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b) Access to Credit

Another factor which leads to people using illegal offshore wagering operators is access to online credit. People who want to bet online and require access to a credit facility not issued by an accredited financial institution can easily access a line of credit from offshore wagering operators, because they are not subject to Australian laws or regulatory oversight.

Access to lines of credit increases the potential for harm for 'at risk' and problem gamblers who bet unsupervised over the internet with legal and illegal wagering operators. (Lines of credit issued online by wagering operators should not be confused with the use of credit or debit cards, which are issued by accredited financial institutions with prudential background checking and ongoing oversight.)

c) Secrecy

Some people may also choose to use illegal offshore wagering providers for reasons of secrecy. Illegal offshore wagering providers are not subject to Australian laws or regulatory oversight, so individuals who are prohibited or excluded from betting on an event (e.g. athletes) can do so undetected. This also applies to high profile individuals who may not want their betting habits subjected to regulatory scrutiny.

d) Broader product range

It should be noted that it has been suggested that lack of product availability is a primary reason that people use offshore wagering providers. While lack of product availability is a likely driver of the illegal use of online poker and lottery games (which are not wagering products, and together with other casino style games account for a much greater financial leakage of illegal offshore gambling), in our view this is not a major driver in respect of wagering on racing or sports with illegal offshore wagering providers.

Lack of product availability drives customers from those wagering operators who are subject to significant levels of fees and taxes, such as Tabcorp, to operators licensed in the Northern Territory, where the product approval regime is much quicker and arguably less onerous.

2. What do you consider are the impacts of illegal offshore wagering and associated financial transactions on the Australian economy, legitimate Australian wagering businesses, sporting organisations and the integrity of Australian sport, and consumers? (Terms of Reference 1)

Tabcorp submits that the following impacts, amongst others, arise as a result of illegal offshore wagering and associated financial transactions:

- loss of Government taxes of up to \$29 million per annum;
- loss of racing industry fees of up to \$65 million per annum;
- lost revenue of up to \$12 million per annum for local hotels and community clubs;
- integrity risks to sport from lack of oversight;



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- increased risks associated with organised crime and money laundering; and
- reduction in consumer protections – especially responsible gambling safeguards.

Australians are estimated to wager around \$1 billion with unlicensed offshore operators².

This leakage has a significant financial impact on government taxes, industry fees, jobs and the viability of local hotels and community clubs.

Unlicensed offshore wagering also threatens the integrity of sports and the integrity of wagering. In Australia, regulators, sports controlling bodies and wagering operators collaborate to reduce integrity risks. Licensed onshore operators enter into comprehensive integrity agreements with sports controlling bodies that strictly govern the bet types that are permitted and the conduct of wagering operators with respect to relevant sporting events. In addition betting rules are required to be approved by State and Territory based regulators.

This collaboration between regulators, sports controlling bodies and wagering operators within Australia also involves sharing information and monitoring behaviours to detect activities that deliberately affect a contest, or that lead to some wagering consumers receiving an unfair advantage. Illegal offshore wagering operators do not share information with regulators or sports controlling bodies, so integrity risks would no doubt increase when consumers bet with them.

Lack of regulatory oversight also increases risks associated with organised crime and money laundering. Strict monitoring, reporting, information sharing and compliance requirements exist for wagering operators in Australia. Since offshore wagering operators are unregulated in Australia (nor potentially in their home jurisdiction), they do not comply with Australian regulations and controls relating to issues such as sports integrity, responsible gambling, anti-money laundering or counter terrorism financing. Such a position puts Australian residents at risk.

Similarly, illegal offshore wagering operators are unlikely to comply with Australian laws in relation to general protection and so consumers are exposed to unfair terms and conditions, and potential criminal activity. There have been circumstances reported where consumers have been unable to withdraw winnings, and where debt collection practices are “swift and brutal”³.

Finally, in an environment where unlicensed offshore wagering can continue to operate in this jurisdiction without sanction, there is a risk that legitimate wagering providers may move offshore to avoid taxes, industry fees and not be subject to regulatory oversight.



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² https://www.dss.gov.au/sites/default/files/documents/09_2015/terms_of_reference_-_illegal_offshore_wagering_review_0.pdf

³ see <http://www.financialcounsellingaustralia.org.au/getattachment/Corporate/Home/FINAL-PDF-Duds,-Mugs-and-the-A-List-The-Impact-of-Uncontrolled-Sports-Betting-low-res.pdf>

3. What measures could be implemented to improve the enforcement of the Interactive Gambling Act 2001 and any other relevant legislation (Commonwealth, state and territory) including any enhancements to presently existing prosecution, investigation and complaints handling processes? What legislative, prosecutorial, investigative or complaint handling measures have been implemented in international jurisdictions that may work in the Australian context? (Terms of Reference 2)

Tabcorp's view is that the following measures could be implemented to improve enforcement of the IGA:

- all wagering operators that take bets from Australian residents should be licensed in Australia; and
- all regulators must enforce the gambling laws and regulations, including investigating those potentially in breach of the law and imposing significantly increased penalties.



Tabcorp therefore proposes that:

- (i) the IGA be amended to prohibit the interactive wagering services of overseas operators not licensed to supply the relevant service in Australia; and
- (ii) that a number of changes be made to improve the current enforcement regime to deter wagering operators (whether within Australia or overseas) from breaching Australian interactive wagering laws.

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These points are expanded on further below.

(i) *Prohibition of interactive gambling services being offered by entities not licensed in Australia*

The IGA is currently structured such that it provides a blanket prohibition on the provision of "interactive gambling services" and then carves out exclusions to this prohibition, including an exclusion for all wagering services irrespective of whether they are provided under a licence granted by a regulatory authority of an Australian State or Territory.

Accordingly, the IGA arguably has the effect of allowing wagering services provided by offshore entities not licensed in Australia to provide "excluded wagering services" to Australian residents. This is not consistent with State/Territory regulatory regimes (where entities may only conduct wagering operations under a licence granted by the relevant State or Territory) and is not desirable (for the reasons set out in section 2 above).

Tabcorp recommends that the IGA be amended so that it is compulsory to be licensed by an Australian State or Territory regulator in order to offer wagering services to Australian residents over an interactive gambling service. This could be achieved by limiting the exclusion regarding excluded wagering services in the IGA so that it only applies to persons who hold a licence to conduct the relevant service under Australian State or Territory legislation.

Tabcorp submits that solely requiring overseas operators to obtain race fields approvals from racing controlling bodies is not sufficient, as it does not deal with the numerous other regulatory issues raised in this Submission, including oversight

of those operators by experienced gambling regulators in respect of a range of consumer protections, sports integrity, responsible gambling practices, taxation leakage and anti-money laundering and counter terrorism financing.

(ii) Improvement of ability to enforce provisions of the IGA

Tabcorp also proposes the following additional deterrence mechanisms that largely mirror the recommendations set out in the *Final Report of the Review of the Interactive Gambling Act 2001* (2012) (**Report**)⁴ and are primarily designed to provide ACMA with additional powers to enforce the IGA:

- a) **Introduce a civil offence and civil penalty regime:** Tabcorp recommends the introduction of a strict liability, civil penalty regime for contravention of the IGA with penalties of sufficient amount to deter conduct. Such a regime would be overseen by the ACMA which would also be empowered to issue infringement notices to entities that contravene the relevant provisions of the IGA. The Federal Court should be provided with the requisite jurisdiction to award injunctive relief in particular circumstances. The strict liability offences should also extend to directors, principals and other officials of the corporation contravening the IGA.

The AFP's recent decision to not investigate online in-play sports wagering services offered by three online wagering operators due to considerations under its Case Categorisation and Prioritisation Model demonstrates the insufficiency of the current enforcement regime. The AFP's decision was made despite the ACMA's initial investigation and assessment of the conduct of certain of these wagering operators as "prohibited internet gambling content", prior to the content being found to be hosted in Australia and therefore within the jurisdiction of the AFP.

- b) **Empower the ACMA to serve notices to contravening persons and maintain public register of non-compliant persons:** Tabcorp recommends the introduction of a provision that empowers the ACMA to serve notices on entities which provide prohibited interactive gambling services stating that the entity's conduct is in breach of Australian law and that the entity must immediately cease such conduct. Entities that have been notified, and continue to act in breach of the IGA, should be placed on a public register to be maintained by the ACMA.
- c) **Include directors/officials of non-compliant entities on the Movement Alert List:** Tabcorp supports the inclusion of individuals (including directors, principals and relevant company officials) who provide prohibited internet gambling content on the Movement Alert List (MAL) administered by the Department of Immigration and Border Protection and to notify them of the fact that they have been placed on the MAL.
- d) **Restrict financial institutions from processing transactions to and from illegal wagering providers:** Tabcorp supports the enactment of laws restricting financial institutions from processing transactions to and from wagering providers that are not licensed in Australia. The financial institutions could be provided with a 'blacklist' of wagering operators (provided and maintained by the relevant enforcement agency) and would



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⁴ see <https://www.communications.gov.au/publications/final-report-review-interactive-gambling-act-2001>

be prohibited from allowing transactions to be sent to and received from those operators.

- e) **Interdiction on future licence applications in Australia:** Tabcorp supports enacting provisions in state and territory licensing legislation which prevents persons who are found to be acting in breach of certain key IGA prohibitions from receiving a licence for a period of time in the future, including an extension to an existing licence. It would be an effective disincentive to wagering operators if they knew that their potentially unlawful conduct under the IGA would put their State or Territory wagering licence at risk.
- f) **Penalties for individuals placing bets:** Tabcorp notes that Singapore has recently introduced new laws which impose jail terms and fines on people who place bets with overseas wagering operators when in Singapore. Tabcorp understands the reservations around imposing similar sanctions in Australia, as it may reduce the likelihood of problem gamblers seeking help, could result in penalties being imposed on unsuspecting individuals who were not aware they were transacting with an unlawful operator and it would be resource intensive. However, Tabcorp submits that a mechanism which imposes penalties on repeat offenders could have some merit. For example, if the ACMA has issued an infraction notice to an individual in relation to using illegal overseas services on three occasions, they could be subject to penalties.

Please refer to Tabcorp's attached submission to the Review of the Australian Communications and Media Authority (August 2015) for further information about enhancements to presently existing prosecution, investigation and complaints handling processes.

4. Are there non-legislative options, such as technological and financial innovations, that could be implemented to limit the access to illegal offshore wagering sites by Australian based customers? What non-legislative measures have been used in international jurisdictions that may work in the Australian context? (Terms of Reference 3)

Tabcorp supports the following options to limit Australian residents' access to illegal offshore wagering services:

- a) **Restrictions on financial institutions:** as set out in 3(ii)(d) above, by restricting the ability of Australians to transfer funds into a betting account with an unlawful overseas provider, the ease with which this type of unlawful activity can be undertaken is curtailed.
- b) **Blocking websites operated by illegal offshore wagering operators:** Online gambling service providers that are confirmed by the ACMA as providing prohibited services in contravention of the IGA should continue to be included on the ACMA's list of prohibited URLs and/or websites that are subject to blocking by certain vendors of PC filters. To the extent this could be expanded to additional persons, such as through the cooperation of Internet Service Providers, that would also be supported.
- c) **Warning message for customers:** In the event that blocking does not occur, Internet Service Providers and vendors of security software could



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agree to enable a standard warning page to appear whenever an Australian consumer accesses an unlicensed online gambling website as identified by the ACMA.

5. What approaches could be implemented to encourage offshore wagering providers to comply with Australian laws, and would this require measures to assist in ensuring domestic providers would not be operating at a disadvantage to offshore providers?

Tabcorp considers that overseas operators should be prohibited from offering wagering services directly to Australians. Instead, such services should be offered by an Australian entity, which is licensed in a State or Territory of Australia to conduct online wagering.

6. Are there education and awareness initiatives that could be implemented by industry, consumer groups or government to alert Australians to the risks associated with offshore gambling operators?

Tabcorp considers that information about the risks associated with offshore gambling operators should be published on regulators' websites together with a 'name and shame' list of illegal offshore wagering operators.

Information on regulators' websites could also include:

- case studies of the impacts of betting with illegal overseas operators on individual Australians; and
- the financial impacts of such conduct on our world-class racing industry and the viability of local hotels and community clubs.

Trust marks on the websites of licensed onshore wagering operators, and an associated education campaign could also be helpful.

7. What initiatives could be used to alert offshore gambling providers to Australian interactive gambling provisions?

If the IGA were to be amended to clearly prohibit the offering of wagering services by unlicensed operators (as submitted in section 3), the ACMA could notify unlicensed overseas operators of this change of law. A similar approach was adopted recently by the Singapore regulator when new laws prohibiting overseas wagering operators from offering bets to Singaporeans were introduced and overseas wagering operators were placed on a blacklist.

The efficacy of approaches to protect the consumer (Terms of Reference 4)

Tabcorp submits that the following approaches could be utilised to protect the consumer:

- a nationally consistent approach for credit betting, advertising, responsible gambling, product availability and wagering taxation; and,
- limiting the availability of online live betting on sport to retail venues subject to State and Territory laws.



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The expansion of live betting into digital channels has the potential to harm both the racing industry and licensed venues such as local hotels and community clubs. These stakeholders are significant employers in Australia.

National consistency is needed

To protect consumers, a nationally consistent approach is needed for the following areas:

- a) **Provision of credit by wagering operators:** There needs to be a single rule across the country in relation to the offering of credit by bookmakers. Northern Territory-licensed corporate bookmakers can offer their clients lines of credit, but state-licensed TABs cannot. A sensible way to address this is to introduce a single rule preventing wagering operators from acting as lenders and providing credit to customers.
- b) **Advertising:** Nationally consistent and clear regulations around gambling advertising and inducements are needed. Last year, there was approximately \$89 million spent on wagering advertising across Australia by Australian wagering operators. This advertising spend is up 34% on the prior year. Tabcorp's concern is not only that advertising is regulated differently across Australian States and Territories. We also share the community's view that there is too much gambling advertising in Australia.
- c) **Responsible gambling:** There are various inconsistencies across jurisdictions for harm minimisation measures such as responsible gambling messages and age verification requirements for opening accounts⁵.
- d) **Product availability:** As previously outlined, there are differences across each jurisdiction about what wagering products and bet types can be offered. This creates an uneven playing field for customers and wagering operators.
- e) **Wagering taxation:** There has to be a more equitable structure in relation to the payment of wagering taxes. In FY14 Northern Territory-licensed corporate bookmakers paid around \$6 million in wagering tax on \$8.5 billion in turnover. On the same turnover, Tabcorp would have paid \$170 million back to government - 28 times more. This raises the question as to why the community getting so little out of the substantial wagering activity that is taking place through Northern Territory-licensed corporate bookmakers.

There has been some discussion about a point of consumption wagering tax. If such a tax was introduced, exemptions or credits should be given for state taxes already paid.

Online 'in play' betting on sports

The IGA prohibits the offering of online 'in play' betting on sports. The IGA only permits betting on 'in play' sports in a retail venue such as a local hotel, community club or TAB agency, or over a telephone "wholly by the way of voice calls made



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⁵ see <https://www.communications.gov.au/publications/final-report-review-interactive-gambling-act-2001>

using a standard telephone service". Put simply, to place an in-play bet legally customers are required to place their bet face-to-face or over the phone.

Despite the current law, some online operators are offering 'in play' betting on sports over the internet and on mobile betting apps. This allows consumers to place live bets very quickly over their mobile betting app anywhere, anytime, including at sporting events. Tabcorp considers these activities do not fit within the exception in the IGA outlined above and indeed this is why many of these operators are also lobbying for this conduct to be legalised by amendment to the IGA.

Expanding online live betting into sport by amending the IGA would harm the racing industry, local hotels and community clubs. Early estimates suggest lost revenue of up to \$10 million per annum for the racing industry and licensed venues. This figure does not take into account further consequential migration to other online products, exacerbating the revenue leakage.

High profit margins from online sports wagering is also likely to lead to wagering operators marketing these products at the expense of racing products which will further harm the racing industry and also affect attendances at racetracks, local hotels and community clubs. This impact is likely to be hardest felt in areas of regional Australia.

Tabcorp argues that it is critical to eliminate any ambiguity around the legality of online live betting on sport. A clear framework is required.

Nevertheless, if such conduct is legalised, Tabcorp will have no choice but to consider offering online live betting products, so as to be able to compete effectively.

Conclusion

In closing, it is Tabcorp's view that this review is timely and provides the Commonwealth Government with an opportunity to define the type of wagering industry we want to have in Australia and address existing areas of inconsistency and ambiguity.

Wagering is not only a popular activity for many Australians. It provides significant funding to the Australian racing industry and is an important part of the social offer in local hotels and community clubs. As such it is vital that it is effectively regulated and that regulations are enforced.

Thank you for the opportunity to contribute to the review. Please contact Tom Callachor, Senior Manager, Government & Industry Relations on (02) 9218 1229 if you have any queries regarding this submission.

Yours faithfully,

David Attenborough
Managing Director and Chief Executive Officer



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16 November 2015

The Hon. Barry O'Farrell
Chairperson
Impact of Illegal Offshore Wagering Review
Department of Social Services

By email: wageringreview@dss.gov.au

Impact of Illegal Offshore Wagering Review



Dear Mr O'Farrell,

Tabcorp Holdings Limited (**Tabcorp**) makes this submission (**Submission**) in relation to the Impact of Illegal Offshore Wagering Review (**Review**).

Tabcorp made a submission in August 2015 in relation to the Review of the Australian Communications and Media Authority (**ACMA**). That document addresses some of the legislative, enforcement and process issues that are raised in this Review. A copy of that document is enclosed with this Submission for ease of reference.

About Tabcorp

Tabcorp is a leading Australian gambling entertainment company and a top 100 public company listed on the Australian Securities Exchange. Tabcorp is one of the world's largest publicly listed gambling companies.

Tabcorp is diversified across three businesses: Wagering and Media, Gaming Services and Keno.

Tabcorp is Australia's largest wagering operator by market share and holds the retail and totalisator wagering licences in Victoria, New South Wales and the Australian Capital Territory. Tabcorp distributes its fixed odds and totalisator wagering products through a network of retail outlets, racecourses and stadiums, as well as telephone, online and mobile channels. Tabcorp also owns the Northern Territory-licensed corporate bookmaking business Luxbet.

Tabcorp wholly owns Sky Sports Radio and the Sky Racing television network, which broadcasts into 2.4 million Australian homes and over 5,400 retail outlets, with coverage of more than 95,000 races per year. Sky Racing also exports vision of Australian and New Zealand racing to more than 100 countries around the world.

Tabcorp is the largest contributor of funding to the Australian racing industry. In the 2014/15 financial year Tabcorp returned \$770 million to the Australian racing industry, and also paid \$460 million to governments through gambling taxes.

Tabcorp is recognised as a global industry leader in responsible gambling. Tabcorp has been named the global gambling industry leader in the annual assessment for

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the Dow Jones Sustainability Index in 10 out of the last 11 years. In the most recent assessment, Tabcorp once again received a 100% score in 'Promoting Responsible Gaming'.

Tabcorp employs more than 3,000 people. In November 2015, the company was recognised by the Federal Government's Workplace Gender Equality Agency as one of Australia's leading promoters of workplace diversity. Tabcorp was one of 90 organisations to be named an 'Employer of Choice for Gender Equality', and the only one in the gambling entertainment industry to make the list.

Summary of Tabcorp's Submission

Tabcorp's position is that the most appropriate way to reduce the impact of illegal offshore wagering and protect Australian consumers is for the Commonwealth and the States and Territories (as applicable) to adopt the following measures:

- All wagering operators who take bets from Australian residents should be licensed in Australia;
- All regulatory bodies responsible for wagering must proactively and fairly enforce gambling laws and regulations, including investigating those potentially in breach of the law and imposing appropriate penalties (which also need to be strengthened);
- A nationally consistent approach should be implemented across areas such as credit betting, advertising, responsible gambling, product availability and wagering taxation; and
- A clear and unambiguous position must be adopted in relation to the legality of online live betting on sport.



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Background

Australians have enjoyed wagering for entertainment and leisure since the first official thoroughbred horse race meeting in 1810 at Sydney's Hyde Park. Around 70 per cent of Australians will gamble each year¹.

a) Strong regulatory and other oversight required

While a very popular activity, wagering can lead to integrity issues in sports and racing and gambling problems for some. To maintain integrity and responsible gambling standards, it is appropriate that key stakeholders such as government, sports controlling bodies and racing organisations have oversight of wagering operators.

Australian wagering operators should comply with Australian laws, offer their services responsibly and return a benefit to the community. They should do this by paying appropriate levels of tax and fees to government and the Australian sports controlling bodies and racing organisations that supply content.

b) Increased competition and changing market dynamics

Over the past decade the wagering sector in Australia has undergone significant change. Increased competition from online corporate bookmakers and unregulated

¹ Productivity Commission Report into Gambling, 2010.

offshore wagering operators, in addition to the introduction of new technologies such as the 'smartphone', mean that the public can readily access a significant volume of wagering products at any time of the day. This dynamic market has become increasingly complex, with different regulations in each Australian jurisdiction. Digital betting, however, bypasses traditional state and territory borders. It is the fastest growing channel and accounted for almost 30 per cent of Tabcorp's TAB wagering turnover in 2014/15.

c) Inconsistent regulation comes at a significant cost

Australian States and Territories are typically responsible for gambling laws, however the laws related to the online environment are primarily the responsibility of the Commonwealth. There are also various State laws dealing with interactive gambling. This creates inconsistencies, particularly with issues that extend beyond jurisdictional borders.

Online wagering licences from a jurisdiction such as the Northern Territory allow online operators to pay less tax and have different consumer protection and credit betting regulations to wagering operators in other states. This comes at a significant expense to state governments, potentially exposes vulnerable consumers, erodes racing industry funding and puts at risk the financial viability of hotels and community clubs. A nationally consistent and fair approach is required.

d) Uneven playing field

Different regulations and approval processes in each Australian State and Territory jurisdiction have led to an unfair playing field in the Australian wagering market. For example, approvals of wagering products in the Northern Territory can take as little as three days, compared to a year or more in some other jurisdictions.

As a result, wagering operators licensed in the Northern Territory can offer more products than wagering operators licensed in other jurisdictions. This puts state-licensed operators at a significant disadvantage because all wagering operators go to market on the same digital channels, such as smartphones, yet cannot offer the same suite of products.

e) Lack of enforcement

Australian online gambling legislation has not kept pace with the changes in the wagering sector. Regulators have also failed to enforce existing legislation and regulations, which has resulted in many wagering operators flouting laws and taking advantage of slow bureaucratic processes. This enables illegal activities to continue without sanction.

An example of the above is the Australian Federal Police's (AFP) recent failure to investigate potential breaches of the Interactive Gambling Act (IGA) in relation to 'in play' betting products being offered by three online operators due to 'case prioritisation issues'. We have elaborated further on this in sections 3 and 8 of this submission. If regulators fail to effectively enforce laws, potentially illegal activities will continue and possibly increase.



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What is an illegal offshore wagering operator?

Offshore wagering operators that offer wagering products to Australian residents are arguably not currently acting in breach of the IGA (see Question 3 for further on this).

Therefore, where this Submission refers to 'an illegal offshore wagering operator', it is a reference to a wagering operator who takes bets from Australian customers but who is not licensed in an Australian jurisdiction. Such wagering operators:

- are not subject to regulatory oversight;
- do not pay any local Australian taxes;
- do not pay any fees to Australian sports controlling bodies (i.e. race fields and product fees); and
- are not able to be held to account for responsible gambling standards.



Our response to Question 3 sets out Tabcorp's proposed solution.

1. What are the factors that lead people to use illegal offshore wagering operators?

Customers utilise illegal offshore wagering operators for a variety of reasons, including the following:

- better odds and rebates offered to customers, including professional punters;
- easy access to online credit; and
- secrecy (that is, people who are prohibited from betting or do not want their betting habits subjected to any regulatory scrutiny).

a) Better odds and rebates/ high value punters

Our experience suggests that the majority of people who use illegal offshore wagering operators are high value punters or syndicates who wager more than \$100,000 per annum. High value punters get better returns when they bet with illegal offshore wagering operators because the operators do not pay tax, do not pay industry fees and do not have additional responsible gambling and compliance costs, which means they can offer better odds as well as rebates for repeat business.

It is well understood in the wagering industry that professional punters report that their bets are often not accepted or their accounts are closed when they bet with some licensed onshore wagering operators. This practice, which has attracted widespread media coverage, is sometimes a result of high value professional punters having a higher win-rate that erodes the wagering operators' profit margin. The absence of government taxes, industry fees and additional compliance costs allows offshore operators to retain this type of customer.

Further, some online wagering operators have business models that rely solely on high volume, high frequency transactions on major events (e.g. Melbourne Cup, NRL State of Origin, AFL Grand Final). These online wagering operators do not wish to be exposed to the margin risk of high value punters, which also leads to some high value punters going offshore.

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b) Access to Credit

Another factor which leads to people using illegal offshore wagering operators is access to online credit. People who want to bet online and require access to a credit facility not issued by an accredited financial institution can easily access a line of credit from offshore wagering operators, because they are not subject to Australian laws or regulatory oversight.

Access to lines of credit increases the potential for harm for 'at risk' and problem gamblers who bet unsupervised over the internet with legal and illegal wagering operators. (Lines of credit issued online by wagering operators should not be confused with the use of credit or debit cards, which are issued by accredited financial institutions with prudential background checking and ongoing oversight.)

c) Secrecy

Some people may also choose to use illegal offshore wagering providers for reasons of secrecy. Illegal offshore wagering providers are not subject to Australian laws or regulatory oversight, so individuals who are prohibited or excluded from betting on an event (e.g. athletes) can do so undetected. This also applies to high profile individuals who may not want their betting habits subjected to regulatory scrutiny.

d) Broader product range

It should be noted that it has been suggested that lack of product availability is a primary reason that people use offshore wagering providers. While lack of product availability is a likely driver of the illegal use of online poker and lottery games (which are not wagering products, and together with other casino style games account for a much greater financial leakage of illegal offshore gambling), in our view this is not a major driver in respect of wagering on racing or sports with illegal offshore wagering providers.

Lack of product availability drives customers from those wagering operators who are subject to significant levels of fees and taxes, such as Tabcorp, to operators licensed in the Northern Territory, where the product approval regime is much quicker and arguably less onerous.

2. What do you consider are the impacts of illegal offshore wagering and associated financial transactions on the Australian economy, legitimate Australian wagering businesses, sporting organisations and the integrity of Australian sport, and consumers? (Terms of Reference 1)

Tabcorp submits that the following impacts, amongst others, arise as a result of illegal offshore wagering and associated financial transactions:

- loss of Government taxes of up to \$29 million per annum;
- loss of racing industry fees of up to \$65 million per annum;
- lost revenue of up to \$12 million per annum for local hotels and community clubs;
- integrity risks to sport from lack of oversight;



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- increased risks associated with organised crime and money laundering; and
- reduction in consumer protections – especially responsible gambling safeguards.

Australians are estimated to wager around \$1 billion with unlicensed offshore operators².

This leakage has a significant financial impact on government taxes, industry fees, jobs and the viability of local hotels and community clubs.

Unlicensed offshore wagering also threatens the integrity of sports and the integrity of wagering. In Australia, regulators, sports controlling bodies and wagering operators collaborate to reduce integrity risks. Licensed onshore operators enter into comprehensive integrity agreements with sports controlling bodies that strictly govern the bet types that are permitted and the conduct of wagering operators with respect to relevant sporting events. In addition betting rules are required to be approved by State and Territory based regulators.

This collaboration between regulators, sports controlling bodies and wagering operators within Australia also involves sharing information and monitoring behaviours to detect activities that deliberately affect a contest, or that lead to some wagering consumers receiving an unfair advantage. Illegal offshore wagering operators do not share information with regulators or sports controlling bodies, so integrity risks would no doubt increase when consumers bet with them.

Lack of regulatory oversight also increases risks associated with organised crime and money laundering. Strict monitoring, reporting, information sharing and compliance requirements exist for wagering operators in Australia. Since offshore wagering operators are unregulated in Australia (nor potentially in their home jurisdiction), they do not comply with Australian regulations and controls relating to issues such as sports integrity, responsible gambling, anti-money laundering or counter terrorism financing. Such a position puts Australian residents at risk.

Similarly, illegal offshore wagering operators are unlikely to comply with Australian laws in relation to general protection and so consumers are exposed to unfair terms and conditions, and potential criminal activity. There have been circumstances reported where consumers have been unable to withdraw winnings, and where debt collection practices are “swift and brutal”³.

Finally, in an environment where unlicensed offshore wagering can continue to operate in this jurisdiction without sanction, there is a risk that legitimate wagering providers may move offshore to avoid taxes, industry fees and not be subject to regulatory oversight.



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² https://www.dss.gov.au/sites/default/files/documents/09_2015/terms_of_reference_-_illegal_offshore_wagering_review_0.pdf

³ see <http://www.financialcounselingaustralia.org.au/getattachment/Corporate/Home/FINAL-PDF-Duds,-Mugs-and-the-A-List-The-Impact-of-Uncontrolled-Sports-Betting-low-res.pdf>

3. What measures could be implemented to improve the enforcement of the Interactive Gambling Act 2001 and any other relevant legislation (Commonwealth, state and territory) including any enhancements to presently existing prosecution, investigation and complaints handling processes? What legislative, prosecutorial, investigative or complaint handling measures have been implemented in international jurisdictions that may work in the Australian context? (Terms of Reference 2)

Tabcorp's view is that the following measures could be implemented to improve enforcement of the IGA:

- all wagering operators that take bets from Australian residents should be licensed in Australia; and
- all regulators must enforce the gambling laws and regulations, including investigating those potentially in breach of the law and imposing significantly increased penalties.

Tabcorp therefore proposes that:

- (i) the IGA be amended to prohibit the interactive wagering services of overseas operators not licensed to supply the relevant service in Australia; and
- (ii) that a number of changes be made to improve the current enforcement regime to deter wagering operators (whether within Australia or overseas) from breaching Australian interactive wagering laws.

These points are expanded on further below.

(i) *Prohibition of interactive gambling services being offered by entities not licensed in Australia*

The IGA is currently structured such that it provides a blanket prohibition on the provision of "interactive gambling services" and then carves out exclusions to this prohibition, including an exclusion for all wagering services irrespective of whether they are provided under a licence granted by a regulatory authority of an Australian State or Territory.

Accordingly, the IGA arguably has the effect of allowing wagering services provided by offshore entities not licensed in Australia to provide "excluded wagering services" to Australian residents. This is not consistent with State/Territory regulatory regimes (where entities may only conduct wagering operations under a licence granted by the relevant State or Territory) and is not desirable (for the reasons set out in section 2 above).

Tabcorp recommends that the IGA be amended so that it is compulsory to be licensed by an Australian State or Territory regulator in order to offer wagering services to Australian residents over an interactive gambling service. This could be achieved by limiting the exclusion regarding excluded wagering services in the IGA so that it only applies to persons who hold a licence to conduct the relevant service under Australian State or Territory legislation.

Tabcorp submits that solely requiring overseas operators to obtain race fields approvals from racing controlling bodies is not sufficient, as it does not deal with the numerous other regulatory issues raised in this Submission, including oversight



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of those operators by experienced gambling regulators in respect of a range of consumer protections, sports integrity, responsible gambling practices, taxation leakage and anti-money laundering and counter terrorism financing.

(ii) Improvement of ability to enforce provisions of the IGA

Tabcorp also proposes the following additional deterrence mechanisms that largely mirror the recommendations set out in the *Final Report of the Review of the Interactive Gambling Act 2001* (2012) (**Report**)⁴ and are primarily designed to provide the ACMA with additional powers to enforce the IGA:

- a) **Introduce a civil offence and civil penalty regime:** Tabcorp recommends the introduction of a strict liability, civil penalty regime for contravention of the IGA with penalties of a sufficient amount to deter conduct. Such a regime would be overseen by the ACMA which would also be empowered to issue infringement notices to entities that contravene the relevant provisions of the IGA. The Federal Court should be provided with the requisite jurisdiction to award injunctive relief in particular circumstances. The strict liability offences should also extend to directors, principals and other officials of the corporation contravening the IGA.

The AFP's recent decision to not investigate online in-play sports wagering services offered by three online wagering operators due to considerations under its Case Categorisation and Prioritisation Model demonstrates the insufficiency of the current enforcement regime. The AFP's decision was made despite the ACMA's initial investigation and assessment of the conduct of certain wagering operators as "prohibited internet gambling content", prior to the content being found to be hosted in Australia and therefore within the jurisdiction of the AFP.

- b) **Empower the ACMA to serve notices to contravening persons and maintain public register of non-compliant persons:** Tabcorp recommends the introduction of a provision that empowers the ACMA to serve notices on entities which provide prohibited interactive gambling services stating that the entity's conduct is in breach of Australian law and that the entity must immediately cease such conduct. Entities that have been notified, and continue to act in breach of the IGA, should be placed on a public register to be maintained by the ACMA.
- c) **Include directors/officials of non-compliant entities on the Movement Alert List:** Tabcorp supports the inclusion of individuals (including directors, principals and relevant company officials) who provide prohibited internet gambling content on the Movement Alert List (MAL) administered by the Department of Immigration and Border Protection and to notify them of the fact that they have been placed on the MAL.
- d) **Restrict financial institutions from processing transactions to and from illegal wagering providers:** Tabcorp supports the enactment of laws restricting financial institutions from processing transactions to and from wagering providers that are not licensed in Australia. The financial institutions could be provided with a 'blacklist' of wagering operators (provided and maintained by the relevant enforcement agency) and would



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⁴ see <https://www.communications.gov.au/publications/final-report-review-interactive-gambling-act-2001>

be prohibited from allowing transactions to be sent to and received from those operators.

- e) **Interdiction on future licence applications in Australia:** Tabcorp supports enacting provisions in state and territory licensing legislation which prevents persons who are found to be acting in breach of certain key IGA prohibitions from receiving a licence for a period of time in the future, including an extension to an existing licence. It would be an effective disincentive to wagering operators if they knew that their potentially unlawful conduct under the IGA would put their State or Territory wagering licence at risk.
- f) **Penalties for individuals placing bets:** Tabcorp notes that Singapore has recently introduced new laws which impose jail terms and fines on people who place bets with overseas wagering operators when in Singapore. Tabcorp understands the reservations around imposing similar sanctions in Australia, as it may reduce the likelihood of problem gamblers seeking help, could result in penalties being imposed on unsuspecting individuals who were not aware they were transacting with an unlawful operator and it would be resource intensive. However, Tabcorp submits that a mechanism which imposes penalties on repeat offenders could have some merit. For example, if the ACMA has issued an infraction notice to an individual in relation to using illegal overseas services on three occasions, they could be subject to penalties.

Please refer to Tabcorp's attached submission to the Review of the Australian Communications and Media Authority (August 2015) for further information about enhancements to presently existing prosecution, investigation and complaints handling processes.

4. Are there non-legislative options, such as technological and financial innovations, that could be implemented to limit the access to illegal offshore wagering sites by Australian based customers? What non-legislative measures have been used in international jurisdictions that may work in the Australian context? (Terms of Reference 3)

Tabcorp supports the following options to limit Australian residents' access to illegal offshore wagering services:

- a) **Restrictions on financial institutions:** as set out in 3(ii)(d) above, by restricting the ability of Australians to transfer funds into a betting account with an unlawful overseas provider, the ease with which this type of unlawful activity can be undertaken is curtailed.
- b) **Blocking websites operated by illegal offshore wagering operators:** Online gambling service providers that are confirmed by the ACMA as providing prohibited services in contravention of the IGA should continue to be included on the ACMA's list of prohibited URLs and/or websites that are subject to blocking by certain vendors of PC filters. To the extent this could be expanded to additional persons, such as through the cooperation of Internet Service Providers, that would also be supported.
- c) **Warning message for customers:** In the event that blocking does not occur, Internet Service Providers and vendors of security software could



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agree to enable a standard warning page to appear whenever an Australian consumer accesses an unlicensed online gambling website as identified by the ACMA.

5. What approaches could be implemented to encourage offshore wagering providers to comply with Australian laws, and would this require measures to assist in ensuring domestic providers would not be operating at a disadvantage to offshore providers?

Tabcorp considers that overseas operators should be prohibited from offering wagering services directly to Australians. Instead, such services should be offered by an Australian entity, which is licensed in a State or Territory of Australia to conduct online wagering.



6. Are there education and awareness initiatives that could be implemented by industry, consumer groups or government to alert Australians to the risks associated with offshore gambling operators?

Tabcorp considers that information about the risks associated with offshore gambling operators should be published on regulators' websites together with a 'name and shame' list of illegal offshore wagering operators.

Information on regulators' websites could also include:

- case studies of the impacts of betting with illegal overseas operators on individual Australians; and
- the financial impacts of such conduct on our world-class racing industry and the viability of local hotels and community clubs.

Trust marks on the websites of licensed onshore wagering operators, and an associated education campaign could also be helpful.

7. What initiatives could be used to alert offshore gambling providers to Australian interactive gambling provisions?

If the IGA were to be amended to clearly prohibit the offering of wagering services by unlicensed operators (as submitted in section 3), the ACMA could notify unlicensed overseas operators of this change of law. A similar approach was adopted recently by the Singapore regulator when new laws prohibiting overseas wagering operators from offering bets to Singaporeans were introduced and overseas wagering operators were placed on a blacklist.

The efficacy of approaches to protect the consumer (Terms of Reference 4)

Tabcorp submits that the following approaches could be utilised to protect the consumer:

- a nationally consistent approach for credit betting, advertising, responsible gambling, product availability and wagering taxation; and,
- limiting the availability of online live betting on sport to retail venues subject to State and Territory laws.

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The expansion of live betting into digital channels has the potential to harm both the racing industry and licensed venues such as local hotels and community clubs. These stakeholders are significant employers in Australia.

National consistency is needed

To protect consumers, a nationally consistent approach is needed for the following areas:

- a) **Provision of credit by wagering operators:** There needs to be a single rule across the country in relation to the offering of credit by bookmakers. Northern Territory-licensed corporate bookmakers can offer their clients lines of credit, but state-licensed TABs cannot. A sensible way to address this is to introduce a single rule preventing wagering operators from acting as lenders and providing credit to customers.
- b) **Advertising:** Nationally consistent and clear regulations around gambling advertising and inducements are needed. Last year, there was approximately \$89 million spent on wagering advertising across Australia by Australian wagering operators. This advertising spend is up 34% on the prior year. Tabcorp's concern is not only that advertising is regulated differently across Australian States and Territories. We also share the community's view that there is too much gambling advertising in Australia.
- c) **Responsible gambling:** There are various inconsistencies across jurisdictions for harm minimisation measures such as responsible gambling messages and age verification requirements for opening accounts⁵.
- d) **Product availability:** As previously outlined, there are differences across each jurisdiction about what wagering products and bet types can be offered. This creates an uneven playing field for customers and wagering operators.
- e) **Wagering taxation:** There has to be a more equitable structure in relation to the payment of wagering taxes. In FY14 Northern Territory-licensed corporate bookmakers paid around \$6 million in wagering tax on \$8.5 billion in turnover. On the same turnover, Tabcorp would have paid \$170 million back to government - 28 times more. This raises the question as to why the community getting so little out of the substantial wagering activity that is taking place through Northern Territory-licensed corporate bookmakers.

There has been some discussion about a point of consumption wagering tax. If such a tax was introduced, exemptions or credits should be given for state taxes already paid.

Online 'in play' betting on sports

The IGA prohibits the offering of online 'in play' betting on sports. The IGA only permits betting on 'in play' sports in a retail venue such as a local hotel, community club or TAB agency, or over a telephone "wholly by the way of voice calls made



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⁵ see <https://www.communications.gov.au/publications/final-report-review-interactive-gambling-act-2001>

using a standard telephone service". Put simply, to place an in-play bet legally customers are required to place their bet face-to-face or over the phone.

Despite the current law, some online operators are offering 'in play' betting on sports over the internet and on mobile betting apps. This allows consumers to place live bets very quickly over their mobile betting app anywhere, anytime, including at sporting events. Tabcorp considers these activities do not fit within the exception in the IGA outlined above and indeed this is why many of these operators are also lobbying for this conduct to be legalised by amendment to the IGA.

Expanding online live betting into sport by amending the IGA would harm the racing industry, local hotels and community clubs. Early estimates suggest lost revenue of up to \$10 million per annum for the racing industry and licensed venues. This figure does not take into account further consequential migration to other online products, exacerbating the revenue leakage.

High profit margins from online sports wagering is also likely to lead to wagering operators marketing these products at the expense of racing products which will further harm the racing industry and also affect attendances at racetracks, local hotels and community clubs. This impact is likely to be hardest felt in areas of regional Australia.

Tabcorp argues that it is critical to eliminate any ambiguity around the legality of online live betting on sport. A clear framework is required.

Nevertheless, if such conduct is legalised, Tabcorp will have no choice but to consider offering online live betting products, so as to be able to compete effectively.

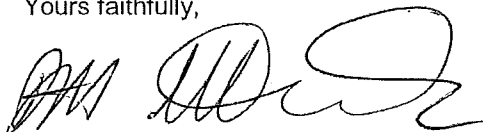
Conclusion

In closing, it is Tabcorp's view that this review is timely and provides the Commonwealth Government with an opportunity to define the type of wagering industry we want to have in Australia and address existing areas of inconsistency and ambiguity.

Wagering is not only a popular activity for many Australians. It provides significant funding to the Australian racing industry and is an important part of the social offer in local hotels and community clubs. As such it is vital that it is effectively regulated and that regulations are enforced.

Thank you for the opportunity to contribute to the review. Please contact Tom Callachor, Senior Manager, Government & Industry Relations on (02) 9218 1229 if you have any queries regarding this submission.

Yours faithfully,



David Attenborough
Managing Director and Chief Executive Officer



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10 August 2015

ACMA Review
Department of Communications
GPO Box 2154
CANBERRA ACT 2601

ACMAreview@communications.gov.au

Review of the Australian Communications and Media Authority



Dear Sir/ Madam,

Tabcorp makes this submission as part of the public consultation accompanying the review of the Australian Communications and Media Authority ('ACMA').

About Tabcorp

Tabcorp is a leading Australian gambling entertainment company listed on the Australian Securities Exchange. We have more than 3,000 employees and our wagering, media and gaming products are distributed through a network of retail outlets, call centre operations, online, mobile, Pay TV and radio channels.

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Tabcorp wholly owns Sky Racing television and radio which broadcasts into 2.4 million Australian homes, over 5,400 retail outlets with coverage of more than 95,000 races per year. Sky Racing also exports vision of Australian and New Zealand racing to more than 50 countries around the world.

Our interactions with the ACMA relate to its role as the industry regulator of Sky Racing television and radio, and its legislative responsibilities for online gambling activities under the Interactive Gambling Act 2001 (Cth) ('IGA').

Summary of this submission

This submission focuses on the ACMA's role in administering the IGA. In summary, it is Tabcorp's view that:

- Legislation administered by the ACMA which regulates the online gambling entertainment industry has not kept pace with industry changes.
- The IGA should be modernised and the agency responsible for its administration requires stronger powers to prosecute offenders and impose penalties.
- Commonwealth Government regulatory functions in the gambling entertainment industry are spread across multiple agencies which limits effectiveness and wastes resources.
- The regulator needs to be able to adequately resource compliance, industry relations and complaints-handling functions to remain relevant and responsive in the future.

Ability to keep pace with a rapidly changing industry (Questions 7 and 12)

The gambling entertainment industry has changed significantly since the ACMA was formed in 2005, and certainly since the IGA became law in 2001.

Increased competition from corporate bookmakers and unregulated offshore wagering operators, in addition to the introduction of new technologies such as the smart phone, means that Australian customers today can consume demonstrably more gambling products anywhere in the world, at almost any time of the day, from multiple providers. This dynamic market has become increasingly complex with different gambling regulations in each Australian jurisdiction.

Legislation administered by the ACMA, such as the IGA, has not kept pace with industry changes of the past 10 to 15 years. Specific to this review, the IGA also does not give the ACMA adequate enforcement powers to impose penalties for breaches. In line with the changing industry and the growth of globalisation, the body tasked with enforcing the IGA may also need new powers to monitor, regulate and possibly restrict gambling providers domiciled outside of Australia from operating in Australia (Question 7).

A legislative framework that has not kept pace with industry changes, accompanied by a less than optimal enforcement regime, has resulted in new market entrants over-stepping legislative boundaries, particularly with new technologies, with seemingly no action being taken by the Australian Federal Police ('AFP') and consequently no penalties being imposed. Organisations are able to take advantage of slow bureaucratic processes which enable illegal activities to continue without sanctions.

The combined effects of an out-dated legislative regime and inadequate enforcement have significant consequences for the community. Protections for gambling consumers, and the broader community, are not as robust as they should be. Operators who acquire customers illegally put at risk the funding of our world-class racing industry and the viability of local hotels and community clubs. In other words, ineffective regulation has real consequences.

Consolidating regulatory functions to fewer agencies will improve effectiveness (Questions 4 and 14)

The gambling entertainment industry is complex in Australia as it is principally regulated in each State and Territory. Where the Commonwealth Government has a requirement to regulate, these functions are generally split across multiple agencies; for example, responsible gambling (Department of Social Services), integrity in sport (Department of Health – National Integrity in Sport Unit), enforcement and organised crime (Australian Federal Police), media and the online environment (Department of Communications with the ACMA). This complexity and splitting of functions across multiple agencies can create duplication, inefficiencies and ultimately wastes resources.

Consolidating or re-allocating these functions to fewer Commonwealth agencies will have benefits to the Government, as streamlined service provision delivers cost savings, and will deliver better services and greater certainty to consumers, the racing industry, local hotels and registered clubs (Question 14).



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Priority functions of the regulator (Questions 1, 3, 4, 5, 6 and 14)

The ACMA's function with respect to the gambling entertainment industry is to ensure the online environment is appropriate for Australian consumers, especially with respect to standards of responsible gambling.

The intended purpose of the IGA is to prevent organisations from making available to consumers over the internet products and services that, if provided without adequate supervision, could result in or accentuate problem gambling. Therefore the ACMA's priority function with respect to the IGA should be to investigate, and take action with respect to products and services which are not in accordance with responsible gambling standards, regardless of whether they are hosted in Australia and overseas (Question 4).

Whether it is the ACMA or another agency that delivers this function, to be effective the relevant regulator should have the power and resources to enforce breaches, including by directly launching proceedings and prosecutions against offending organisations.

Structure and governance of the regulator (Questions 9 and 10)

We have no specific views with respect to the structure and governance of the ACMA, except that to be fit for purpose and effective in a dynamic, highly competitive and heavily regulated industry it is important for the regulator to be across the latest industry developments and responsive to change, especially when resolving ambiguity.

Adequate resourcing of industry sensitive functions (Questions 11, 18 and 22)

Given the market forces at play in dynamic, highly competitive and heavily regulated industries, the regulator should place a priority on the efficient turn-around of responses to industry which impact market dynamics. It is therefore important for the regulator to allocate adequate resources towards compliance, industry relations and complaints handling (Questions 18 and 22).

In this regard, we understand that ACMA's has a three month KPI for providing substantive responses to complaints lodged. In our view, complaints should be addressed much more quickly, and these matters should be adequately resourced for a more efficient turn-around (Question 11).

Strengthening enforcement powers (Questions 13 and 20)

It is noted that regulators like the Australian Securities and Investments Commission are effective due to their wide ranging powers which include the ability to launch proceedings to impose financial penalties on companies and directors for breaches of relevant legislation.



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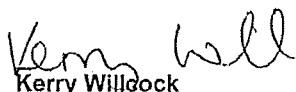
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Thank you for the opportunity to contribute to the review. We are pleased to provide any assistance to ensure the ACMA can be effective and responsive to current and future challenges and priorities. Please contact Tom Callachor, Senior Manager, Government & Industry Relations on (02) 9218 1229 if you have any queries regarding this submission.

Yours faithfully,



Kerry Willcock

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