

Tuesday, 12 January 2021

Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

By email: lacsc@parliament.qld.gov.au

Tabcorp Submission: *Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020*

Dear Secretary

Thank you for the opportunity to respond to the *Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020 (the Bill)*. This submission from Tabcorp Holdings Ltd (**Tabcorp**) specifically addresses the sections on:

- Prohibiting inducements to open an account, or refer a friend to open an account, with an online wagering provider or racing bookmaker.
- Providing that a wagering provider may pay the declared minimum dividend under the Queensland Wagering Rule 2010 if rounding would result in a dividend that is lower than a declared minimum dividend.

Relevant clauses and sections are referenced in the submission below. Tabcorp recognises the commitment made by the Government to reform gambling inducement laws and regulations in Queensland and is committed to working with the Queensland Parliament to achieve that aim. **Tabcorp is supportive of the legislation** but wishes to draw the Committee's attention to several potential anomalies and subsequent unintended consequences on the State-based licensee.

We also respectfully request that the Committee consider broader restrictions on inducements and advertising in Queensland, with exemptions for exclusive racing industry media platforms and retail venues. This would bring Queensland further into line with other jurisdictions (see **Appendix One**) and help manage community concerns while supporting local pubs, clubs and racing.

Tabcorp has always been a responsible contributor in Queensland

Tabcorp has a proud Australian history dating back to 1881 – collaboratively working with governments and partnering with the community, particularly in times of need. We have always made significant contributions to natural disaster recovery efforts including over \$1.2 million to the Queensland drought, flood, and cyclone relief efforts, and recently we donated more than \$1.9 million to the 2019/2020 bushfire recovery effort. We are the presenting partner of

the annual 9 Telethon which last year raised over \$13 million for the Children's Hospital Foundation, including a \$1.7 million donation from Tabcorp to the Foundation.

To support small and family businesses and protect jobs during the COVID-19 pandemic, Tabcorp has waived around \$23.5 million in contracted fees for 1,550 Queensland venues.

Tabcorp in Queensland

Tabcorp, through our subsidiary brands (e.g. Golden Casket, Powerball, TAB, Sky Racing, Keno), makes **an economic contribution in Queensland of \$918 million per year** – this includes \$477 million in state taxes, \$127 million in support to the racing industry and \$170 million in commissions to local small and family-owned businesses. **Tabcorp's products support 110,000 jobs across Queensland**, and Brisbane is the national headquarters for Tabcorp's lotteries business, supporting 1,400 direct jobs.

As background, Tabcorp is the sole wagering licensee and wagering service provider (**WSP**) in Queensland. Tabcorp has the exclusive rights to offer retail in-venue and on-course wagering for sport and racing until 30 June 2044. Tabcorp has paid a significant sum of money for this exclusive retail wagering licence in Queensland. However, over the last decade overseas-owned online-only gambling companies licensed in the Northern Territory (**NT**) have rapidly grown their market share in Queensland (currently almost 80% online market share). They have used the low cost and favourable regulatory landscape in the NT, as well as changes in technology and consumer behaviour, to attract customers from gambling in retail venues across Queensland. The regulatory environment has not kept pace with these underlying structural changes. This risks permanent damage to the state-based licensee, to the local racing industry (which relies on Tabcorp for over 70% of its funding), to local retail venues and local jobs in Queensland. This also reduces the value of Queensland's exclusive retail wagering licence.

Tabcorp response to the Bill

Tabcorp supports the Queensland Government's approach to reform inducement laws and to codify the provisions of the [National Consumer Protection Framework \(NCPF\)](#)¹, and has been advocating for these amendments for over 12 months (the relevant NCPF provisions came into effect on 26 May 2019). **We support the NCPF for online wagering and the provisions in it that ban the offering of inducements to open accounts.** However, recent changes made in Queensland only impact Tabcorp, and overseas-owned online gambling companies are indirectly at an advantage from this disparity.

In 2019, Queensland's gambling regulator, the Office of Liquor and Gaming, opted to enforce the NCPF provisions via licence conditions and amended Tabcorp's Queensland wagering licence accordingly. As the only state-based licensee, Tabcorp was the only WSP subject to the NCPF provisions in Queensland. NT-licensed overseas-owned online gambling companies could (and did) continue to exploit loopholes in the existing gambling inducements

¹ Relevant NCPF provision: "Restrictions on inducements: Online wagering providers will be prohibited from offering any credit, voucher, reward, or other benefit as an incentive to open an account or to refer another person to open an account. This measure is designed to protect consumers from incentive-based marketing and strengthen standards for direct marketing. It also includes preventing turnover requirements to withdrawing winnings from complementary betting credits or tokens."

laws by offering banned products in Queensland to entice punters away from the local TAB². This has cascading financial impacts on our venue partners (pubs and clubs) and the Queensland racing industry who rely on TAB sales for commissions and funding. With no laws or regulatory oversight to prevent this activity, corporate, overseas-owned WSP's have been profiting at the expense of the local industry and local jobs.

With the introduction of this Bill, the Queensland Government is moving to ensure the NCPF provisions are followed within the state, and we support that goal. However, we believe the Committee should explore whether the legislation could go further to include additional restrictions on the advertising of wagering inducements in Queensland – especially advertising which is not in places, or via channels, where consumers intend to gamble (i.e. not in pubs, clubs or at racetracks, or on exclusive racing platforms, or via direct marketing to existing customers, which should all be exempt from restrictions). For example, the Committee could consider further restrictions on:

- outdoor wagering advertising³
- wagering advertising on television, radio and other broadcast channels
- wagering advertising on social media and online channels
- advertising any inducement to gamble, including an inducement to bet more frequently (beyond what is in the current draft which, broadly speaking, only restricts inducements to open or to avoid closing an account or to refer another person to open an account).

The Committee could also consider restrictions on the characteristics of wagering advertising, including any other content and placement that might offend community standards (e.g. [sexist or degrading content](#) in gambling marketing). Noting that it be would be essential for industry to be provided with clear guidance as to what forms of offering, features or similar constitute “inducements” to ensure understanding and compliance.

A broader ban on wagering inducements has been successfully implemented in other jurisdictions (NSW, Victoria and Western Australia, see **Appendix One**). Tabcorp research also suggests that the community would support restrictions on gambling advertising; 57% of Australians are negative about the amount of gambling advertising in Australia⁴.

Unintended Consequences

Tabcorp believes this is well-intended legislation designed to remedy this disparity and restore some value to the Queensland tote (which funds racing). However, we wish to draw the Committee's attention to several potential unintended consequences that could have a deleterious impact on Tabcorp as the state-based licensee.

(1) s228D(1)(a) of the *Wagering Act 1998 (QLD)* refers to **Direct Marketing** to existing customers:

*“...the relevant person has given **express and informed** consent to receiving promotional or advertising material directly by that means”*

² [afr.com/rear-window/ladbroke-vouchers-fall-foul-of-nt-racing-commission-20191114-p53ao2](https://www.abc.net.au/news/2019-06-05/ladbroke-vouchers-fall-foul-of-nt-racing-commission-20191114-p53ao2)
[abc.net.au/news/2019-06-05/ladbroke-neds-flouts-national-ban-on-offering-inducements/11177914](https://www.abc.net.au/news/2019-06-05/ladbroke-neds-flouts-national-ban-on-offering-inducements/11177914)

³ Victorian regulations prohibit outdoor gambling advertising within certain distances of schools and public transport. Through the Victorian Responsible Gambling Advisory Council, they are considering expanding these further.

⁴ Tabcorp commissioned NewGate Research: Community Attitudes to Gambling

Tabcorp believes the reference to “informed” is unnecessary and goes beyond the parameters of the NCPF⁵. Tabcorp is seeking confirmation that “express” consent is sufficient and respectfully recommends amending s228D(1) to delete the reference to informed and require that express consent apply to all promotional and advertising material rather than requiring consent for each medium.

(2) s228(D)(4) refers to consent and withdrawal timeframes:

*“...if the relevant person withdraws consent from receiving promotional or advertising material, **the withdrawal takes effect 5 business days, or a shorter period prescribed by regulation, after the relevant person withdraws.**”*

Tabcorp supports this provision but notes that consent is addressed in existing federal legislation. Under the *Spam Act 2003 (Cth)*, organisations must comply with a customer request to opt-out of marketing within five business days⁶. However, changes to gambling regulations in the NT and NSW have reduced this to 24 hours. To comply with changes across different jurisdictions, Tabcorp introduced a 24-hour withdrawal timeframe across every jurisdiction, including Queensland.

Also note that in our experience, most opt-out requests come via digital channels and are therefore processed within 24 hours. Opt-out requests received via retail channels (i.e. TABs and licensed venues) or our Contact Centre have a longer lag time due to practical and logistical considerations. If a TAB agent must file and process a physical or electronic form, this is a lengthier process than, say, an automated request to “UNSUBSCRIBE” for example. To mitigate this, Tabcorp has increased the frequency of data transfer to multiple times daily to meet the 24-hour standard. As the only retail wagering operator in Queensland, Tabcorp faces some constraints (as per the above examples) not applicable to online WSPs. This provision permits regulations to prescribe a shorter period for withdrawal of consent to take effect. Tabcorp, therefore, recommends the “shorter period” referred to in the above provision be no less than 24 hours to ensure retail and licensed venues and Contact Centre personnel have a reasonable amount of time process requests.

(3) ss228E (1) and (2) and (3) refer to identity verification and correctly identifying a customer’s location:

“...A licence operator must, when receiving a bet made from an interactive wagering account, take reasonable steps to identify the location of the person making the bet.

For complying with subsection (1), the licence operator may rely on either of the following addresses as being the location of the person making the bet—

(a) for an individual—an address given to the licence operator by the individual as the individual’s residential address;

(b) for a company within the meaning of the Corporations Act—an address given to the licence operator by or for the company as the company’s principal place of business.”

⁵ The NCPF says, “All direct marketing to customers may only be sent to customers who provide their express consent to receive this material.”

⁶ Part 7, Schedule 2, s6(1) of the *Spam Act 2003 (Cth)*

*“...However, subsection (2) does not apply if the **licence operator knows, or has reasonable grounds to suspect**, that an address mentioned in subsection (2)(a) or (b) is not the location of the person when the bet is made.”*

The above reliance provisions are excluded if the licence operator knows or has reasonable grounds to suspect that an address provided is not the location of the person when the bet is made. Tabcorp cannot reasonably rely on the address if it “knows or has reasonable grounds to suspect” that the address provided by the customer is not their current address. For example, if Tabcorp incidentally identifies a person is on holiday in a different location, we would not propose to amend the address from Queensland for one particular bet. We, therefore, recommend removing s228E(3) to avoid confusion or inadvertent non-compliance.

(4) s164 refers to the amendments to introduce the **minimum dividend**. Tabcorp supports these amendments, which are an accurate reflection of the changes sought and requested by Tabcorp.

Conclusion

Thank you again for the opportunity to respond to the Bill. We look forward to working with the Queensland Parliament to ensure that racing in Queensland remains strong, small businesses such as pubs and clubs are supported, and gambling continues to be delivered responsibly in the community.

Please do not hesitate to contact me [REDACTED] [REDACTED] should you require anything further or have additional questions for Tabcorp. We are very willing to make ourselves available to the Committee at any stage of this inquiry.

Yours sincerely



TOM CALLACHOR
General Manager – Government & Industry Affairs

APPENDIX ONE: GAMBLING ADVERTISING RESTRICTIONS

NSW

- Liquor & Gaming NSW [Gambling Advertising & Inducements Guidelines](#)
- Parts 4A and 4B of the [Betting and Racing Act 1998 \(NSW\)](#)
- Part 7 of the [Totalizator Act 1997 \(NSW\)](#)

Victoria:

- Part 2 of the [Gambling Legislation Amendment Bill 2017](#)
- [Gambling Ad Ban Near Schools, Roads and Public Transport](#)

Western Australia

- Dept of Local Government, Sport & Cultural Industries [Gambling advertising and inducements](#)