

10 August 2015

ACMA Review  
Department of Communications  
GPO Box 2154  
CANBERRA ACT 2601

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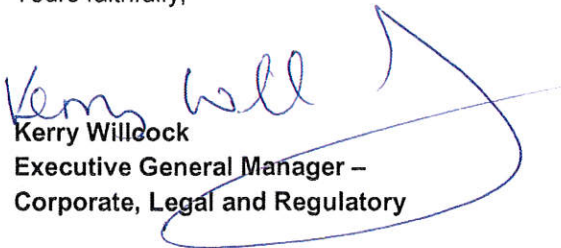
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Thank you for the opportunity to contribute to the review. We are pleased to provide any assistance to ensure the ACMA can be effective and responsive to current and future challenges and priorities. Please contact Tom Callachor, Senior Manager, Government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

Yours faithfully,

  
**Kerry Willcock**  
**Executive General Manager –**  
**Corporate, Legal and Regulatory**



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