

IN THE AUSTRALIAN COMPETITION TRIBUNAL

ACT 1 of 2017

Re: Application by Tabcorp Holdings Limited under section 95AU of the *Competition and Consumer Act 2010* for an authorisation under subsection 95AT(1) to acquire shares in the capital of a body corporate or to acquire assets of another person

Applicant: Tabcorp Holdings Limited



STATEMENT

Statement of: Patrick John Brown
Address: 461-473 Lutwyche Road, Lutwyche QLD 4030
Occupation: General Counsel and Corporate Affairs Manager of Ladbrokes Digital Australia Pty Ltd
Date: 27 April 2017

Filed on behalf of	Australian Competition and Consumer Commission		
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I, **Patrick John Brown**, of 461-473 Lutwyche Road, Lutwyche QLD 4030, General Counsel and Corporate Affairs Manager, say as follows:

1. I am the General Counsel and Corporate Affairs Manager of Ladbrokes Digital Australia Pty Ltd (**LDA**). I have been in this role since March 2016. Prior to this, I was in the role of Corporate Counsel for LDA since August 2014. Prior to this, I was the Head of Legal and Compliance with Collection House Limited between March 2012 and July 2014. Prior to this, I was the Compliance Manager with Tatts Group Limited between August 2010 and March 2012.
2. I hold a Bachelor of Laws from the University of Western Sydney (obtained in 2008), a Graduate Diploma of Applied Finance and Investment from Kaplan Professional (obtained in 2009), a Graduate Certificate of Financial Planning from the Financial Services Institute of Australasia (obtained in 2008), a Graduate Diploma of Legal Practice from the Australian National University (obtained in 2008) and a Master of Laws (Commercial Law) from Bond University (obtained in 2010).
3. I am authorised to make this statement on behalf of LDA.
4. I make this statement in relation to an application by Tabcorp Holdings Limited (**Tabcorp**) to the Australian Competition Tribunal for the authorisation of the proposed merger of Tabcorp and Tatts Group Limited (**Tatts**).

Ladbrokes Group

5. LDA is a company which is registered in Australia and operates almost exclusively in Australia. It is a wholly owned subsidiary of Ladbrokes Coral Group plc, which is listed on the UK securities exchange.
6. Ladbrokes Coral Group plc and its subsidiaries (**LCG**) offer fixed odds betting and betting exchange bets on racing, sports and novelty events, including some tote derivative type products. LCG operates in a number of countries including:
 - (a) in England, Wales and Scotland it operates under the 'Ladbrokes' and 'Coral' brands and accepts bets online, by telephone and through over 3,500 retail outlets. This information is available on the LCG website, which I believe is up to date. On the basis of this information, I believe

that paragraph 314 of the statement of Douglas Freeman, which suggests that LCG operates over 4,100 betting shops in the UK, is inaccurate; and

- (b) in Italy, Ireland and Belgium, it operates using brands including 'Ladbrokes', 'Coral', 'Eurobet', 'Betdaq', and 'Sportium', and accepts bets online, by telephone and through a large number of retail outlets; and
- (c) in Australia, it operates through LDA.

- 7. LCG does not operate a totalisator or a totalisator pool in Australia or any other jurisdiction.

Ladbrokes entry into Australia

- 8. LCG commenced operating in Australia in September 2013 when it acquired all of the shares in bookmaker.com.au Pty Ltd (**BPL**), a Brisbane-based bookmaker that traded as bookmaker.com.au. In that same month, BPL changed its company name to Ladbrokes Digital Australia Pty Ltd.
- 9. BPL operated under a bookmaking licence issued by the Norfolk Island Gaming Authority both prior to its acquisition by LCG and immediately afterwards.
- 10. In May 2014, LDA acquired the assets of Betstar Pty Ltd's bookmaking business.
- 11. In September 2016, LDA ceased to operate under its bookmaking licence issued by the Norfolk Island Gaming Authority and commenced to operate under a bookmaking licence issued by the Northern Territory Department of Business.

LDA's current operations

- 12. LDA currently uses three brands: Ladbrokes, bookmaker.com.au and Betstar. Each brand offers similar wagering products and there is no difference between the odds. Each of the Ladbrokes, bookmaker.com.au and Betstar brands has a desktop website, mobile website and app. The bookmaker.com.au and Betstar websites and apps are essentially a white-label of the Ladbrokes websites and app. LDA accepts bets online, through its apps and through its websites, and by telephone, but does not have a retail licence in Australia and is therefore prohibited by State and Territory legislation from offering any face to face betting in Australia.

13. LDA offers fixed odds betting on racing (thoroughbred, greyhounds and harness), sporting events (including for example football and cricket) and some novelty events such as reality television and politics. In respect of racing, LDA also offers a tote derivative product which pays odds determined by reference to the dividends paid by the three Australian tote pools.
14. As a relatively new entrant to the Australian market, at least compared with Tabcorp and Tatts, LDA is seeking to grow its market share. In this regard, LDA is at a disadvantage compared with Tabcorp and Tatts because LDA does not have an existing network of retail outlets, and the customer base that comes with that incumbency. As retail licensees, Tabcorp and Tatts have the exclusive right to provide a retail betting environment for their customers in outlets, pubs and clubs, the legal right to allow customers to place anonymous cash bets (which the corporate bookmakers cannot), the advertising and presence that comes from a retail network, and the legal right to offer certain betting products that corporate bookmakers cannot such as in-play wagering on sports and virtual racing. Furthermore, Tabcorp does not allow corporate bookmakers to advertise on the Sky Racing channels – this vision is displayed in all Tabcorp and Tatts/UBet retail outlets.
15. LDA estimates that it currently has an approximate **[HIGHLY Confidential to LDA and LCG]** [REDACTED] market share of the overall Australian wagering market, and **[HIGHLY Confidential to LDA and LCG]** [REDACTED] market share of the online Australian wagering market.
16. A key means by which LDA is seeking to grow its market share is through advertising. LDA advertises in a variety of media including on television, radio, billboards and social media and sponsors various race clubs and sporting teams. However, LDA faces a significant disadvantage in its ability to advertise its products to potential customers as compared to Tabcorp and Tatts. This is for reasons including that it cannot advertise in the retail outlets operated by Tatts and Tabcorp, cannot advertise on the Sky Racing Channels (where most Australian races are broadcast) and typically encounters difficulties when it seeks to advertise at racetracks (an example of these difficulties is provided below). The proposed legislative changes discussed at paragraph 38 below would likely to make it even more difficult for LDA to compete with Tabcorp and Tatts.

17. Although LDA is owned by LCG, LDA is run almost entirely by staff based in Australia and its wagering products are produced almost exclusively in Australia. Specifically, as at 26 April 2017, LDA employed 251 staff, all of whom are based in Australia and operated its own betting platform which is maintained by staff based in Australia. LDA operates from three offices in Australia and its servers are located in Darwin, Sydney and Brisbane. Although LCG employs a large number of staff in overseas operations, those staff are not involved in operating LDA save for a small number of minor exceptions such as LDA sharing a small component of its book making resources with LCG's United Kingdom operations. In the 2016 calendar year, LDA's workforce costs and taxes in Australia were as follows: **[HIGHLY Confidential to LDA and LCG]**



18. The table below contains data relating to LDA's financial and operational performance over the last three calendar years **[HIGHLY Confidential to LDA and LCG]**:

	2014 calendar year	2015 calendar year	2016 calendar year
Turnover	[REDACTED]		
Gross Win	[REDACTED]		
Net Gaming Revenue	\$73,214,000	\$109,202,000	\$166,470,000
Statutory Profit / (Loss)	\$(8,782,000)	\$(2,216,000)	\$4,502,000

Gross Win Margin (Overall – including bet backs)	
Gross Win Margin (Fixed Odds)	
Gross Win Margin (Tote Derivative)	
Gross Win Margin (Sports)	
% Racing Turnover on fixed odds (rather than Tote Derivative)	
% racing turnover on tote derivative (rather than Fixed Odds)	
Number of Active Customers	

19. Paragraph 281 of the statement of Douglas Freeman dated 8 March 2017 contends that corporate bookmakers enjoy higher margins than Tabcorp. I do not agree with that contention. I understand that in that paragraph, Mr Freeman undertakes a comparison based on 'gross margin (% of revenue)', which figure is calculated as the ratio of profit ex marketing to gross revenue. Marketing is a cost of doing business. It is a significant cost of doing business for LDA because of the disadvantages that LDA faces in seeking to compete with Tabcorp and Tatts, both of which have exclusive retail licences and extensive retail networks. In discussions about financial data, LDA employees commonly refer to yield but rarely if ever discuss the 'gross margin (% of revenue)' figure referred to by Mr Freeman in paragraph 281.

20. In the period since 2013, LDA has grown rapidly with an increasing number of account holders and increasing revenue and turnover. The predominant drivers of LDA's growth are increased betting turnover, increased gross win and increased numbers of active users. There is a slight trend overall towards sport away from racing. For the 2016 calendar year, approximately [HIGHLY Confidential to LDA and LCG] ████████ of turnover was on racing and [HIGHLY Confidential to LDA and LCG] ████████ of turnover was on other sports.

Corporate Social Responsibility & Community Involvement in Australia

21. LDA is bound by and complies with the Northern Territory Code of Practice for Responsible Online Gambling.
22. LDA operates a program that promotes responsible gambling, which includes:
- (a) staff training;
 - (b) publishing responsible gambling material; and
 - (c) the appointment of two senior executives (the Chief Financial Officer and the General Counsel & Corporate Affairs Manager) to oversee responsible gambling initiatives.
23. In February 2017, a permanent dedicated "Responsible Gambling Officer" was appointed by LDA with responsibilities including.
- (a) reviewing customers' betting activity; and
 - (b) engaging with customers who may be at risk of harm from problem gambling, and advising these customers of the harm minimisation tools available.
24. LDA has engaged in the following activities to bolster gambling assistance throughout Australia and support the community generally:
- (a) Voluntarily participating in two problem gambling research projects. Currently, LDA is working with a university, the Victorian Responsible Gambling Foundation and the Australian Gambling Research Centre to survey 3,000 LDA customers regarding marketing promotions. Separately,

in March 2017, LDA agreed to work with the Victorian Responsible Gambling Foundation on a research project to develop predictive analytical tools which will be able to identify customers who are at-risk of harm from problem gambling.

- (b) Funding problem gambling research. On 9 December 2016, LDA's then-CEO Mr Dean Shannon pledged \$100,000 at a meeting with senior staff of all major online bookmakers and the Northern Territory Gambling Regulator (Licensing NT) towards problem gambling research. This pledge was refreshed by LDA's new CEO, Mr Jason Scott, on 15 March 2017 and will be met once Licensing NT are able to receive the funds. Ladbrokes' pledge resulted in other bookmakers making similar pledges.
- (c) Establishing an Indigenous Employment Program (via LDA's Darwin office).
- (d) Actively supporting staff to take paid leave to participate in volunteer activities with charities and not-for-profit institutions.
- (e) Donating computer equipment to a not-for-profit charity for use in its programs and services in the areas of domestic violence, disability support and employment.
- (f) Donating \$20,000 in April 2017 to a fund to assist racing industry stakeholders affected by the recent Queensland cyclones and floods.

Retail licences

25. LDA is broadly interested in acquiring the exclusive State licences in Australia to operate retail outlets and a totalisator in the relevant State (**Exclusive State Licence**). For example:

- (a) in 2010, prior to LDA commencing its operations in Australia, LCG initially submitted an expression of interest for the Exclusive State Licence in Victoria but withdrew from the tender process prior to its conclusion. I believe, based on discussions with LCG employees based in the United Kingdom, that LCG withdrew because it concluded:

- (i) LCG only had a slim chance of winning. In this regard, Tabcorp, as the incumbent, had a number of advantages. This included detailed knowledge of the existing operations of the business, the key commercial levers relevant to costs, revenues, efficiencies and profitability. In consequence, Tabcorp was better placed than LDA to put together a competitive bid; and
 - (ii) even if LCG had won, it would have faced significant difficulty in establishing a retail network and all of the necessary commercial arrangements. That tender process occurred prior to LCG's entry into the Australia market in September 2013. As such, LCG would have had to establish a network (and a business in Australia) from scratch. This would have included employing management and staff, creating a technology platform that could accommodate totalisator and fixed odds betting both online and in retail outlets and would communicate with existing or new terminals, procuring such terminals, procuring or taking over retail leases and ensuring access to vision of racing in the retail network on reasonable commercial terms.
 - (b) in 2014, LDA submitted an expression of interest for a second retail Licence in Queensland but was unsuccessful. The possibility of a second retail licence in Queensland was withdrawn by the Queensland government and Racing Queensland. The incumbent, UBet, retained the Exclusive Licence in Queensland. No formal reasons were provided to Ladbrokes at the time.
26. LDA remains interested in acquiring Exclusive State Licences in Australia even though it would be difficult for LDA to win a tender for such a licence.
27. In Victoria, it would be difficult for LDA to win a tender because Tabcorp, as the incumbent, has a significant advantage. There are a number of reasons for this including:

- (a) Tabcorp, has a detailed knowledge of the existing operations of the business, including the key commercial levers relevant to costs, revenues, efficiencies and profitability, and is therefore better placed than any other player to make a competitive bid;
 - (b) Tabcorp, has an existing retail network in place including premises and staff with experience in operating that network. A new player such as LDA would need to take numerous steps to establish that network including employing staff, rebranding those venues and ensuring that betting terminals at existing venues communicated with LDA's technology platform (as discussed further below). This is the case notwithstanding provisions in the Victorian Government's licence agreement designed to assist in a transition, because the reality is that a transition of this scale is likely to be costly and difficult. As such, in contrast to the incumbent, a bid from LDA for a licence would need to factor in the material cost of establishing or transitioning into a network.
 - (c) Tabcorp has existing betting platform infrastructure in place. LDA also has an existing betting platform. However, LDA's platform is currently geared toward the provision of digital fixed odds wagering. As such, in contrast to the incumbent, a bid from LDA for a licence would need to factor in the significant investment required to establish a platform that could accommodate both fixed odds and totalisator betting, operate on the physical terminals around the relevant State and interact with LDA's existing betting platform.
 - (d) As noted above, neither LDA nor LCG have the infrastructure (including a betting platform) to operate a totalisator. As such, a bid from LDA would need to factor in the cost of building or acquiring that infrastructure.
28. For reasons including those above, LDA would be unlikely to bid for the Victorian Exclusive State Licence in 2024 unless a number of conditions were satisfied. Specifically:
- (a) One of the key conditions is access to vision rights. LDA would be unlikely to bid for Exclusive State Licences unless it could obtain access to vision of a significant number of races around the country at a commercially

reasonable rate. This is because vision of the races around Australia is a key component to successfully operating a retail network.

- (b) Tabcorp, through Sky, currently controls the media rights for racing in all States and Territories, save for Victorian thoroughbred racing and shows those races on various Sky channels. In order to make a bid, LDA would need to obtain assurance from Sky that LDA could obtain access to vision of those races on commercially viable terms. As Sky is owned by Tabcorp, Sky would have an incentive not to provide its channels to LDA on commercial terms as it is likely that Tabcorp would be bidding against LDA in such a tender.
- (c) LDA would also require rights in respect of Victorian races. In this regard:
 - (i) Most Victorian thoroughbred races are currently broadcast on Channel 78 which is a free to air channel operated by Racing.com under an agreement which runs to 2020.
 - (ii) If Sky was to acquire all media rights in respect of Victorian races in 2020, LDA would be significantly less likely to bid for a Victorian Exclusive State Licence in 2024 because it would be unlikely that Sky would give LDA access to that vision on commercially reasonable terms for the same reasons as stated above and that would make it significantly more difficult for LDA to operate a retail network successfully.

29. LDA would be unlikely to bid for the Western Australian Exclusive State Licence, if privatisation occurs, unless a number of conditions were satisfied. Specifically:

- (a) One of the key conditions is access to vision rights. LDA would be unlikely to bid for the Western Australian Exclusive State Licence unless it could obtain access to vision of a significant number of races around the country at a commercially reasonable rate. For the reasons set out above, to the extent that Sky holds those rights at the time of any privatisation, it would not have a commercial incentive to do so.
- (b) For Western Australia, which has a smaller population, another key condition would be access to pooling services. LDA would be unlikely to

bid for a Western Australian retail wagering licence unless it could ensure that it would be able to pool those totalisator operations with those in other States on commercially reasonable terms in order to establish the critical mass necessary to operate a totalisator successfully. If Tabcorp makes a binding commitment to Racing and Wagering Western Australia regarding the terms on which it would provide pooling services, the impact of this on LDA's decision as to whether or not to bid for the Western Australian Exclusive State Licence would depend upon the content of the terms of that commitment.

Digital Media rights

30. LDA digitally streams Victorian thoroughbred races to its customers pursuant to an agreement with Racing Victoria under which LDA pays a fee of [HIGHLY Confidential to LDA and LCG] [REDACTED] of its turnover on those races.
31. LDA would like to be able to digitally stream to its customers races from across Australia.
32. However, Tabcorp, through Sky, currently owns the media rights, including digital rights, to all races in Australia save for thoroughbred racing in Victoria. Sky does not allow LDA to digitally stream vision of those races to its customers. The only corporate bookmaker that currently has digital streaming rights to Australian races outside Victoria is William Hill, in respect of NSW thoroughbred racing.
33. This lack of ability to digitally stream vision of races to its customers substantially hinders LDA's ability to compete in relation to the provision of digital wagering on racing. Data demonstrates that the introduction of streaming for Victorian thoroughbred races has increased LDA's turnover on those races. For example. Quarter 4 2015 was the first quarter in which digital streaming of Victorian thoroughbred races was fully implemented and available to LDA customers. The below table shows the change in quarterly growth rates of turnover on races in Victoria, for which digital streaming was available, compared with races in all States other than Victoria, for which digital streaming was not available. [HIGHLY Confidential to LDA and LCG]

Races	Turnover growth compared with corresponding quarter in prior year		Movement [Q4 2015 / Q3 2015]
	Q3 2015	Q4 2015	
Victoria thoroughbred			
Australian thoroughbred excluding Victoria			

34. The media rights for Victorian thoroughbred racing come up for renewal in 2020. If Sky acquired exclusive digital rights to those races at that time, that would be likely to further hinder LDA's ability to compete in relation to the provision of digital wagering on racing because, based on its approach with racing in other States, Sky would be unlikely to allow LDA to digitally stream those races.
35. LDA would also like to advertise its wagering products on channels distributed by Sky including Sky Racing 1. However, Sky has not allowed LDA to advertise on those channels. This substantially hinders LDA's ability to compete in relation to the provision of digital wagering because it makes it more difficult for LDA to reach potential customers. On 19 April 2017, LDA through its media buyer Ikon Communications, approached Sky to attempt to advertise on Sky. Ikon was advised that Sky won't allow LDA or any corporate bookmakers to advertise on Sky and that it has no plans to allow this in the future.

Regulatory regimes

36. The wagering industry in Australia is heavily regulated. For example:
- (a) LDA is precluded by legislation from providing face to face betting in any State or Territory in Australia as it does not hold the exclusive retail licence in any State or Territory.

- (b) LDA is precluded by legislation from operating a totalisator in any State or Territory in Australia as it does not hold the exclusive totalisator licence in any State or Territory.
 - (c) LDA is only permitted to offer specific types of wagering products. For example, LDA is not currently permitted to offer live in play betting on sports via digital devices. Proposed legislation regarding in play betting is discussed further below.
 - (d) LDA is only permitted to offer wagering products on specific events. For example, LDA is not permitted to offer wagering products on the result of club level games of AFL or NRL, or virtual racing, in Australia.
 - (e) LDA is only permitted to offer certain bet types. For example, LDA is not permitted to offer online in-play wagering on sporting events.
 - (f) Each State and Territory has regulation for wagering advertising, which can and does differ between each State and Territory. This is overlaid by Commonwealth regulation for wagering advertising.
37. Regulatory regimes are influenced by lobbying and it is my belief that the proposed acquisition would result in a combined group which would wield greater influence with governments and regulators than Tatts and Tabcorp have individually. This influence includes in relation to the introduction of legislation and the approach of regulators to its interpretation and enforcement. In this regard, I observe that each exclusive State licence is a licence awarded by a State government. As such, the acquisition increases Tabcorp's ties to State governments. I am aware that both Tabcorp and Tatts have dedicated teams whose objective is to lobby for regulation that is favourable to Tabcorp and Tatts.
38. As an example of the importance of lobbying, I observe that the Federal Government and South Australian Government have recently announced that they will implement, or consider implementing, further regulation on the wagering industry. Specifically:
- (a) A new point of consumption tax for online bookmakers is to commence in South Australia from 1 July 2017. This is a tax of 15% on the bookmaker's gross win (i.e. customer bets less customer payouts) and will result in a decrease of around 15% in LDA's revenue from customers in

South Australia. Operators have a choice to levy this on punters whose account has an address within South Australia or to implement a technology solution to identify when a punter is physically located in South Australia. This tax does not apply to licensed retail bookmakers. In South Australia, UBet is a licensed retail bookmaker.

- (b) On 23 March 2017, the Federal Treasurer announced that the Commonwealth Government is considering a national point of consumption tax for online bookmakers, along similar lines to the South Australian point of consumption tax. A copy of a press release from the Honorary Scott Morrison MP, Treasurer in this regard is marked "**PJB-1**" and attached to this statement. This tax will not apply to retail bookmakers (i.e. Tabcorp, Tatts Group/UBet and WA TAB). A national point of consumption tax on terms equivalent to the impending point of consumption tax in South Australian would result in a tax liability for LDA many times larger than LDA's 2016 statutory profit.
- (c) The *Interactive Gambling Amendment Bill 2016* (Cth) (**IG Bill**), to amend the *Interactive Gambling Act 2001* (Cth) (**IG Act**), is currently before the parliament and may pass shortly. Under the IG Act, in-play (or in-the-run) betting on sports is prohibited online. The IG Bill proposes to insert into the IG Act a new 'place-based betting service' exemption, which will allow retail betting venues (TABs, pubs and clubs) to allow online in-play betting on sports, even on a digital device (such as a punter's iphone or an ipad provided by the venue that is connected to the internet). This will create a monopoly for in-play betting on sports in the various States and Territories in Australia for Tabcorp, Tatts and the Western Australia TAB. In a jurisdiction such as the United Kingdom where online in-play betting on sports is legal and not limited to a monopoly provider, online in-play betting on sports accounts for approximately 30% of the betting market. A copy of a report from the UK Gambling Commission containing information in relation to the popularity and regulation of in-play betting is marked "**PJB-2**" and attached to this statement.
- (d) It has been reported in the media that additional regulation of wagering advertising by the Commonwealth Government is being discussed by the

cabinet, involving the banning of gambling advertising during the live broadcast of a sporting event on free to air television and pay television. This is not likely to apply to the broadcast of a racing event such as that on Sky, which given Sky's refusal to allow corporate bookmakers to advertise on Sky, will lock corporate bookmakers out of advertising on free to air television and pay television during nearly all live events on which it accepts bets. A copy of a media article regarding this issue is marked "**PJB-3**" and attached to this statement.

39. Each of the above regulatory changes would likely to make it more difficult for LDA to compete with licensed retail bookmakers because they would increase LDA's costs as compared to the costs of Tabcorp and Tatts or increase the number of products that Tabcorp and Tatts can offer and advertise relative to LDA.
40. In addition, the approach by regulators and industry bodies to the interpretation and enforcement of relevant legislation is important to LDA's ability to compete with Tabcorp and Tatts.
41. For example, in each of the States/Territories where either Tabcorp or Tatts has an exclusive license, there is a separate Exclusivity Deed between Tabcorp or Tatts, the State/Territory government and the relevant State/Territory racing body (but only in some jurisdictions). I provide further detail below in relation to the effect of the Exclusivity Deeds.
42. The regulatory regimes applicable within Australia and the manner in which those regimes are interpreted and enforced, significantly inhibit LDA's ability to acquire new customers, offer innovative products to the Australian public and compete with Tabcorp and Tatts.

Exclusivity Deeds

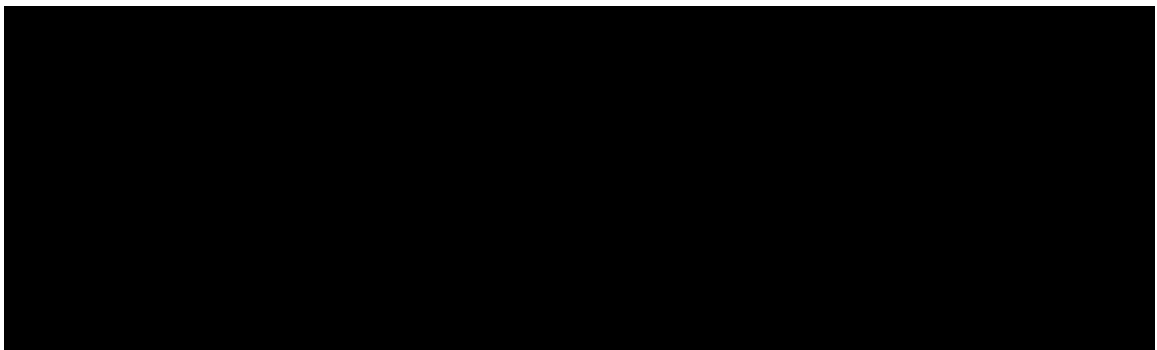
43. In each of the States/Territories where either Tabcorp and Tatts has an exclusive license, there is a separate Exclusivity Deed between:
 - (a) Tabcorp or Tatts Group/UBet (which is the exclusive licence holder in that jurisdiction);
 - (b) the relevant State/Territory government; and

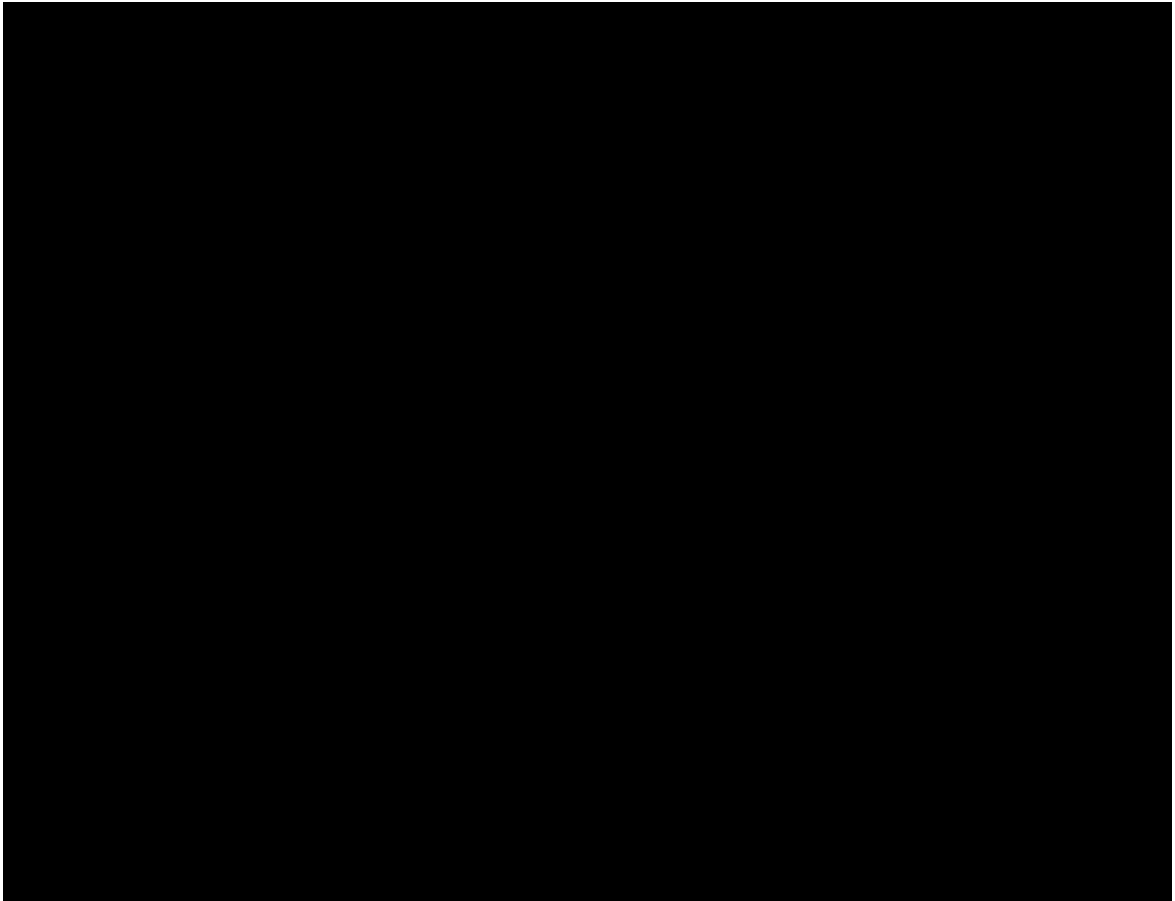
- (c) the relevant State/Territory racing body (but only in some jurisdictions).
44. In most jurisdictions these are highly confidential, and any attempts to access these documents are resisted by the relevant parties. However, the NSW Exclusivity Deed was publicly available from the NSW Parliament website for a period of time. A copy of this document is marked "**PJB-4**" and attached to this statement.
45. Under clause 5.1 of the NSW Exclusivity Deed, the State of NSW must compensate Tabcorp if an Adverse Exclusivity Event occurs.
46. Under clause 5.4(a) of the NSW Exclusivity Deed, the State of NSW has certain obligations. Specifically, clause 5.4(a) states:

"If an Adverse Exclusivity Event occurs and the State becomes aware of it, the State must take all reasonable steps available to it and within its power to prohibit, restrict or (subject to the State considering, acting reasonably, that there is a reasonably arguable view of the law to support its case) vigorously prosecute or defend the relevant Adverse Exclusivity Event, as the case may be (including subject to the State considering, acting reasonably, that there are reasonable prospects of success to support its case, prosecuting or defending all available appeals), and taking action to remove or seize equipment."

47. Whilst I have not seen the Queensland Exclusivity Deed, I am aware that Racing Queensland is a party to the Queensland Exclusivity Deed, along with the State of Queensland and Tatts. It has been my experience that the Queensland Exclusivity Deed also places significant obligations on Racing Queensland and the State of Queensland in relation to the practical operation of wagering markets. For example:

[HIGHLY Confidential to LDA and LCG]





Impact of the proposed acquisition

48. LDA is of the view that the proposed acquisition will give Tabcorp a substantially more dominant position in the Australian wagering market, through a combination of changes arising from the proposed acquisition and existing power including:
- (a) the combination of monopoly retail and totalisator licenses and established retail networks in all States and Territories (apart from Western Australia) that Tabcorp would achieve through the proposed acquisition;
 - (b) its control of essential wagering inputs such as racing vision and certain racing information such as tote pricing;
 - (c) the favourable regulatory regime for Tabcorp and its inherent advantage in regard to lobbying and dealings with the State and Territory governments and racing bodies due to the Exclusivity Deeds and Tabcorp's relationships with those entities arising from its position.

49. Thus, the proposed acquisition would make it more difficult for LDA to compete with Tabcorp because:
- (a) The combination of Tatts and Tabcorp's exclusive licences would give Tabcorp even greater scale and reach, thus making it more difficult for the corporate bookmakers to attain a scale sufficient to remain viable.
 - (b) Acquiring the exclusive retail and totalisator licences in Queensland, SA, NT and Tasmania would give Tabcorp a greater ability and incentive to prevent LDA forging relationships with pubs and clubs in those States/Territories. In considering whether to enter a relationship with LDA, pubs and clubs would be mindful of Tabcorp being both a party to an Exclusivity Deed, which may be used by Tabcorp as a barrier to competition, and the owner of Sky, on which pubs and clubs are dependent for racing vision.
 - (c) As the exclusive state licensee in 7 of the 8 States/Territories, the merged entity would have even greater power to lobby governments in those States/Territories for legislative change that would advantage the exclusive licensee.

Material from merger parties

50. In response to paragraph 156 of the David Attenborough statement, I would suggest that the growth achieved by LDA and other corporate bookmakers has been achieved by a combination of marketing spend, product innovation and competition.
51. I do not agree with paragraph 157 of the David Attenborough statement that corporate bookmakers are able to advertise through the vision available in Tabcorp's retail venues. The primary screens in Tabcorp's retail venues typically show Sky Racing 1 (although I acknowledge it may be technically possible for them to show other channels if the relevant agency chose to do so). As is set out in paragraph 16 of this statement, LDA cannot advertise on the Sky Racing Channels, where most Australian races are broadcast.
52. Paragraph 304 of the Douglas Freeman statement asserts that corporate bookmakers are offered tax incentives by the Northern Territory Government. That assertion mischaracterises the position. The Northern Territory taxation regime

applies to operators that are registered in the Northern Territory, including Luxbet which is owned by Tabcorp. In other States and Territories, Tabcorp and Tatts have been granted an exclusive licence to provide wagering at retail outlets and to operate a totalisator. Those exclusive licences have significant value, which should be taken into account in considering the impact of the applicable taxation regimes in those States and Territories.

53. Paragraph 305 of the Douglas Freeman statement asserts that corporate bookmakers pay a lower proportion of their wagering turnover to the racing industry. To the extent this assertion is intended to suggest that Tabcorp faces a disadvantage, it mischaracterises the position. LDA has entered into agreements with racing bodies in return for the ability to take bets on races and it pays the full amounts required by those agreements. Tabcorp and Tatts have been granted exclusive licences to provide wagering at retail outlets and to operate a totalisator in various States and Territories. Those exclusive licences have significant value and this must be taken into account in considering the payments that Tabcorp and Tatts are required to make pursuant to the agreements that they have entered with racing bodies.

Dated: 27 April 2017

Signed:.....



Patrick John Brown

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IN THE AUSTRALIAN COMPETITION TRIBUNAL

ACT 1 of 2017

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Applicant: Tabcorp Holdings Limited

ANNEXURE CERTIFICATE

This is the annexure marked "**PJB-1**" annexed to the statement of **Patrick John Brown** dated 27 April 2017.

Annexure "PJB-1"

Press release from the Honorary Scott Morrison MP

Filed on behalf of	Australian Competition and Consumer Commission		
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The Hon. Scott Morrison MP
Treasurer

MEDIA STATEMENT

Friday 24 March 2017

STATEMENT - COUNCIL ON FEDERAL FINANCIAL RELATIONS MEETING

The Council on Federal Financial Relations (CFFR) met today in Canberra to progress issues of national economic significance.

Treasurers provided an update on the economic and fiscal outlook at the Commonwealth and State levels. The Council noted that Australia's economy continues to navigate the transition from the mining boom to broader based growth. While we are in the midst of our 26th year of continuous economic growth, we noted the distribution of growth varies across States and Territories.

There was consensus amongst Treasurers that addressing housing affordability is a key priority for both Commonwealth and State Governments. Recognising that States and Territories are already undertaking a range of initiatives to improve housing supply and affordability, Treasurers affirmed their commitment to continue to work on policies to improve housing affordability, including rental affordability for those on low-incomes. It is important that the Commonwealth funding provided to support the National Affordable Housing Agreement is invested more effectively to deliver these outcomes.

The Council received a presentation from the Chair of the Fintech Advisory Group, Mr Craig Dunn, on the digital revolution. A constructive discussion followed on how digitisation can deliver efficiency gains across the economy and the role governments play in promoting digital reforms.

Signatories to the Intergovernmental Agreement on Competition and Productivity enhancing Reforms noted the progress in developing a Regulatory Reform National Partnership.

Last December, Treasurers agreed that further work needs to be done to explore what factors might be impeding business investment in Australia and have asked Heads of Treasuries to prepare a report for consideration in late 2017. This inquiry is progressing well and consultation with industry – including small, medium and large business – is underway.

The Treasurers agreed to consider a common national approach on examining a point of consumption tax for online gambling having regard to South Australia's approach. Treasurers will consider a model that provides for Commonwealth oversight of consistency. The common approach will include a National Consumer Protection Framework on online gambling. Each State and Territory will need to individually consider the impacts on sports organisations within their own jurisdictions and the Commonwealth will report on efforts to crack down on illegal offshore gambling.

Treasurers have asked Heads of Treasuries to report back to the next Council meeting on such a potential model, including an assessment of the transitional impacts on existing State and Territory arrangements.

The Northern Territory reserved its position on this issue, subject to receiving the report.

I also consulted with my colleagues on the Commonwealth Grant Commission's recommended GST relativities for 2017-18. The Commission's report is now available on their website www.cgc.gov.au

This was a productive meeting and I thank all of the Treasurers for their valuable contributions.

Further information: Kate Williams 0429 584 675, Sonia Gentile 0455 050 007

IN THE AUSTRALIAN COMPETITION TRIBUNAL

ACT 1 of 2017

Re: Application by Tabcorp Holdings Limited under section 95AU of the *Competition and Consumer Act 2010* for an authorisation under subsection 95AT(1) to acquire shares in the capital of a body corporate or to acquire assets of another person

Applicant: Tabcorp Holdings Limited

ANNEXURE CERTIFICATE

This is the annexure marked "**PJB-2**" annexed to the statement of **Patrick John Brown** dated 27 April 2017.

Annexure "PJB-2"

Report from UK Gambling Commission

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In-play (in-running) betting: position paper

September 2016

1 Introduction and definition

- 1.1** This paper sets out the Gambling Commission's (the Commission) position in relation to in-play betting, and updates the paper we published in March 2009. We have considered our position in the context of the potential risk that this form of betting could pose to the three licensing objectives set out in the Gambling Act 2005.¹ We have also reviewed our position to reflect changes in the market, technological advances and our experience in regulating the industry to date.
- 1.2** By in-play betting (also known as in-running or live betting), we mean placing a bet while the event to which the bet relates is actually taking place, for example, placing a bet on a football match while the match is being played. This form of betting takes place mainly, but not exclusively, on sporting events.
- 1.3** In-play betting is predominantly an online activity, where bettors place bets using a betting operator's website. Bets can be placed via sportsbooks that offer fixed odds in-play betting, and through betting exchanges that facilitate in-play betting between two or more parties. Bets can also be placed in betting shops (through over the counter transactions and via self-service betting terminals) and by telephone.
- 1.4** In-play betting continues to grow in popularity - the number of in-play markets are expanding and a significant volume of betting takes place in-play. The Commission's [gambling participation survey data from 2015](#) shows that 25% of online gamblers had bet in-play within the preceding four week period. From November 2014, we began collecting data on all operators holding a licence to supply the British market, and indications from this show that in-play betting accounts for over one-third of online betting gross gambling yield.²

¹ These are: to keep gambling free from crime and being associated with crime, to ensure gambling is fair and open, and to protect children and vulnerable people from being harmed or exploited by gambling.

² Gross gambling yield is the amount retained by operators (in relation to the licensed activity) after the payment of winnings but before the deduction of the costs of the operation.

2 Summary of the Commission's position

- 2.1 The Commission does not consider, at this time, that in-play betting represents such a significant risk to the licensing objectives that additional measures are required. We do however acknowledge that, like other forms of gambling, in-play betting potentially raises a number of issues that could impact on the licensing objectives. These issues relate to the:
- fairness and transparency of the betting
 - integrity of the betting
 - risk of harm within the betting medium.
- 2.2 In-play betting does not appear to cause unacceptable risks to fairness and openness as long as bettors are sufficiently aware of their own position compared to that of other bettors and betting operators. Bettors must be made aware of any information deficit or any built-in time delays to the system they are using. We do not consider it necessary to prevent some bettors using technology to gain an advantage, for example, from computer software programs or faster online connectivity speeds, provided it is made clear to all bettors that this is possible. However, the Commission is considering whether the current information requirements sufficiently inform bettors about the potential use of software aids and operator's policies for handling bet requests should a price change during the period between a bet request and confirmation. We will be consulting on these matters as part of the *Remote gambling and software technical standards* review that will be launched in October 2016.
- 2.3 In relation to betting integrity, there is potential for individuals to exploit in-play betting for criminal or otherwise inappropriate gain. However, other forms of betting also have similar potential for exploitation. We do not consider that in-play betting requires further regulatory controls to those already applied within the Commission's wider efforts to maintain integrity in sports betting.
- 2.4 People who bet in-play may place a higher number of bets in a shorter time period than people who bet in other ways, as in-play betting offers more opportunities to bet. Some studies have shown that placing a high number of bets can be an indication that a bettor may be at risk of harm from gambling. We do not consider that someone who bets in-play is automatically at increased risk of harm from gambling, but expect that licensees will monitor all bettors for signs of risk as required by our [Licence conditions and codes of practice](#).
- 2.5 We conclude that risk to the licensing objectives from in-play betting is appropriately managed through the current regulatory framework and controls applied by licensees. We require all licensed betting operators to have and put into effect policies and procedures designed to manage the regulatory risks within in-play betting, and monitor and review their effectiveness. Evidence does not indicate that further regulatory control measures are required at this time. We will continue to monitor in-play betting for fairness and openness as part of our overall betting compliance programme, and take its particular characteristics into account in our wider work on integrity in sports (and other) betting and gambling related harm.

3 Fairness and openness of in-play betting

3.1 In-play betting is fast paced, and the prices available for betting are amended continuously according to the information and/or the liabilities held by the betting operators. Having accurate and timely information is vital to both operators and bettors alike as a means of not being at a competitive disadvantage. For example, operators will use real-time sports data companies to supply them with instantaneous information from an event in order to revise their prices, suspend markets and settle bets accurately. Conversely, bettors also seek access to real-time data and use this and other technological advantages (such as access to 'live' pictures, the use of computer software programs and faster online connectivity speeds) to place bets.

Access to real-time data and 'live' pictures

3.2 People who attend a sporting event have the most accurate and timely information on the event. Others may watch events on the operator's website, in a betting shop, on television or through online streams that hold official broadcast rights. Although the degree of latency (the time it takes for something that happens in real-time to display on the broadcast medium) varies, there is a gap in information for the period of that delay for those not watching in real-time, and this creates a potential inequality between the parties concerned in an in-play bet.

3.3 The term 'courtsiding' (coined due to its initial prominence in tennis) is often used to describe the practice of using or transmitting information from a live sporting event for the purpose of gambling. The practice involves a spectator at a sporting event taking advantage of the delay between the live action and TV or data feeds. The spectator can use (or pass on to a third party) the real-time information to place bets on in-play markets before a betting operator, or other betting exchange user, receives the information and adjusts their odds accordingly to reflect the state of play. This results in the bettor being able to obtain more favourable odds.

3.4 We do not consider that courtsiding amounts to an offence of Cheating under section 42 of the Gambling Act 2005. The practice may however breach the entry terms and conditions of a tournament/event.

3.5 Information Provision Annex 3 of our [Remote gambling and software technical standards](#) (RTS) refers to in-play betting. It requires operators to provide information that explains that 'live' TV or other broadcasts are delayed, and that others may have more up-to-date information. Additionally operators must design main in-play betting pages to include this information where practicable.

Use of computer software programs and online connectivity speeds

3.6 Other technological advantages can be achieved via computer software programmes and online connectivity speeds. These can both impact upon the speed in which a bettor can place a bet, an advantage seen most greatly on betting exchanges.

3.7 Computer software, often known as 'bots', is used to monitor betting markets and place bets at a much higher rate than is possible for a person. Bots are most commonly used within in-play betting to automatically detect and place bets on 'stale prices',³ and to detect 'arbitrage'⁴ opportunities which offer the bettor a guaranteed profit.

³ 'Stale prices' occur when the market has moved, but an old price that does not reflect the most recent information has been left available by a betting operator/exchange user who has not yet reacted to the new information. A bot will automatically detect this and place a bet at the favourable odds left available.

⁴ Arbitrage betting is where a gambler takes advantage of a variation in odds offered by different betting operators, in order to make a profit regardless of the outcome of an event. Bots can be programmed to recognise such market opportunities and place bets to make a guaranteed profit.

- 3.8** Information Provision Annex 4 of the RTS relates to the use of automated gambling software and requires betting operators to inform bettors of their policies on the use of bots. The Commission is considering whether the current information requirements are sufficient to inform bettors about the use of software aids, including bots, and will be consulting on this as part of the RTS review that will be launched in October 2016.
- 3.9** Online connectivity speeds can depend on a range of factors such as the type of connection (for example, broadband or wireless), processing speeds of the computer and router or modem, whether you are sharing a connection and the level of software the computer or device is running in the background.
- 3.10** Information Provision Annex 5 of the RTS relates to time-critical events and requires betting operators to inform bettors that they may be disadvantaged because of technical characteristics such as slower network speeds or slower end user device performance. We consider that there is currently no evidence to support a need for further information requirements relating to time-critical events.

Trading rooms

- 3.11** When the Commission first published our position on in-play betting in 2009, trading rooms were a noticeable example of technological advantage. Trading rooms rent seats at high-performance PCs with high-speed internet connectivity and dedicated sports feeds. By offering some of the shortest time delays they put bettors in the best position for betting (primarily on exchanges). These trading rooms charge bettors a fee for use of the services, and some also have commercial arrangements with betting operators and receive a percentage fee from their bettor's activity with an operator.
- 3.12** Trading rooms are regulated by the Commission, and we consider having them within the licensing regime is a suitable and proportionate response to the risk they pose to the licensing objectives. As of 30 April 2016, we licensed six operators for this activity. We will continue to observe them in accordance with the existing licensing regime, and monitor the general level of awareness among bettors of the range of technological advantages available.

Time delays in bet processing

- 3.13** Betting operators set time delays so that when a bettor places a bet in-play there is a number of seconds between pressing the 'place bet' button and receiving confirmation that the bet has been made. This ensures that the odds on offer accurately reflect the progress of the event. It should be noted that sportsbooks and betting exchanges differ in that sportsbooks put in a delay to ensure their own prices are correct, whilst betting exchanges put a delay in place to protect its bettors. The length of delay varies from betting operator to betting operator depending on their own trading strategy, from event to event depending on how frequently and significantly the price could be affected and subject to the potential latency of the data source used.
- 3.14** Bettors opting to use a 'cash out' facility also experience a delay between pressing the cash out button and receiving confirmation that the transaction has been processed. Cash out allows bettors to get money back on an event before it is over. Cash out offers that are subject to live betting markets can be volatile during a sporting event, increasingly so in the final stages. As the chances of winning change, an offer for cash out will increase, decrease or be removed altogether. We require that betting operators offering cash out facilities do so under clear and accessible terms and conditions that cover, for example, the availability, acceptance and settlement of any such bets.
- 3.15** We do not believe it is necessary or practical at this stage to set out standards for time delays in processing any bets, including in-play bets. However, the Commission is considering whether customers are sufficiently informed about how a bet request will be handled should the price change before it is accepted. We will be consulting on this as part of the RTS review that will be launched in October 2016.

4 Integrity in sports betting

- 4.1 Cheating, including collusion with sports players or officials, could take place on an event where the bettor obtains an unfair advantage on pre-event betting and in-play/proposition bet⁵ markets. It is argued by some, however, that there are specific inherent or greater risks involved with in-play betting that are not present or so great for pre-event betting. Examples of such arguments can be found in the report by the Asser Institute [Facts & Figures on the Integrity Risk of Certain Sports Bets](#) which references that integrity concerns about these types of sports bets surface in policy discussions at both the national and European level. As a means to safeguard the integrity of sport and prevent betting-related match-fixing, calls are frequently made to prohibit such betting products. For instance, the European Parliament has urged EU Member States to ban live betting... “as *these have proved to be very vulnerable to match fixing*”.
- 4.2 These concerns often focus on sports that can potentially cause additional risks due to their very nature, in particular where a single participant can affect the outcome of a bet, for example, the winner of the next set in a tennis match or the next player out in a cricket match.
- 4.3 It has also been argued that those attempting to manipulate an event could take advantage of the short time frame in which in-play betting occurs, making the detection of suspicious betting patterns more difficult to identify. The Asser Institute Report references various studies in which these potential integrity risks have been identified.
- 4.4 Despite the concerns raised about the risks to integrity from in-play betting there is limited evidence to show that the risks are greater than those associated with pre-event betting.
- 4.5 With sports governing bodies and betting operators, we have taken steps to improve the management of risks to sports betting integrity in Great Britain. Following a formal consultation process, we revised licence condition 15.1 (Reporting suspicion of offences etc) in 2008. This condition places specific obligations on all Commission licensed betting operators to share information about irregular or suspicious betting with our Sports Betting Intelligence Unit (SBIU) and to sports governing bodies in specific circumstances. We amended this condition, via consultation, in 2015 to better ensure that any potential threats to betting integrity are identified, reported and properly investigated.
- 4.6 In addition, many sports governing bodies employ commercial companies or have implemented their own systems to monitor betting markets for suspicious betting activity.
- 4.7 We work closely with betting operators and sport and law enforcement at both operational and strategic levels. This ensures a collaborative approach to managing risks to sports betting integrity, focused on effectively managing any reports of irregular betting across the full range of markets.
- 4.8 Reports of irregular betting into SBIU have increased significantly over time, partly because of the amendment to gambling regulation in 2014.⁶ This amendment required all operators offering betting services to British bettors to be licensed by the Commission and to be compliant with licence condition 15.1.2 and ordinary code provision 8.1.2. This means we are now sighted on a much larger proportion of the British market.
- 4.9 The increase in reports includes information on irregular betting patterns on in-play markets, and also a significant number of reports about pre-event betting or covering both types of market.

⁵ A proposition bet (also known as exotic, novelty or side bets) is a bet made on a specific aspect of an event, unrelated to the final result.

⁶ [Gambling and Licensing Act 2014](#)

- 4.10 The report published by the Asser Institute also studied potential links between betting related match-fixing cases and specific types of sports bets, including in-play and proposition betting. This was the first study to examine these links based on quantitative evidence. The majority of cases examined within the report showed that more than one of the main betting markets were exploited and irregular betting patterns were identified in both pre-event and in-play betting. The report concluded that the evidence does not support the claim that in-play betting, by its very nature, would significantly encourage manipulation in comparison to pre-event betting.
- 4.11 The report [*Protecting the Integrity of Sport Competition; The Last Bet for Modern Sport*](#), published by the Sorbonne – ICSS Sport Integrity Research Programme, presents the argument that the lack of liquidity on in-play markets supports the Asser reports conclusions: “Although these products contributed to the transformation of traditional betting markets, their liquidity levels limit, for the time being, their attractiveness to cheat and therefore limit their danger for sports.”
- 4.12 Opponents of in-play betting have suggested restricting or prohibiting the markets offered by licensed betting operators on sports integrity grounds. We are aware that this approach is adopted by some other countries. We do have the power to impose such restrictions but based on the available evidence we maintain our position that such methods are not warranted at this time. Taking such action may also increase the risk that bettors would be driven to seek to place bets via grey and black markets, over which we have no oversight.
- 4.13 Sports governing bodies are responsible for managing the risk of sports participants being tempted to unfairly manipulate events. They do this through education programmes that highlight the potential consequences, supported by transparent disciplinary processes and contracts that restrict betting on a participant’s own sport. The [*Sports and Sports Betting Action Plan*](#) outlines these responsibilities.
- 4.14 Our updated position paper on betting integrity ([*Protecting betting integrity*](#)), published in 2013, details our wider efforts to maintain betting integrity. It should be read alongside the *Sports and Sports Betting Action Plan* and it sets out Britain’s approach to managing sports betting integrity issues.

5 Risk of harm from gambling

5.1 The Commission must also consider whether gambling activities can place people at risk of harm from gambling. People who bet in-play frequently make large volumes of bets over the course of a betting session. This could be the normal activity of a skilful or committed bettor who concentrates on betting in-play, or it could be an indication that a bettor is experiencing harm. In 2009 there was no evidence to suggest that in-play betting posed a greater specific risk of causing gambling-related harm than other forms of betting or online gambling.

5.2 However, since then, some studies have looked at the potential for links between in-play betting and the risk of harm from gambling. These indicate the possibility of greater risk of harm from gambling for those who participate in in-play betting compared to those who participate in other forms of gambling. Findings include:

- Increased in-play betting on sports events has changed formerly 'slow' forms of betting that traditionally have been considered to pose less risk of harm. For example, previously, a football supporter might have had an opportunity to bet only on the outcome of a match, that is, one bet per two hour time period. Now there are increased opportunities to bet within that same time period, for example on the time the next goal will be scored or on who will win the next corner. This, combined with the availability of sports events from around the world via internet and satellite television, brings sports events like football more in line with horse racing in terms of opportunities to bet. Some researchers have linked such increased opportunities to bet – or to be 'rewarded' - with an increased likelihood of gambling problems.⁷
- Studies conducted in Australia have specifically shown a correlation between tendencies to place a high proportion of in-play bets with an increased risk of harm from gambling. The same study indicated that alongside other factors, those scoring highest of being at risk of harm from gambling tended to be younger men.⁸ This is a consideration for us given that figures from our [gambling participation survey data from 2015](#), indicated that men aged 18-34 were most likely to have taken part in in-play gambling.
- Data from our 2016 gambling prevalence survey indicates that online gamblers are more likely to be classified as problem gamblers if they bet in-play, and more likely to be classified as at greater risk of harm from gambling than those who do not bet in-play.⁹

5.3 Through our *Licence conditions and codes of practice*, and specifically under social responsibility code provision 3.4 (Customer interaction), we already require licensees to have in place policies that:

- identify the types of behaviour that may trigger a problem gambling interaction
- have provision to identify at risk bettors who may not be displaying obvious signs of, or overt behaviour associated with problem gambling, eg by reference to indicators such as time or money spent
- provide for the licensee to interact with any bettor who they suspect may be at risk of harm from gambling.

5.4 Licensees must also make information available to bettors on how to gamble responsibly and how to seek help for problem gambling (social responsibility code provision 3.3.1).

⁷ [The 'In' Crowd: Is there a relationship between in-play betting and problem gambling?, Dr M Griffiths](#)

⁸ [Demographic, Behavioural and Normative Risk Factors for Gambling Problems Amongst Sports Bettors, Journal of Gambling Studies, Hing et al, September 2015](#)

⁹ 27.4% of online gamblers who bet in-play were classified as problem gamblers, compared to 10.9% of all online gamblers and 5.4% of online gamblers who do not bet in-play. 44.1% of online gamblers who bet in-play were classified as at risk of problem gambling compared to 40.4% of all online gamblers and 26.4% of online gamblers who do not bet in-play. Problem gambling status has been defined using the short-form Problem Gambling Severity Index (PGSI mini-screen, Volberg, 2012), which was developed from the full 9-item PGSI. Due to small base sizes the data presented here should be considered as indicative, and be treated with caution.

- 5.5** We expect licensees who offer in-play betting to be aware that their policies and procedures must be able to identify risks of harm from gambling to those participating in this activity, where, for example, betting frequency may be exaggerated compared to other forms of gambling. This is particularly important given the links that studies are beginning to show between in-play betting and the risk of gambling-related harm, as discussed above. However, not everyone who participates in in-play betting will automatically be at risk, even if they place bets at greater frequencies than other gamblers. Licensees must have procedures in place to ensure they can capture information about individual's patterns of play, for example, changes in the frequency of a bettor's gambling, or time or money spent, and use this information to identify those who may be at risk of harm, and interact with them appropriately. These procedures must properly capture information that might indicate a bettor is at risk of harm for those taking part in in-play betting as well as other forms of gambling.
- 5.6** We will continue to monitor this area to ensure the protections in place are appropriate.

6 Conclusion

- 6.1** We are aware that some countries have taken a more prohibitive approach towards in-play betting, for example, by restricting the markets that are available or the means by which in-play bets can be placed. However, in exercising our functions under the Gambling Act 2005 we are obliged to permit gambling in so far as it is conducted in a manner that is consistent with the licensing objectives. On the balance of the evidence we have reviewed and considered, we have concluded that the current regulatory regime in place for in-play betting is sufficient and further controls are not needed at this time.
- 6.2** We will continue to monitor the development of in-play betting and associated risks in accordance with the Commission's intention to be an evidenced based regulator.

Gambling Commission September 2016

Keeping gambling fair and safe for all

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IN THE AUSTRALIAN COMPETITION TRIBUNAL

ACT 1 of 2017

Re: Application by Tabcorp Holdings Limited under section 95AU of the *Competition and Consumer Act 2010* for an authorisation under subsection 95AT(1) to acquire shares in the capital of a body corporate or to acquire assets of another person

Applicant: Tabcorp Holdings Limited

ANNEXURE CERTIFICATE

This is the annexure marked "**PJB-3**" annexed to the statement of **Patrick John Brown** dated 27 April 2017.

Annexure "PJB-3"

The Australian article dated 26 April 2017

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Sports betting ads to be banned 'siren to siren'



Senator Nick Xenophon.

NICK TABAKOFF, JOE KELLY THE AUSTRALIAN 12:00AM April 20, 2017

The federal government is poised to introduce new laws to ban gambling advertising during live sporting events as early as next week — but the imminent move has prompted angry opposition from sporting bodies, which say the move will dramatically reduce funds for grassroots sport.

The Australian understands that Communications Minister Mitch Fifeld will go to cabinet on Tuesday with the proposal that would affect all betting advertising from “siren to siren”, or from the start to the finish of games.

Senator Fifeld has held high-level meetings in the past week with AFL chief executive Gillon McLachlan and NRL chief operating officer Nick Weeks. It is understood he has also asked sporting codes how a siren-to-siren betting advertising ban would affect them, in preparation for the measures to be implemented.

It is understood the move has been most heavily pushed by Scott Morrison. The measures are expected to be approved by cabinet.

But a senior source at a major sporting body claimed yesterday that the move was shortsighted.

“This will drive punters to overseas websites and it will result in no reduction in gambling, but a reduction in taxation to state and federal governments,” the source said. “It also has the potential to rob sports of product fees.” Product fees are a commission that sporting codes make on each bet waged on their sport with Australian betting agencies.

Malcolm Speed, the executive director of the Coalition of Major Professional and Participation Sports, which represents all of Australia’s major codes, has also protested about the prospect of more restrictions. “We don’t support a ban on sports betting advertising, on the basis that it is likely to impact on media rights deals or the value of media rights, which is the sports’ greatest asset,” Mr Speed told *The Australian*.

“We operate in a highly regulated system, where there are limits on placement of sports betting advertising.

“The sports have co-operated with broadcasters and the government to ban live odds during matches. So any restriction or prohibition will inevitably result in lowering investment in community and participation programs, and grassroots development.”

As part of the deal, the federal government is expected to engage in a trade-off with free-to-air TV networks, which is likely to see them use the deal as leverage to have their licensing fees reduced. It is not yet clear whether a similar deal will be struck to compensate subscription television.

Senator Nick Xenophon, who has been the driving force behind the bans, said he supported the moves on betting ads.

“Obviously I support tightening up gambling advertising ... I’m not going to stand in the way of restrictions, but if you want it to be sustainable in the long term, you bring the broadcasting industry with you,” he said, adding “it should also come with a reduction in licensing fees”. He said he would also support subscription networks getting an equivalent discount.

A spokesman for Senator Fifeld would not comment on “speculation about (the government’s) deliberations”.

[PUBLIC VERSION]

Revenue from betting agencies has provided a significant increase in revenues for sports.

Only last year, the NRL made Sportsbet its “official wagering partner”, as part of a \$60 million, five-year deal. It is understood that the AFL has a \$10m-a-year deal with CrownBet.

FROM THE HOMEPAGE

‘It’s a free country, I’ll say my piece’ ♦

RACHEL BAXENDALE

Tony Abbott says in a party that “doesn’t practice Stalinism”, he should be free to comment on the Turnbull government.



ABC should put Australia first ♦

GRAHAM RICHARDSON

Yassmin Abdel-Magied’s Anzac Day Facebook post demonstrates what’s wrong with the national broadcaster.



‘Building house designed to last’ ♦

RHIAN DEUTROM, VERITY EDWARDS

Cory Bernardi has disputed claims the merger between his party and Family First proved they couldn’t survive alone.



Ships sink, Keating warns US ♦

PRIMROSE RIORDAN

Former PM says America should learn from history that conflict in the South China Sea would lead to naval disaster.



AOC man stands down ♦

CHIP LE GRAND

Former AOC chief executive Fiona De Jong has detailed complaints into bullying. Media director Mike Tancred has stood down.



Wild boar take down IS fighters ♦

BEL TREW

A herd of wild boar has mauled three Islamic State militants to death and injured five others in Iraq.



One Nation candidate quits ♦

Citing abuse and threats to his family, Mark Ellis decried his targeting by the “leftie media” and “pathetic haters”.



Nine urged to dump cricket ♦

MITCHELL BINGEMANN

Nine Entertainment has been pushed to ditch its cricket broadcast deal, as estimated annual losses reach \$40m.



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IN THE AUSTRALIAN COMPETITION TRIBUNAL

ACT 1 of 2017

Re: Application by Tabcorp Holdings Limited under section 95AU of the *Competition and Consumer Act 2010* for an authorisation under subsection 95AT(1) to acquire shares in the capital of a body corporate or to acquire assets of another person

Applicant: Tabcorp Holdings Limited

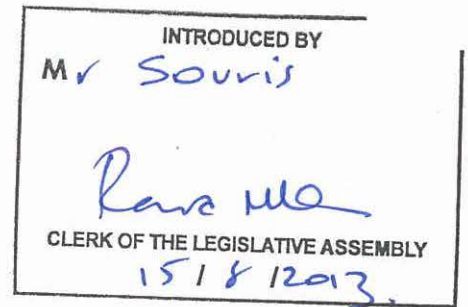
ANNEXURE CERTIFICATE

This is the annexure marked "**PJB-4**" annexed to the statement of **Patrick John Brown** dated 27 April 2017.

Annexure "PJB-4"

NSW Exclusivity Deed

Filed on behalf of	Australian Competition and Consumer Commission		
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Address for service	Melbourne VIC 3000		



Tabled copy of deed poll for Totalizator Amendment (Exclusivity) Bill 2013

This is the copy of the deed poll executed by TAB Limited on 19 June 2013 as tabled, by or on behalf of the Minister introducing the Bill for the *Totalizator Amendment (Exclusivity) Act 2013*, in the Legislative Assembly on the day that the Bill was introduced.

Ronda Miller
Clerk of the Legislative Assembly

Deed poll

Date ► 19 June 2013

This deed poll is made

By TAB Limited (ABN 17 081 765 308) of 5 Bowen Crescent, Melbourne
VIC 3004, AUSTRALIA (TAB)

in favour of **The Honourable George Souris** in his capacity as Minister for
Tourism, Major Events, Hospitality and Racing of the State of New
South Wales for and on behalf of the Crown in the right of the State of
New South Wales (**the State**)

This deed poll provides as follows:

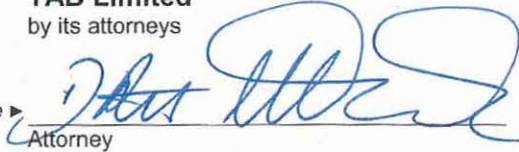
- (1) TAB offers to enter into the NSW Exclusivity Deed (being the deed in Attachment 1) (**Offer**), and agrees to be bound by the terms of the NSW Exclusivity Deed upon the State accepting the Offer in accordance with clauses (2) and (3) of this deed poll. The Offer is irrevocable.
- (2) The Offer may not be accepted by the State unless and until the conditions set out in clause 4 of the NSW Exclusivity Deed have been satisfied in accordance with that clause.
- (3) The State may accept the Offer by properly executing and returning an original counterpart of the Exclusivity Deed to:
TAB Limited
495 Harris Street
Ultimo NSW 2007
Australia
- (4) This deed poll will terminate and the Offer will lapse if:
 - (a) the conditions referred to in clause (2) are not satisfied, or are waived by TAB by notice to the State in writing, on or before 31 December 2013; or
 - (b) the State has not accepted the Offer in accordance with this deed poll within seven (7) days after the conditions referred to in clause (2) of this deed poll have been satisfied, or waived by TAB in accordance with clause (4)(a) of this deed poll.
- (5) This deed poll is governed by the law in force in New South Wales.

- (6) TAB irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed. TAB irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

Executed as a deed poll

Signed sealed and delivered for
TAB Limited
by its attorneys

sign here ▶



Attorney

print name

DAVID ATTENBOROUGH

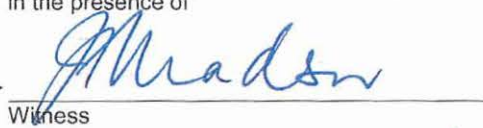
Attorney



DOUGLAS JOHN FREEMAN

in the presence of

sign here ▶



Witness

print name

JOANNE LOUISE MADSEN

Witness



JOANNE LOUISE MADSEN

Attachment 1

NSW Exclusivity Deed

NSW Exclusivity Deed

TAB Limited

The Honourable George Souris in his capacity as
Minister for Tourism, Major Events, Hospitality and
Racing of the State of New South Wales for and on
behalf of the Crown in the right of the State of New
South Wales

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Deed

Date ► 2013

Between the parties

TAB Limited

ABN 17 081 765 308 of 5 Bowen Crescent
Melbourne VIC 3004
AUSTRALIA

(TAB)

The Honourable George Souris in his capacity as Minister for
Tourism, Major Events, Hospitality and Racing of the State of New
South Wales for and on behalf of the Crown in the right of the State of
New South Wales

(the State)

Recitals

- 1 Under the *Totalizator Act 1997* (NSW) (**Totalizator Act**), TAB was granted a licence to conduct an Off-Course Totalizator for a 99 year period commencing on 6 March 1998 and expiring on 5 March 2097.
- 2 In accordance with the Totalizator Act, the 'exclusivity period', as defined in section 11 of the Totalizator Act, is due to expire on 22 June 2013.
- 3 For the duration of the existing exclusivity period, TAB has been the sole holder of an Off-Course Totalizator licence in NSW. Under that licence, TAB operated both totalizator and fixed odds betting services. For the same period, TAB and the Racing Clubs held On-Course Totalizator licences.
- 4 Throughout the same period, the Scheme has precluded anyone other than TAB from providing betting services in a Public Place (other than a Racecourse) and TAB, Racing Clubs and On-Course Bookmakers from providing betting services at a NSW Racecourse.
- 5 Under the Totalizator Act, TAB was required to enter into commercial arrangements with the NSW racing industry as a prerequisite to being granted a licence.
- 6 The State has considered whether the 'exclusivity period' should be extended. Recognising the object of the continued effective and productive operation of the NSW racing industry, the State has determined, in the context of the Scheme, that it is in the interest of the public and of the NSW racing industry for TAB to remain the sole wagering operator licensed to provide betting services in a Public Place (other than a Racecourse), and the sole wagering operator (other than Racing Clubs and On-Course Bookmakers) licensed to provide betting services on a Racecourse, for a period of 20 years with effect on and from 23

June 2013.

- 7 TAB agrees to pay a Fee on the terms set out in this deed, including if the legislative amendments required to extend the exclusivity period, are made and come into force, provided that, if certain events occur, the State must pay TAB an amount determined in accordance with the terms of this deed.
- 8 The Fee will be paid by way of an initial amount, and ten instalments for a 10 year period from 2024 subject to the terms and conditions of this deed.

This deed witnesses as follows:

1 Definitions, interpretation and deed components

1.1 Definitions

The meanings of the terms used in this deed are set out below.

Term	Meaning
Adverse Exclusivity Event	<ol style="list-style-type: none">1 the occurrence of any activity which is, or which the State considers, acting reasonably, on a reasonably arguable view of the law, may be, in contravention of any NSW Wagering Legislation;2 any legal proceedings are brought by a third party which challenge NSW Wagering Legislation, the Scheme or this deed; or3 the occurrence of any Relevant Conduct by a person (other than TAB).
Adverse Regulatory Event	<ol style="list-style-type: none">1. the State introduces, and Parliament chooses to enact, legislation; or2. the Minister makes an order, imposes a condition or takes any other action under any NSW Wagering Legislation (other than disciplinary action in accordance with Division 5 of the Totalizator Act), which would (either by itself or together with any other action referred to in paragraph 1 or 2 above):3. enable the grant, or provide, to a person other than TAB any licence, authorisation, approval or permission, under the Totalizator Act or any other legislation, which would have the effect that the person could conduct any or all parts of an Off-Course Totalizator or any activity that is reasonably similar to any part of an Off-Course Totalizator, or otherwise engage in

Term	Meaning
	<p>any Relevant Conduct;</p> <ol style="list-style-type: none">4. enable the grant, or provide, to a person other than TAB, any Racing Club or any On-Course Bookmaker, any licence, authorisation, approval or permission, under the Totalizator Act or any other legislation, which would have the effect that the person could conduct any or all parts of an On-Course Totalizator, or any activity that is reasonably similar to any part of an On-Course Totalizator;5. result in the cancellation, suspension or reduction of the term of the Exclusivity Period (other than as a consequence of the lawful cancellation or suspension of TAB's Wagering Licence or On-Course Totalizator licence); or6. prevent or restrict TAB from receiving the benefit of the Scheme, <p>and, as a result of any of the above matters:</p> <ol style="list-style-type: none">(a) a person other than TAB may lawfully conduct any or all parts of an Off-Course Totalizator within NSW; or(b) a person other than TAB, Racing Clubs and On-Course Bookmakers may lawfully conduct any or all parts of an On-Course Totalizator within NSW.
Business Day	a day on which banks are open for business in Sydney excluding a Saturday, Sunday or public holiday in that city.
Commencement Date	has the meaning given in clause 2.
Controlling Body	in relation to: <ol style="list-style-type: none">1 horse racing other than harness racing – Racing New South Wales;2 harness racing – Harness Racing New South Wales; and3 greyhound racing – Greyhound Racing New South Wales.
Deed Poll	the deed poll, dated June 2013, by TAB in favour of the State in relation this deed.
Due Payment Date	the date which is: <ol style="list-style-type: none">1 15 Business Days after the date on which TAB gives written notice to the State that an Adverse Regulatory Event has occurred; or2 if the Adverse Regulatory Event occurs as an unintended consequence of an action by the State or the Minister, and that action is remediable, 180 days after the date on which TAB gives written notice to the State that an Adverse Regulatory Event has occurred.

Term	Meaning
Exclusivity	<ol style="list-style-type: none">1. means the Scheme continues to have the full effect set out under paragraphs 1 and 2 of the definition of 'Scheme';2. there is no current or continuing Adverse Regulatory Event; and3. there is no occurrence of any Relevant Conduct by a person other than TAB (whether or not the Relevant Conduct is lawful or unlawful at the time it occurs, including where the Relevant Conduct is lawfully able to occur following a legal challenge).
Exclusivity Amendment	means the amendments to be made to the Totalizator Act, together with any action of the Minister, as set out in Schedule 1.
Exclusivity Period	the period commencing on 23 June 2013 and ending at 12:00 a.m. on 23 June 2033.
Fee	\$75 million (exclusive of any applicable GST) payable in accordance with the terms of this deed.
Government Agency	any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world, including the OLGR.
Initial Amount	\$50 million (exclusive of any applicable GST).
Instalment Amount	\$2.5 million per annum (exclusive of any applicable GST).
Interest Rate	two percent plus: <ol style="list-style-type: none">1 the monthly average yield of 90-day Bank Accepted Bills published by the Reserve Bank of Australia for the preceding month;2 or, if the rate referred to in paragraph 1 is no longer available or becomes incapable of application, the rate reasonably determined by TAB to be the appropriate equivalent rate, having regard to prevailing market conditions.
Minister	the Responsible Minister for the purposes of administering the <i>Totalizator Act 1997 (NSW)</i> from time to time.
NSW Wagering Legislation	means: <ol style="list-style-type: none">1 New South Wales legislation as at the date of the Deed Poll (and whether or not that legislation is subsequently amended or repealed); or2 any legislation that is enacted to amend or replace that

Term	Meaning
	legislation, which underpins or supports TAB's exclusive ability to provide betting services in a Public Place (other than a Racecourse) or (together with Racing Clubs and On-Course Bookmakers) on a Racecourse, including any legislation which prevents any Relevant Conduct.
NSW Racecourse	land in New South Wales that is licensed as a racecourse under the Racing Administration Act.
Offer	has the meaning given in the Deed Poll.
OLGR	the New South Wales Office of Liquor, Gaming and Racing within the Department of Trade and Investment, Regional Infrastructure and Services.
On-Course Bookmaker	a person who is authorised by a Controlling Body under any Racing Act to carry on bookmaking, and who is permitted to carry on bookmaking at: <ol style="list-style-type: none">1 a NSW Racecourse under the Unlawful Gambling Act; or2 any premises other than a Public Place, that have been approved by a Controlling Body as premises at which that person may conduct telephone or electronic betting pursuant to an authority under the Racing Administration Act.
Off-Course Totalizator	means a Totalizator that is not an On-Course Totalizator.
On-Course Totalizator	means a Totalizator the bets on which can only be placed by persons on a Racecourse.
Public Place	means a place that the public, or a section of the public, is entitled to use or that is open to, or is being used by, the public or a section of the public (whether on payment of money, by virtue of membership of a club or other body, or otherwise) and, without limitation, includes the premises of a registered club under the <i>Registered Clubs Act 1976 (NSW)</i> and licensed premises under the <i>Liquor Act 2007 (NSW)</i> .
Racecourse	means: <ol style="list-style-type: none">1 a NSW Racecourse; or2 land outside New South Wales (including outside Australia) used for race meetings.

Term	Meaning
Racing Act	means the: <ol style="list-style-type: none">1 <i>Thoroughbred Racing Act 1996 (NSW)</i>;2 <i>Harness Racing Act 2009 (NSW)</i>; or3 <i>Greyhound Racing Act 2009 (NSW)</i>.
Racing Administration Act	means the <i>Racing Administration Act 1998 (NSW)</i> .
Racing Club	means a club, association or other body of persons (whether incorporated or unincorporated) that is registered as a racing club by <i>Racing New South Wales, Harness Racing New South Wales, or Greyhound Racing New South Wales</i> .
Refund Payment	the amount determined in accordance with Schedule 3.
Refund Payment Table	means the table set out under paragraph 2 of Schedule 3.
Relevant Conduct	means any of the following: <ol style="list-style-type: none">1 opening, keeping, using or operating or hold itself out as opening, keeping, using or operating: <ol style="list-style-type: none">(a) a retail venue or outlet or place of betting on a NSW Racecourse (other than a Racing Club under its On-Course Totalizator licence or an On-Course Bookmaker); or(b) an off-course retail venue or outlet or place of betting in New South Wales, including a Public Place, in or at which wagers or bets may be placed or received;2 carrying on any bookmaking in a Public Place (other than circumstances contemplated in clause 5.2(g)); or3 allowing or making available a Remote Access Betting Facility in a Public Place for use by persons frequenting that place (other than on a NSW Racecourse where the Remote Access Betting Facility is for betting or facilitating betting on a Totalizator conducted under the authority of a Racing Club under its On-Course Totalizator licence).
Remote Access Betting Facility	means any device (such as a computer terminal or telephone) that is for use primarily or exclusively for betting on any event or contingency or for facilitating betting on any event or contingency.
Scheme	means the scheme of New South Wales wagering legislation, including provisions in the Totalizator Act and the Unlawful Gambling Act, which together with TAB's Wagering Licence or On-Course Totalizator licence has the effect that:

Term	Meaning
	<ol style="list-style-type: none">1 TAB is the sole wagering operator lawfully permitted to provide betting services, and engage in Relevant Conduct, in a Public Place (other than on a Racecourse) in NSW; and2 only TAB, Racing Clubs and On-Course Bookmakers are lawfully permitted to provide betting services, and engage in Relevant Conduct, on a NSW Racecourse.
Term	has the meaning given in clause 2.
Totalizator	means: <ol style="list-style-type: none">1 a system used to enable persons to invest money on events or contingencies with a view to successfully predicting specified outcomes of those events or contingencies and to enable the money left after the deduction of commission to be divided and distributed among those persons who successfully predict those outcomes and any instrument, machine or device through or by which the system is operated; and2 the conduct of any betting activity (otherwise than by the means set out in paragraph 1) on a particular event or contingency or class of events or contingencies, that has been approved by the Minister to be conducted by the holder of a licence in force under the Totalizator Act, both as at the date of the Deed Poll and as subsequently extended (including, for the avoidance of doubt, the conduct of any fixed odds approved betting activity).
Totalizator Act	the <i>Totalizator Act 1997</i> (NSW) as in force from time to time.
Unlawful Gambling Act	the <i>Unlawful Gambling Act 1998</i> (NSW).
Wagering Licence	the off-course licence to conduct a Totalizator granted to TAB on 6 March 1998 and expiring on 5 March 2097.
Year	means the 12 month period commencing at 12:01 a.m. on 23 June 2023, and each successive 12 month period commencing at 12:01 a.m. on 23 June, except the last year of the Term which will commence at 12:01am on 23 June and end on the last day of the Term.

1.2 Interpretation

In this deed:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of this deed.
- (b) The singular includes the plural and the plural includes the singular.

- (c) Words of any gender include all genders.
- (d) Other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning.
- (e) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.
- (f) A reference to Dollars, A\$ and \$ means the lawful currency of the Commonwealth of Australia.
- (g) A reference to a person including an authority whether statutory or not:
 - (1) which is reconstituted, renamed or replaced;
 - (2) which ceases to exist; or
 - (3) whose powers or functions are transferred to another person,is a reference to the person which replaces it or which substantially succeeds to its powers or functions.
- (h) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this deed.
- (i) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (j) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (k) A reference to a party to a document includes that party's successors and permitted assignees.
- (l) A reference to an agreement other than this deed includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (m) No provision of this deed will be construed adversely to a party because that party was responsible for the preparation of this deed or that provision.

1.3 Interpretation of inclusive expressions

Specifying anything in this deed after the words 'include' or 'for example' or similar expressions does not limit what else is included.

1.4 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

1.5 Deed components

This deed includes any schedule.

1.6 Exercise of functions

This deed does not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Minister to exercise any of his functions pursuant to any applicable laws.

2 Term

- (a) This deed comes into force on the date the State accepts the Offer by providing a properly executed counterpart of this deed to TAB in accordance with the terms of the Deed Poll (**Commencement Date**).
- (b) Subject to clause 5.4(b), the State's obligations under this deed take effect on and from the date of the Deed Poll.
- (c) This deed continues until the end of the Exclusivity Period unless terminated earlier in accordance with clause 5.1(c) (**Term**).

3 TAB payments

3.1 Initial Amount

Subject to clause 4, TAB must pay the Initial Amount to the State, no later than three (3) Business Days after the Commencement Date.

3.2 Instalment Amount

- (a) Subject to clause 3.2(c) below, if Exclusivity exists as at 12:01 a.m. on 23 June 2023, and continues throughout the next 12 month period until 12:00 a.m. on 23 June 2024 (**Year 11**), TAB must pay the Instalment Amount to the State, no later than 20 Business Days after the end of Year 11.
- (b) Subject to clause 3.2(c) below, in respect of each Year after Year 11 until the last Year of the Term, if Exclusivity exists as at 12:01 a.m. on 23 June in that Year and continues throughout the next 12 months to the end of that Year, TAB must pay the Instalment Amount to the State, no later than 20 Business Days after the end of that Year.
- (c) If in any Year (from Year 11):
 - (1) the Scheme does not continue to have the full effect set out under paragraphs 1 and 2 of the definition of 'Scheme';
 - (2) there is an Adverse Regulatory Event; or
 - (3) a person other than TAB engages in any Relevant Conduct whether or not the Relevant Conduct is lawful or unlawful at the time it occurs (including where the Relevant Conduct is lawfully able to occur following a legal challenge),

(**Exclusivity Infringement**), TAB will be obliged to pay the Instalment Amount for that Year to the State only if that Exclusivity Infringement is remedied or ceases within 45 days of the State receiving notice of that Exclusivity Infringement from TAB and that Exclusivity Infringement does not recur in that Year.

3.3 Method of payment

- (a) TAB must pay the Initial Amount and any Instalment Amount into the following bank account:

Bank	Westpac
Branch	NSW Government Department, Level 1 Westpac Place, 275 Kent Street, Sydney, NSW 2000

Account Name	Department of Trade & Investment, Regional, Infrastructure & Services – Operating Account
BSB	032-001
Account Number	169146

- (b) TAB must forward a remittance advice to the Funds Officer on the same day the Initial Amount or Instalment Amount (as applicable) is paid to the State by:
- (1) mail to the Department of Trade & Investment, Locked Bag 21, Orange NSW, 2800; or
 - (2) email to orangeho.remittances@industry.nsw.gov.au.

4 Conditions

TAB is not obliged to pay the Initial Amount or any Instalment Amount unless and until:

- (a) the Exclusivity Amendment has been made and proclaimed to come into full force and effect; and
- (b) any other Ministerial decisions or actions required to give full force and effect to the Exclusivity Amendment have occurred,

and no other amendments or Ministerial action is taken which derogates from the Exclusivity Amendment having full force and effect, or detracts from any rights which TAB has as at the date of the Deed Poll.

5 Obligations of the State

5.1 Adverse Regulatory Events

- (a) Subject to clause 5.2, if during the Term an Adverse Regulatory Event occurs and TAB gives the State written notice of that Adverse Regulatory Event, the State must make the Refund Payment to TAB against the Initial Amount on or before the Due Payment Date (except that the Refund Payment is not payable if the Adverse Regulatory Event occurs as an unintended consequence of an action by the State or the Minister that is remediable, and that action is remedied and consequence rectified within 180 days of TAB giving the State the notice of that Adverse Regulatory Event.
- (b) The amount payable under clause 5.1(a) will be a debt due by the State to TAB.
- (c) The State may, by written notice to TAB, terminate this deed once it has paid TAB the full amount of the Refund Payment payable under clause 5.1(a) or the full amount otherwise payable under clause 8.2(c) or clause 8.2(d).

5.2 Exceptions to Adverse Regulatory Event

The parties acknowledge and agree that an Adverse Regulatory Event will not occur in any of the following circumstances:

- (a) if the relevant event or action is at the express written request or with the express written consent of TAB;

- (b) the licensing, permitting or other approval of On-Course Bookmakers taking bets on-course or off-course (other than at a Public Place) pursuant to an authority under the Racing Administration Act, including fixed odds and declared events betting;
- (c) the licensing, permitting or other approval of On-Course Bookmakers to provide on-course totalizator odds betting in accordance with section 88(2) of the Totalizator Act;
- (d) any change to bet types permitted in NSW by the Minister under the Racing Administration Act, which applies equally to all bookmakers and other wagering operators providing bookmaking or wagering services in NSW;
- (e) a court of final appeal holding that a provision of NSW Wagering Legislation, by itself or together with any actions of the Minister is invalid or unenforceable because it contravenes s.92 of the Constitution of the Commonwealth of Australia (**s.92 Event**) and:
 - (1) as a direct consequence, a provision of NSW Wagering Legislation is repealed or amended (but only to the extent of the s.92 Event); and/or
 - (2) as a direct consequence of the s.92 Event, or the repeal or amendment referred to in (1) above, the Minister makes an order or takes any action (provided that it is only to the extent that the order or action is reasonable, necessary and goes no further than addressing the s.92 Event or is reasonable and appropriate as a consequence of the repeal or amendment referred to in (1) above), which, without limitation, may include a grant by the Minister of a licence to a person other than TAB or a Racing Club under the Totalizator Act;
- (f) a court of final appeal holding that an equivalent legislative provision to a provision of NSW Wagering Legislation, by itself or together with relevant ministerial action in another State or Territory of Australia, is invalid or unenforceable because it contravenes s.92 of the Constitution of the Commonwealth of Australia (**s.92 Interstate Event**), in circumstances where there is no reasonable basis for considering that a different result would have occurred in relation to the equivalent NSW Wagering Legislation; and
 - (1) as a direct consequence, a provision of NSW Wagering Legislation is repealed or amended (but only to the extent of the s.92 Interstate Event); and/or
 - (2) as a direct consequence of the s.92 Interstate Event, or the repeal or amendment referred to in (1) above, the Minister makes an order or takes any action (provided that it is only to the extent that the order or action is reasonable, necessary and goes no further than addressing the s.92 Interstate Event or is reasonable and appropriate as a consequence of the repeal or amendment referred to in (1) above), which, without limitation, may include a grant by the Minister of a licence to a person other than TAB or a Racing Club under the Totalizator Act; or
- (g) call of the card betting (including at a Public Place to the extent customarily occurring as at the date of the Deed Poll) carried on by an On-Course Bookmaker in accordance with an approval of the Minister under section 9(3) of the Unlawful Gambling Act.

5.3 Interest

If the whole or any part of any amount payable under clause 5.1 is not paid on the Due Payment Date, then the outstanding amount will bear interest at the Interest Rate calculated daily from the Due Payment Date up to but not including the date on which the outstanding amount plus any interest due under this clause 5.3 has been paid.

5.4 Adverse Exclusivity Event

- (a) If an Adverse Exclusivity Event occurs and the State becomes aware of it, the State must take all reasonable steps available to it and within its power to prohibit, restrict or (subject to the State considering, acting reasonably, that there is a reasonably arguable view of the law to support its case) vigorously prosecute or defend the relevant Adverse Exclusivity Event, as the case may be (including subject to the State considering, acting reasonably, that there are reasonable prospects of success to support its case, prosecuting or defending all available appeals), and taking action to remove or seize equipment.
- (b) If an Adverse Exclusivity Event occurs on or after the date of the Deed Poll but before the Commencement Date, the State will not breach clause 5.4(a) if it has taken all reasonable steps in accordance with clause 5.4(a) on, or as soon as possible after, the Commencement Date.
- (c) TAB will, if it has legal standing to do so, join any proceedings commenced or defended by the State (or relevant Government Agency) in connection with an Adverse Exclusivity Event. If TAB cannot join the proceedings, TAB agrees to provide reasonable assistance to the State (or relevant Government Agency), in the defence or prosecution of any such third party action.
- (d) The obligations of the State under this clause 5.4 only apply to Adverse Exclusivity Events which arise during the first fifteen (15) years of the Exclusivity Period.

5.5 Acknowledgement

- (a) The State acknowledges that as at the Commencement Date, it is not aware of any Adverse Exclusivity Event or Adverse Regulatory Event which has occurred and is subsisting.
- (b) TAB acknowledges that as at the date of the Deed Poll, it is not aware of any Adverse Exclusivity Event or Adverse Regulatory Event which has occurred and is subsisting.

5.6 Goods and Services Tax

- (a) Any reference in this deed to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) To the extent that GST is payable in respect of any supply made by a party (**Supplier**) under or in connection with this deed, the consideration to be provided under this deed for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST payable. Provided that the Supplier has first issued a tax invoice, that additional amount is payable at the same time and same manner as the consideration to which it relates.
- (c) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this deed, the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under clause 5.6(b), the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- (d) If one of the parties to this deed is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this deed, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss,

cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with clause 5.6(b).

5.7 Consultation

- (a) In the event that NSW Wagering Legislation is proposed to be amended or repealed (**Legislative Change**) in the circumstances contemplated in clause 5.2(e)(1), the State will consult with TAB in relation to the nature of the Legislative Change upon, or, if practicable, before, the Legislative Change is introduced to the NSW Parliament, provided that nothing in this clause provides or implies that TAB has any right to cause or influence the manner in which Legislative Change may be effected.
- (b) In the event that the Minister makes an order or takes any action (**Ministerial Action**) in the circumstances contemplated in clause 5.2(e)(2), the Minister will consult with TAB in relation to the nature of the Ministerial Action before taking that Ministerial Action, provided that nothing in this clause provides or implies that TAB has any right to cause or influence the manner in which the Ministerial Action may be taken.

6 Warranties

- (a) Each party represents and warrants that it has the power to execute, deliver and perform its obligations under this deed and all necessary action has been undertaken to authorise such execution, delivery, and performance.
- (b) Each party represents and warrants that this deed sets out that party's valid and binding obligations enforceable against it in accordance with its terms subject to the availability of equitable remedies.
- (c) The execution, delivery and performance of this deed will not contravene any law to which the State is subject as at the date of this deed.

7 Notice

- (a) Any notice, direction or other communication given under this deed must be in writing and may be given by hand, post or facsimile to the party's address for service of notices set out in Schedule 2.
- (b) A notice, direction or other communication is taken to have been received:
 - (1) if delivered by hand to the receiver, at the time of delivery;
 - (2) if posted in a postage paid envelope addressed to the receiver, 3 Business Days after the date of posting;
 - (3) if given by facsimile, on receipt by the sender of a confirmation message from the receiver or confirmation answerback code of the receiver, except where the receiver notifies the sender of an incomplete transmission.

8 General

8.1 Governing law and jurisdiction

- (a) This deed is governed by the law in force in New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

8.2 Invalidity and enforceability

- (a) Subject to clause 8.2(b), if any provision of this deed is invalid, prohibited, void, voidable, illegal or unenforceable, then that provision is severed from this deed without affecting the continued operation of this deed to the extent that the severance of that provision does not materially alter the intended effect and operation of this deed.
- (b) If all or any part of clause 5.1 is invalid, prohibited, void, voidable, illegal or unenforceable, then that clause is not severed from this deed and clause 8.2(c), 8.2(d), 8.2(e) and 8.2(f) will apply.
- (c) If the State alleges that all or any part of this deed is invalid, prohibited, void, voidable, illegal or unenforceable, the State must pay TAB the amount set out in the Refund Payment Table for the year in which that allegation is made, within 15 Business Days after the date that allegation is made.
- (d) Subject to clause 8.2(e), if a court of competent jurisdiction declares that this deed is invalid, prohibited, void, voidable, illegal or unenforceable (**Declaration**), the State must pay TAB the amount set out in the Refund Payment Table for the year in which a Declaration occurs, within 30 Business Days after the date of the Declaration.
- (e) The State's obligation to pay TAB under clause 8.2(d) will not apply if, within 30 Business Days after the date of the Declaration, the parties have entered into an enforceable and binding agreement that puts TAB in the same position it would have been in from the date of the Declaration, had this deed remained on foot and enforceable.
- (f) If the whole or any part of any amount payable under clause 8.2(c) or 8.2(d) is not paid on the date due under that clause, then the outstanding amount will bear interest at the Interest Rate calculated daily from the date it is due up to but not including the date on which the outstanding amount plus any interest due under this clause 8.2(f) has been paid.

8.3 Variation

A variation of any term of this deed must be in writing and signed by the parties.

8.4 Assignment of rights

- (a) Rights arising out of or under this deed are not assignable by a party without the prior written consent of the other party.
- (b) A breach of clause 8.4(a) by a party entitles the other party to terminate this deed.

- (c) Clause 8.4(b) does not affect the construction of any other part of this deed.

8.5 Further action to be taken at each party's own expense

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this deed and the transactions contemplated by it.

8.6 Entire agreement

This deed states all the express terms agreed by the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

8.7 Counterparts

This deed may be executed in any number of counterparts.

9 Dispute Resolution

9.1 Dispute resolution process

- (a) A party must not commence or maintain any action or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute or difference as to any matter relating to or arising under this deed (**Dispute**) which includes disagreement as to whether an Adverse Regulatory Event or Adverse Exclusivity Event has occurred, unless it has complied with this clause.
- (b) A party claiming that a Dispute has arisen must notify the other party giving details of the Dispute.
- (c) Within 5 Business Days after a notice is given under clause 9.1(b), each party must nominate in writing a representative authorised to settle the Dispute on its behalf (**Representative**).
- (d) During the period of 10 Business Days after a notice is given under clause 9.1(b) (or any longer period agreed between the parties), each party must ensure that its Representative uses his or her best endeavours, with the other Representative to:
- (1) resolve the Dispute; or
 - (2) agree on a process to resolve the Dispute without court proceedings (eg mediation, conciliation or independent expert determination) including:
 - (A) the involvement of any dispute resolution organisation;
 - (B) the selection and payment of a third party to be engaged by the parties to assist in negotiating a resolution of the Dispute without making a decision that is binding on a party unless that party's Representative has so agreed in writing;
 - (C) any procedural rules;
 - (D) the timetable, including any exchange of relevant information and documents; and
 - (E) the place where meetings will be held.
- (e) If, by the expiry of the period of 10 Business Days specified in clause 9.1(d):

- (1) the Dispute has not been resolved; and
- (2) no process has been agreed under clause 9.1(d),

then:

- (3) clause 9.1(a) will no longer operate in relation to the Dispute;
- (4) a party that has complied with clauses 9.1(b) to 9.1(d) may terminate the dispute resolution process referred to in clause 9.1(d) by giving notice to the other party.

Schedule 1

Exclusivity Amendment

Amendments to the Totalizator Act, together with any action of the Minister, which provide for:

- (a) a further period of twenty years (**Further Exclusivity Period**) commencing on 23 June 2013 and ending at 12:00 a.m. on 23 June 2033, during which only TAB can be the holder of a licence to conduct Off-Course Totalizators in NSW and only TAB and the Racing Clubs can be the holders of a licence to conduct On-Course Totalizators in NSW;
- (b) empowering the NSW Government to require an amount to be paid in connection with the Further Exclusivity Period referred to in (a) above;
- (c) empowering the Minister to enter into this deed;
- (d) approving of the entering into this deed between TAB and the State and giving effect to this deed pursuant to section 17A of the Totalizator Act;
- (e) ensuring that section 107 of the Totalizator Act does not preclude any claim or other action against the State under this deed; and
- (f) ensuring that the references to the 'exclusivity period' under TAB's Wagering Licence and On-Course Totalizator licence include the Further Exclusivity Period.

Schedule 2

Notice details

TAB Limited

Address	495 Harris Street Ultimo NSW 2007 AUSTRALIA
Attention	CEO and Managing Director, copied to Group General Counsel.
Phone	02 9218 1484
Fax	02 9282 9524

**The Honourable George Souris in his capacity as Minister for
Tourism, Major Events, Hospitality and Racing of the State of New
South Wales for and on behalf of the Crown in the right of the
State of New South Wales**

Address	323 Castlereagh Street, Sydney NSW 2000 GPO Box 7060 Sydney NSW 2001
Attention	Executive Director, Office of Liquor Gaming and Racing, NSW Trade & Investment
Phone	02 9995 0999
Fax	02 9995 0644

Schedule 3

1. Refund Payment

The Refund Payment is the amount in the Refund Payment Table below relating to the year of the Term in which the Adverse Regulatory Event occurs.

2. Refund Payment Table

Note, for the purposes of this table:

Year 1 means the 12 month period commencing on 23 June 2013, and ending at 12.00 a.m. 23 June 2014;

Year 2 means the 12 month period commencing at 12.01 a.m. on 23 June 2014, and ending at 12.00 a.m. on 23 June 2015;



and so on until the last Year which will commence at 12.01 a.m. on 23 June of that Year and end on the last day of the Term.

Year	Payment amount (\$)	Year	Payment amount (\$)
1	\$50m	11	\$25m
2	\$47.5m	12	\$22.5m
3	\$45m	13	\$20m
4	\$42.5m	14	\$17.5m
5	\$40m	15	\$15m
6	\$37.5m	16	\$12.5m
7	\$35m	17	\$10m
8	\$32.5m	18	\$7.5m
9	\$30m	19	\$5m
10	\$27.5m	20	\$2.5m



Signing page

Executed as a deed

Signed sealed and delivered for
TAB Limited
by its attorneys

sign here ▶		
	Attorney	Attorney
print name	DAVID ATTENBOROUGH	DOUGLAS JOHN FREEMANTLE

in the presence of

sign here ▶		
	Witness	Witness
print name	JOANNE LOUISE MADSEN	JOANNE LOUISE MADSEN

Signed sealed and delivered by
**The Honourable George Souris in his capacity as Minister for Tourism,
Major Events, Hospitality and Racing of the State of New South Wales for
and on behalf of the Crown in the right of the State of New South Wales**

sign here ▶ _____

print name _____

in the presence of

sign here ▶ _____
Witness

print name _____