

Investigation Report – Tabcorp Holdings Limited

| Summary | |
|---------------------------|--|
| Entity | Tabcorp Holdings Limited (TAB) |
| Australian Company Number | 063 780 709 |
| Relevant legislation | <i>Interactive Gambling Act 2001</i> |
| Type of activity | Part 7B – National Self-Exclusion Register |
| Findings | 2 contraventions of subsection 61MA(2) [Opening a wagering account for a registered individual] 47 contraventions of subsection 61KA(3) [Provision of licensed interactive wagering services to registered individuals] |

Background

1. On 13 December 2024, the ACMA commenced an investigation into TAB's compliance with the *Interactive Gambling Act 2001* (IGA) following complaints from 2 consumers who alleged that they were able to open accounts and place bets while registered with BetStop – the National Self-Exclusion Register (**NSER**).
2. On 13 December 2024, under paragraph 173(b) of the *Broadcasting Services Act 1992*, the ACMA gave TAB a Notice requiring it to provide information pursuant to the investigation (the **Notice**).
3. TAB made 3 submissions:
 - > 24 January 2025 (Submission 1);
 - > 21 February 2025 (Submission 2); and
 - > 2 April 2025 (Submission 3)
4. The ACMA's findings are based on:
 - > Submissions 1 to 3 from TAB; and
 - > records from the NSER which demonstrate when individuals became registered individuals and when TAB made requests to the operator of the NSER (the Register operator), including when the operator informed TAB that the individuals were registered individuals.
5. The reasons for the ACMA's findings, including the key elements which establish the contraventions are set out below.

Relevant legislative provisions

6. Obligations related to the NSER are set out in Part 7B of the IGA. The provisions relevant to this investigation are provided at **Attachment A**. Unless otherwise

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specified all references to provisions within legislation in the report are a reference to provisions within the IGA.

Findings

Finding 1 – Breach: Licensed interactive wagering service providers must not open accounts for registered individuals (subsection 61MA(2))

Regulatory obligation

7. A licensed interactive wagering services provider (IWP) must not open a licensed interactive wagering service account for a registered individual.
8. Section 61NC of the IGA provides that an IWP can check the registration status of an individual at any time of night or day by making a request to the Register operator (a request). So that requests can be validly made, the Register operator provided IWPs with technical specifications for making such requests, including the data about customers to be included in each request and the format of such data.
9. The act of submitting a request to the Register operator under section 61NC before opening a new wagering account for an individual alone is unlikely to satisfy a test of reasonable precautions and due diligence.¹ In this context, all the relevant circumstances and actions an IWP took (or it would have been reasonable for it to take) would need to be considered.
10. On 19 March 2024, the ACMA provided a compliance update to reinforce the needs for IWP to have robust processes in place to prevent registered individuals from opening accounts.² The ACMA set out the expectation that an IWP should not solely rely on a positive match from the Register operator and provided the example that this may involve applying flags to people who have been identified as self-excluded so they would be prevented from opening an account if they attempted to register with altered details.

Is TAB a licensed interactive wagering service provider for the purposes of the IGA?

11. TAB is licensed individually by each jurisdiction except for Western Australia to provide licensed interactive wagering services in Australia. For this reason, TAB is included on the ACMA's Register of IWPs maintained under section 68 of the IGA.³
12. It is not disputed that TAB is an IWP for the purposes of the IGA, and the obligations under Part 7B apply.

Did TAB open a licensed interactive wagering account for a registered individual?

Complainant 1

13. NSER records show that Complainant 1 became a registered individual on 29 August 2023.
14. In Submission 1, TAB submitted that Complainant 1 had 3 previous accounts with TAB that were closed before the complainant became a registered individual. Submission 1

¹ <https://www.acma.gov.au/compliance-considerations>

² [Compliance update – 19 March 2024](#)

³ This register is available on the ACMA's website: <https://www.acma.gov.au/check-if-gambling-operator-legal>

also stated that Account 4 (the earliest account) was closed due to self-exclusion before the launch of the NSER.

15. In Submissions 1 and 2, TAB confirmed that it opened a new licensed interactive wagering services account for Complainant 1 on 1 June 2024 at 1:37pm (Account 1), whilst they were a registered individual and after it verified the complainant's identity. Evidence from NSER records shows that TAB submitted a request at the time this account was opened. In response to this request, the Register operator returned a negative response as the information provided by TAB did not match the complainant's NSER record. TAB submitted the licensed interactive wagering services account was opened based on the response from the Register operator that Complainant 1 was not a registered individual
16. In Submission 1, TAB detailed the controls it had in place to prevent customers creating duplicate accounts or accounts with similar customer details as existing accounts. TAB provided details of the measures.
17. In Submission 1, TAB noted that an older account of the complainant had not been 'tagged' correctly in TAB's system. As such, TAB did not identify the new account as a duplicate account. In Submission 3, TAB stated that "should this control have been functioning as intended, Customer 1 would not have been able to open a TAB wagering account".
18. TAB submitted that it took reasonable precautions and exercised due diligence to avoid contravening subsection 61MA(2) by opening a licensed interactive wagering services account for Complainant 1. To support this, TAB provided evidence of the customer verification it undertook to assist it to have correct information about the customer to check against the NSER.
19. The ACMA has considered TAB's submissions. While TAB provided evidence that it verified the information provided by the complainant and used this information to check the exclusion status of the customer, TAB has submitted that its internal control systems did not function as intended. By having internal processes and systems to prevent excluded persons from opening multiple accounts, TAB demonstrated it was aware that excluded customers may attempt to open new wagering accounts to avoid their exclusion. Because of this, TAB needed to have effective systems and processes in place to prevent this from occurring. TAB submitted that these systems and processes did not work as intended and, if they had, Complainant 1 would not have been able to open a new licensed interactive wagering services account.
20. Based on these failures, the ACMA does not accept that TAB took reasonable precautions or exercised due diligence to avoid opening a licensed interactive wagering services account for Complainant 1 as the controls were ineffective and did not function as intended.

Complainant 2

21. NSER records show that Complainant 2 became a registered individual on 27 December 2023.
22. In Submission 1, TAB submitted that Complainant 2 had two previous accounts with TAB that were closed before the complainant became a registered individual.

Submission 1 stated that one of these accounts (Account 2) was closed for responsible gambling reasons following the complainant completing a temporary exclusion.

23. NSER records shows that, in response to requests by TAB, the Register operator informed TAB that Complainant 2 was a registered individual at:
- > 11:00am on 24 January 2024 (the First Request)
 - > 11:00am on 25 January 2024 (the Second Request).
24. The ACMA is of the view that TAB knew Complainant 2 was a registered individual from 11:00am on 24 January 2024.
25. In Submissions 1 and 2, TAB confirmed that it opened a new licensed interactive wagering services account for Complainant 2 on 18 August 2024 at 3:24pm while they were a registered individual (Account 1).
26. Evidence from NSER shows that TAB submitted 2 requests to the Register operator concerning Complainant 2 around this time:
- > The Register operator advised TAB that Complainant 2 was a registered individual on 18 August 2024 at 3:23pm – one minute prior to the account being opened (the Third Request). The Third Request used by TAB included substantially similar customer details to those held by TAB for Complainant 2's earlier accounts with TAB.
 - > Another request was made at 3:24pm on the same day (1 minute later and corresponding with the time TAB submits that the account was opened) (the Fourth Request). The Register operator returned a negative response as this information no longer matched the complainant's NSER record.
27. TAB submitted the licensed interactive wagering services account was opened on the basis of the Fourth Request returning a response from the Register operator that Complainant 2 was not a registered individual.
28. TAB submitted that it was unaware that Complainant 2 was a registered individual until 20 December 2024, when advised by the ACMA as part of this investigation. Evidence from the NSER records demonstrate that TAB had been informed that Complainant 2 was a registered individual 3 times prior to this.
29. In Submission 1, TAB further noted that its internal controls did not identify that the new account belonged to the same individual who had previously held TAB accounts referenced in paragraph 22 or who had attempted to open an account on 18 August 2024 at 3:23pm.
30. TAB submitted that its controls were designed to ensure that it could identify links between accounts for the same person. TAB submitted that "operating as intended, this control should have identified the duplicate account related to Customer 2...". TAB also submitted that this control was not configured to prevent situations like that described in paragraph 26.
31. TAB submitted that it took reasonable precautions and exercised due diligence to avoid contravening subsection 61MA(2) by opening a licensed interactive wagering

services account for Complainant 1. To support this, TAB provided evidence of the customer verification it undertook to assist it to have correct information about the customer to check against the NSER.

32. The ACMA has considered TAB's submissions. While TAB provided evidence that it verified the information provided by the complainant and used this information to check the exclusion status of the customer, TAB has submitted that its internal control systems did not function as intended and were not configured to prevent Complainant 2 from opening an account after being identified as excluded. 1 minute after being advised that Complainant 2 was a registered individual, TAB proceeded to open an account.
33. By having internal processes and systems to prevent excluded persons from opening multiple accounts, TAB demonstrated it was aware that excluded customers may attempt to open new wagering accounts to avoid their exclusion. Because of this, TAB needed to have effective systems and processes in place to prevent this from occurring. TAB submitted that these systems and processes did not work as intended and, if they had, Complainant 2 would not have been able to open a new licensed interactive wagering services account.
34. Based on these failures, the ACMA does not accept that TAB took reasonable precautions or exercised due diligence to avoid opening a licensed interactive wagering services account for Complainant 2 as the controls were ineffective and did not function as intended.

Summary

35. The ACMA finds that TAB contravened subsection 61MA(2) on 2 occasions by opening a licensed interactive wagering services account for:
 - > Complainant 1 on 1 June 2024
 - > Complainant 2 on 18 August 2024.

Finding 2 - Breach: Prohibition of the provision of licensed interactive wagering services to registered individuals (subsection 61KA(3))

Regulatory obligation

36. An IWP must not provide licensed interactive wagering services to a registered individual. Subsection 61KA(4) provides that a person commits a separate contravention of subsection 3 in respect of each day during which the contravention occurs:
37. Licensed interactive wagering service is defined by section 61GB as a regulated interactive gambling service (defined by section 8E) that:
 - a. is a wagering service (as defined in section 4); and
 - b. has an Australian customer link (as defined in section 8); and
 - c. is not provided in contravention of subsection 15AA(3).

Did TAB provide licensed interactive wagering services to registered individuals?

Complainant 1

38. In Submission 1, TAB provided evidence that it provided Complainant 1 with licensed interactive wagering services on 1 day, 1 June 2024. During this time, the complainant placed bets.

Complainant 2

39. In Submission 1, TAB provided evidence that it provided Complainant 2 with licensed interactive wagering services on 46 days between 18 August and 23 October 2024. During this time, the complainant placed bets.

Summary

40. In Submission 3, TAB submitted that it took reasonable precautions and exercised due diligence to avoid providing the complainants with wagering services in contravention of section 61KA.

41. Finding 1 details the ACMA's findings related to TAB opening licensed interactive wagering services accounts for Complainants 1 and 2. Consistent with Submission 3, if TAB's internal controls had operated as intended, Complainants 1 and 2 would not have been able to open a new wagering account. It follows that licensed interactive wagering services would not have been provided to the complainants if TAB's internal controls had operated as intended and the new accounts had not been opened.

42. As such, the failure of these controls contributed to why TAB provided licensed interactive wagering services to the complainants. While TAB has made claims that it took reasonable precautions and exercised due diligence, including because it checked the exclusion status of the complainants, the ACMA has not accepted that TAB took reasonable precautions and exercised due diligence in these cases as its internal controls and processes did not operate as intended. These failures resulted in the complainants being able to open wagering accounts and access wagering services.

43. The ACMA has found that TAB contravened subsection 61KA(2) of 47 occasions by providing licensed interactive wagering services accounts to registered individuals between 1 June and 23 October 2024.

Conclusions

44. The ACMA finds that TAB:

- a. Has contravened 61MA(2) by opening 2 licensed interactive wagering service accounts for registered individuals.
- b. Has contravened 61KA(3) on 47 occasions by providing licensed interactive wagering services to registered individuals on 47 days.

Attachments

Attachment A – Extract of relevant provisions

Key provisions of the IGA

Interactive Gambling Act 2001 Section 61KA Prohibition of the provision of licensed interactive wagering services to registered individuals

Offence

(1) A person commits an offence if:

- (a) the person is a licensed interactive wagering service provider; and
- (b) the person provides a licensed interactive wagering service to an individual; and
- (c) the individual is a registered individual.

Penalty: 500 penalty units.

(2) A person who contravenes subsection (1) commits a separate offence in respect of each day (including a day of conviction for the offence or any later day) during which the contravention continues.

Civil penalty provision

(3) A licensed interactive wagering service provider must not provide a licensed interactive wagering service to a registered individual.

Civil penalty: 750 penalty units.

(4) A person who contravenes subsection (3) commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant civil penalty order is made or any later day).

Exception

(5) Subsections (1) and (3) do not apply if the licensed interactive wagering service provider took reasonable precautions, and exercised due diligence, to avoid the contravention.

Note 1: The Register operator must, if requested to do so by a licensed interactive wagering service provider, inform the provider whether an individual is a registered individual (see section 61NC).

Note 2: In a prosecution for an offence against subsection (1), a defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Note 3: In proceedings for a civil penalty order for a contravention of subsection (3), a defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

Offence—extended geographical jurisdiction

(6) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (1).

Interactive Gambling Act 2001 61MA Licensed interactive wagering service account must not be opened for a registered individual

Offence

(1) A person commits an offence if:

- (a) the person is a licensed interactive wagering service provider; and
- (b) the person opens a licensed interactive wagering service account for an individual; and
- (c) the individual is a registered individual.

Penalty: 120 penalty units.

Civil penalty provision

(2) A licensed interactive wagering service provider must not open a licensed interactive wagering service account for a registered individual.

Civil penalty: 180 penalty units.

Exception

(3) Subsections (1) and (2) do not apply if the licensed interactive wagering service provider took reasonable precautions, and exercised due diligence, to avoid the contravention.

Note 1: The Register operator must, if requested to do so by a licensed interactive wagering service provider, inform the provider whether an individual is a registered individual (see section 61NC).

Note 2: In a prosecution for an offence against subsection (1), a defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Note 3: In proceedings for a civil penalty order for a contravention of subsection (2), a defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

Offence—extended geographical jurisdiction

(4) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (1).