

# Decision and reasons for decision

## Letter of censure

In the matter of disciplinary action against Tabcorp Wagering (Vic) Pty Ltd under section 4.3A.27 of the *Gambling Regulation Act 2003* (Vic) (**the Act**) for two contraventions of section 4.2.3(2), where:

- a. **‘Unapproved Software 1’**: Between 5 July 2022 and 12 September 2022, Tabcorp caused or permitted changes to software that was not approved by the Commission in contravention of section 4.2.3(2) of the Act; and
- b. **‘Unapproved Software 2’**: Between 6 August 2022 and 15 September 2022, Tabcorp caused or permitted changes to software that was not approved by the Commission in contravention of section 4.2.3(2) of the Act.

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**Commission:** Fran Thorn, Chair  
Andrew Scott, Deputy Chair  
Ron Ben-David, Deputy Chair  
Claire Miller, Commissioner  
Chris O’Neill, Commissioner

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**Date of Decision and reasons:** 23 November 2023

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**Decision:** For the reasons attached to this decision, the Victorian Gambling and Casino Control Commission has determined:

- a. To take disciplinary action against Tabcorp Wagering (Vic) Pty Ltd under section 4.3A.27 of the *Gambling Regulation Act 2003* (Vic) for each instance that unapproved software operated in the Wagering and Betting System; and
- b. That, for each instance unapproved software operated in the Wagering and Betting System, the appropriate disciplinary action to take is to issue a letter of censure to Tabcorp Wagering (Vic) Pty Ltd; and
- c. Separately, give a direction to Tabcorp Wagering (Vic) Pty Ltd under section 4.3A.39B of the *Gambling Regulation Act 2003* (Vic) requiring Tabcorp to engage an independent expert to provide an opinion on the adequacy of its internal controls related to software deployment and monitoring in the Wagering and Betting System. The Direction will also require Tabcorp to provide an implementation plan to the Commission in response to the report of the independent expert.

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**Signed:**



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Fran Thorn

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Chair

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## Introduction

1. This is the Victorian Gambling and Casino Control Commission's (**Commission**) determination of whether to take disciplinary action against Tabcorp Wagering (Vic) Pty Ltd (**Tabcorp**) under section 4.3A.27 of the *Gambling Regulation Act 2003* (Vic) (**the Act**) for causing or permitting changes to software that was not approved by the Commission on two occasions.
2. On 2 August 2023 the Commission issued Tabcorp two separate notices to show cause (**Notices**) why disciplinary action should not be taken on the grounds specified in the Notices.
3. On 30 August 2023, Tabcorp provided written responses to each of the Notices. Tabcorp did not request a hearing for either Notice.

## Summary

4. The Commission has determined to issue a letter of censure to Tabcorp for each instance that it caused or permitted unapproved software to operate in the Wagering and Betting System (**WBS**) without prior approval by the Commission.
5. In arriving at this decision, the Commission considered the written submissions and accompanying documents that Tabcorp provided in response to each of the Notices.
6. As well as setting out the reasons for the Commission's decision, this document constitutes the letter of censure in each disciplinary action for Unapproved Software 1 and Unapproved Software 2.
7. Separately, the Commission has also determined to give a Direction to Tabcorp under section 4.3A.39B of the Act. This Direction requires Tabcorp to engage an independent expert to provide an opinion on the adequacy of its internal controls related to software deployment and monitoring in the WBS. The Direction also requires Tabcorp to provide an implementation plan to the Commission in response to the report of the independent expert.

## Background

8. This disciplinary action arises because Tabcorp caused or permitted unapproved software to operate within the WBS without the prior approval of the Commission on two occasions, in contravention of section 4.2.3(2) of the Act, which requires:
 

*(2) A wagering and betting licensee or the holder of a permit must not make, or cause or permit to be made, any change in any instrument, contrivance, hardware, software or other equipment approved by the Commission under subsection (1) unless the change has been approved by the Commission.*
9. The WBS is the computerised system and environment that Tabcorp is permitted to operate in when performing its functions under the Wagering and Betting Licence. The Commission sets high systems integrity standards for the WBS. Tabcorp's compliance with these standards is integral to the integrity of the WBS and its general wagering offering. The Commission has a legitimate interest in ensuring, for reasons of both integrity and security, that only software that has been approved by the Commission is operational within the WBS.
10. The Commission relies on the use of the approved software in the WBS to effectively monitor and oversee Tabcorp's activities. When software changes are made without approval by the Commission, the Commission loses necessary oversight over the WBS system, and its integrity may be compromised.
11. At the core of this disciplinary action is Tabcorp's failure to ensure that only software that had been approved by the Commission was operating within the WBS.

### **Unapproved Software 1**

12. On 8 August 2022, Tabcorp provided an initial significant event notification to the Commission that the baseline hash for the production Raceday Control application differed from the baseline hash that was approved by the Commission. A significant event report was provided to the Commission on 18 August 2023.
13. Information provided by Tabcorp revealed that:
  - a. Between 5 July 2022 and 12 September 2022, unapproved software was live in the WBS.
  - b. The unapproved software went undetected by Tabcorp for a period of 44 days but remained active as unapproved software for 69 days.
  - c. The unapproved software was not automatically rolled back when detected.
  - d. Tabcorp sought the approval of the Commission for the software on 2 September 2022, which was subsequently granted on 12 September 2022.
14. On 2 August 2023 the Commission issued a show cause notice to Tabcorp under section 4.3A.27(1) (**Show Cause Notice 1**) providing them the opportunity to show cause within 28 days why disciplinary action should not be taken under section 4.3A.27(d)(iii) for a breach of section 4.2.3(2).
15. On 30 August 2023, Tabcorp provided a written submission with accompanying documents to the Commission in response to Show Cause Notice 1.
16. In their written submission in response to Show Cause Notice 1, Tabcorp accepted that the incident gave rise to a contravention of the Act.

### **Unapproved Software 2**

17. On 15 September 2022, Tabcorp provided an initial significant event notification to the Commission that the Wagering Informational Feed Transmitter for Longitude (**WIFT-LOCS**) software component differed from the WIFT-LOCS baseline software component that had been approved by the Commission.
18. On the same date, Tabcorp wrote to the Commission and confirmed that the unapproved WIFT-LOCS software component had been withdrawn from the WBS and replaced with the last version approved by the Commission.
19. A significant event report was provided to the Commission on 27 September 2022.
20. Information provided by Tabcorp revealed that:
  - a. Between 6 August 2022 and 15 September 2022, unapproved software was live in the WBS.
  - b. The unapproved software was undetected by Tabcorp for a period of 40 days.
  - c. Upon detection, Tabcorp immediately acted and rolled back the software to the last version approved by the Commission.
21. On 2 August 2023 the Commission issued a show cause notice to Tabcorp under section 4.3A.27(1) (**Show Cause Notice 2**) providing them the opportunity to show cause within 28 days why disciplinary action should not be taken under section 4.3A.27(d)(iii) for a breach of section 4.2.3(2).
22. On 30 August 2023, Tabcorp provided a written submission with accompanying documents to the Commission in response to Show Cause Notice 2.
23. In their written submission in response to Show Cause Notice 2, Tabcorp accepted that the incident gave rise to a contravention of the Act.

## Concerns in relation to internal controls

24. In the Notices, the Commission stated its concern that the breaches demonstrated deficiencies in Tabcorp's internal controls for software approvals, software release management, detecting use of unauthorised software and promptly rectifying instances of unapproved software in the WBS. (**Commission Control Concerns**).
25. In summary, Tabcorp has submitted that it has updated or will update its procedures, encompassing both pre- and post-deployment stages of software processes, to validate the approval status of software within the WBS (**Change Control Procedures**).<sup>1</sup>
26. However, the Commission has remaining concerns about whether the Change Control Procedures will adequately deal with the matters giving rise to these contraventions. This is due to a lack of evidence of systemised control procedures to reduce the potential for such contraventions to occur. As stated previously, the Commission intends to issue a separate direction to Tabcorp in relation to its software internal control procedures.

## Contraventions

27. In arriving at this decision, the Commission has considered the written submissions of Tabcorp in response to each of the Notices, as well as each of the accompanying documents that were provided on 30 August 2023.
28. The Commission has concluded that Tabcorp has engaged in the following contraventions:
- a. **'Unapproved Software 1'**: Between 5 July 2022 and 12 September 2022, Tabcorp caused or permitted changes to software that was not approved by the Commission in contravention of section 4.2.3(2) of the Act; and
  - b. **'Unapproved Software 2'**: Between 6 August 2022 and 15 September 2022, Tabcorp caused or permitted changes to software that was not approved by the Commission in contravention of section 4.2.3(2) of the Act.
29. The Commission notes that Tabcorp accepted that each incident gave rise to a contravention of section 4.2.3(2) of the Act.<sup>2</sup>

## What is the appropriate sanction?

30. Section 4.3A.27(3) of the Act provides that:

*After considering any submissions made under subsection (2), the Commission -*

- (a) *may take either of both of the following disciplinary actions -*
  - (i) *issue a letter of censure of the licensee or operator;*
  - (ii) *fine the licensee or operator an amount not exceeding an amount that is 50 000 times the value of a penalty unit fixed by the Treasurer under section 5(3) of the Monetary Units Act 2004 (Vic); or*
- (b) *may make a written report to the Minister recommending that the Minister take disciplinary action against the licensee under section 4.3A.28.*

<sup>1</sup> Tabcorp written submission to Show Cause Notice 1, at 3 under heading 'Immediate steps taken by Tabcorp following identification of the issue' and at 4, and Tabcorp written submission to Show Cause Notice 2 at 7.1 and 7.2.

<sup>2</sup> See at 4 'Enforcement Action' in written response to Show Cause Notice 1 (ref CD/23/8287) and at 9 'Disciplinary Action' in written response to Show Cause Notice 2 (ref CD/23/8288).

31. Tabcorp submitted that if disciplinary action was deemed necessary by the Commission, that it should go no further than a letter of censure, stating that a fine would be excessive for the contraventions.
32. The Commission does not consider it appropriate to take no disciplinary action.
33. The Commission has determined that a letter of censure is a proportionate outcome, and that it need not go further to impose a fine.
34. The findings that underpin that conclusion are as follows:
  - a. Licensees in the gambling industry are required to adhere to strict regulatory requirements for any software or internal systems that impact their regulated product offering. Breaching these requirements undermines regulatory compliance, which is essential for maintaining the integrity of the gambling industry. While the Commission accepts that Tabcorp did not intentionally contravene the Act, regulators need to maintain trust in the industry, and unregulated software changes can erode that trust.
  - b. The Commission also accepts that there is no evidence of actual loss to consumers or market facing impacts arising from these breaches, or that any profit was gained from the contraventions. However, the Commission considers it was simply fortuitous that on these occasions there was no actual loss to consumers or market impact, or that Unapproved Software 1 was ultimately granted Commission approval. Unapproved software has the potential to cause greater impacts to the reliability, integrity and security of the WBS.
  - c. The Commission expects Tabcorp to have appropriate technological systems and controls to ensure compliance with the law. The imposition of a letter of censure and the Direction will serve as a reminder to Tabcorp that the Commission will enforce integrity requirements of the WBS.
  - d. The duration that the unapproved software remained undetected (i.e., a period of 44 days and 40 days respectively) is of concern. Such a length of time, in the Commission's view, weighs in favour of taking some form of disciplinary action against Tabcorp.
  - e. Tabcorp has admitted each of the contraventions.
  - f. Tabcorp is not to be afforded leniency on the basis that this is its first disciplinary action taken against them. There have been five (5) disciplinary actions taken against Tabcorp in Victoria since 2016, with outcomes ranging from a letter of censure to a fine of \$1 million dollars.
  - g. Tabcorp took some steps to enhance its Change Control Procedures soon after the contraventions occurred.
  - h. Disciplinary action is necessary to provide specific and general deterrence in relation to contraventions concerning the integrity of the WBS system.
  - i. A letter of censure is appropriate to denounce the non-compliance that occurred and create a formal record that disciplinary action has been taken for this type of conduct.