

**Submission to the Department of Infrastructure,
Transport, Regional Development and Communications**

Response to captioning rules for subscription television

Monday, November 15, 2021

Tabcorp Holdings Ltd (**Tabcorp**) appreciates the opportunity to make a submission on the captioning rules for subscription television related to the issues paper, 'A Captioning Scheme for Subscription Television (**Issues Paper**) and the recently passed Broadcasting Legislation Amendment (2021 Measures No. 1) Bill 2021 (**the Bill**).

Tabcorp supports the commitment of the Commonwealth to ensure all Australians have access to media services, including television services with captioning, for the estimated 1 in 6 Australians who experience some level of hearing loss.¹

About Tabcorp

Tabcorp is an ASX 50 diversified gambling entertainment group.

Tabcorp has an Australian history dating back to 1881, working with governments and the community to responsibly deliver gambling products. A significant portion of our revenues are re-distributed to governments and the community, licensed venue partners including pubs and clubs, lottery agents and the racing industry.

Tabcorp operates wagering (both totalisator and fixed odds) and lotteries in all Australian states and territories (excluding WA), Keno in Qld, NSW, Victoria and the ACT, and a range of gaming services including monitoring, in all states and territories. Through its operations, Tabcorp made an economic contribution of over \$4.7 billion dollars last year – this included more than \$1.8 billion in state taxes and over \$500 million in GST, over \$1 billion in support to the racing industry and more than \$740 million in commissions to pubs, clubs, wagering outlets and lottery retailers – many of which are run as small and family businesses. Tabcorp employs more than 4,000 people and the sale of its supports around 500,000 jobs across the country.

Tabcorp is recognised by the Commonwealth Government as one of the country's leading promoters of workplace diversity and gender equality – the only gambling company to receive this recognition from the Government.

Broadcasting operations

In addition to lottery, wagering and gaming services businesses, Tabcorp operates a significant media and broadcast business through its subsidiary, Sky Channel Pty Ltd (**Sky**), under brand names including Sky Racing and Sky Racing World.

Sky Racing is a leader in multivenue, multi-channel racing and sports broadcasting in Australia. Sky operates three Sky Racing television channels, Sky Racing 1, Sky Racing 2 and Sky Thoroughbred Central (**Sky 1, Sky 2 and STC**), which broadcast thoroughbred, harness and greyhound racing (**the three racing codes**) racing vision to wagering operators including TAB, Racing WA and internationally, as well as retail viewers through its licensees and Sky Racing Active app.

¹ <https://www.and.org.au/pages/disability-statistics.html>

Sky Racing Active is a digital app, which provides live streamed and on-demand racing content across thoroughbred (excluding Victoria and South Australia), harness and greyhound racing. Sky Racing Active allows users to create their own racing playlists and showcases.

Subscription television channels

Sky 1 and Sky 2 are distributed to audiences in TAB outlets, pubs, clubs other licensed venues, under its subscription television narrowcasting licence (**Narrowcast Licence**), while Sky 1, Sky 2 and STC are distributed in-home to pay TV subscribers of Foxtel, under its subscription television broadcasting licence (**Foxtel Licence**).

Foxtel does not alter the content that is provided on the service or insert additional content.

Sky 1, Sky 2 and STC are English language racing channels. Racing is consistently shown throughout the year. Sky Racing 1 is broadcast 24 hours a day, 7 days a week. Live racing and replays of live racing represents approximately 90 per cent of the channel's content, with approximately 300 live races per day. The remaining 10 per cent of the channel's content is racing racing-focused magazine-style programs, which are generally shown early in the morning or late at night. Sky 2 features all international racing, as well as offering extended coverage of the three racing codes. STC is the superior thoroughbred racing channel, showcasing the best thoroughbred racing action from Australia (predominate NSW, QLD & WA focus) and around the world with in-depth analysis, mounting yard and experts' comments.

The target audience for these channels are primarily racing punters.

Exemption order background and history

In relation to the captioning rules which apply to subscription television licensees under the *Broadcasting Services Act 1992* (Cth) (**BSA**), due to the unique nature of racing channels, Sky has always relied on exemption orders granted to it in connection with its Narrowcast Licence and those granted to Foxtel in connection with the Foxtel Licence and allocated to Sky.

Captioning challenges

Tabcorp welcomes a number of the reform proposals outlined in the Issues Paper, on the basis that they are implemented as a cohesive package.

While Tabcorp is supportive of providing accessibility of subscription television to deaf or hearing-impaired viewers in general, we do not believe that captioning live racing would deliver any meaningful access for deaf or hearing-impaired viewers, and in fact, would negatively impact their viewing experience.

As noted in the Issues Paper, by the very nature of the dynamic and unpredictable nature of broadcasting animals in races, there are significant challenges in delivering accurate and useful closed captioning to viewers of the Sky channels.

In particular, captioning live broadcasts of the three racing codes could negatively impact viewership by competing against other non-verbal information and data already available to viewers – the large volume of which is unique to racing channels, namely:

- race location;
- race name;
- race number;
- race distance;
- track rating;
- critical timing information (e.g. time to the jump, cumulative race time, sectional times, etc);
- wagering pricing and fluctuations;
- recent form;
- ratings and tips;
- predicted speed map; and
- the Longines Positioning System horse mapping data.



Tabcorp continuously invests in on-screen data and technology to improve the viewing experience of all viewers. This work is conducted with many customers through research and focus groups to ensure the content delivered is appropriate, timely and accurately.

Given captioning is ideally placed somewhere on the screen that will not interfere with the picture; positioning racing captions in a manner that does not obscure either the racing vision or critical non-verbal content continues to be problematic.

Further, the accuracy of captioning (and therefore its readability) is likely to be compromised during a race due to broadcasters animating their race calls, often very quickly and often full of racing jargon – making it difficult for stenocaptioners to accurately capture and present what is being said.

Moreover, the estimated cost is prohibitive, returns little-to-no commercial value and will impact our racing industry partners who rely on funding from wagering to exist.

The reform proposals

Tabcorp strongly supports the following proposed key reforms being applied to all subscription television licensees (including broadcasting and narrowcasting), as set out below. To be clear, Tabcorp's view is that the reforms should apply equally to holders of subscription television broadcasting licences and subscription television narrowcasting licences, as the issues facing both types of licensees are identical, if not more pronounced for subscription television narrowcasting licensees.

1. Introducing a low audience share exemption

In relation to a proposed new low audience share exemption mentioned in the Issues Paper, Tabcorp is supportive of an automatic low audience share exemption which applies where viewership of our channel is below 0.1% (one tenth of 1%) of the average annual national audience share (across both FTA and all subscription TV). This proposal ensures that subscription captioning obligations are appropriately targeted to the channels with a reasonable level of viewers.

This exemption is consistent with the regulatory policy of the BSA, which states that different levels of regulation should be applied to services "according to the degree of influence" those services have on the Australian community.

Due to the nature of broadcasting live racing in Australia of the three racing codes, Sky 1, Sky 2 and STC are by any definition 'special interest' and carry a limited number of viewers and lower share of viewing than most other channels. Captioning would therefore be disproportionately burdensome on such channels and deliver little value to the broader Australian deaf and hearing-impaired community.

An automatic exemption so long as the low audience share criteria as legislated is met would be preferable to a two year exemption. This will reduce any uncertainty and administrative burden around the publication of exemptions. Requiring licensees to wait until publication of an exemption does not appear to serve any public benefit, but would only add uncertainty, cost and administration to the process. To ensure the success of a model which does not rely on published exemptions, one important aspect is to ensure that the low audience share criteria is clearly defined in any proposed legislation. Tabcorp supports clear definition of annual national audience share, perhaps published annually by the regulator to provide certainty for licensees. Tabcorp welcomes the opportunity to provide input in any draft legislation.

Where the OzTAM measurement does not apply, Tabcorp supports the use of in-house audience measurement methods instead.

2. Introducing a racing channel captioning exemption

In relation to a proposed new racing exemption, Tabcorp is supportive of introducing a targeted captioning exemption for channels where at least 70 per cent of the program content consists of broadcasting the three racing codes.

For reasons outlined in this submission, namely with each race running approximately three minutes and the channel consolidating raw racing vision from around Australia and internationally, then scheduling, editing and broadcasting the racing vision, the production of the live racing programming is an extremely dynamic and fast-paced process.

Coupled with the unique character of racing channels, which feature dense displays of on-screen information and rapid, unstructured broadcasting, make them inherently unsuited to captioning.

With such a significant proportion of the screen being text and other graphics, adding captions would be highly distracting and confusing, and would add little value to viewers, especially those who are deaf or hearing-impaired.

Further, advancements in technology such as the Longines Positioning System, mean audio commentary during a race is largely reflected by the information that is already available as text on the screen, meaning captions add little to the viewing experience in these circumstances.

To reduce the administrative burden of preparing and lodging individual exemption applications, Tabcorp supports the proposal that an automatic exemption for racing channels be legislated rather than requiring exemptions to be applied for. We do not believe it is necessary to publish exemptions and support an exemption which only relies on the legislated criteria to be satisfied. This will reduce any uncertainty and administrative burden around the publication of exemptions. Requiring licensees to wait until publication of an exemption does not appear to serve any public benefit, but would only add uncertainty, cost and administration to the process. To ensure the success of a model which does not rely on published exemptions, one important aspect is to ensure that the 70% criteria is clearly defined in any proposed legislation. Tabcorp supports a broad definition of “program content” which would include live racing, as well as commentary and programs which relate to live racing. Such a broad definition would afford Sky more discretion in delivering programming which suits its audience, especially as the audience evolves over time, so long as it is in large part relating to live racing. Tabcorp welcomes the opportunity to provide input in any draft legislation.

3. Removing the annual 5 per cent increase on each genre’s captioning target.

In relation to the issues for comment in the Issues Paper regarding whether it is appropriate that annual STV captioning levels be frozen or continue to increase by 5% per annum, for reasons outlined in this submission, Tabcorp strongly supports the proposal to introduce a cap on our genre’s captioning target, rather than progress to the current ultimate 100 per cent requirement.

Successive 5 per cent year on year increases means that the compliance and cost burden on our business continually increases with no commensurate increasing value for viewers. Unless the targets are capped, Tabcorp will be required to caption at 100 per cent in the future, which we contend is unduly onerous, particularly for subscription television narrowcasting

licensees and also compared to the level of captions required on FTA services with much larger audiences.

Conclusion

Tabcorp appreciates the opportunity to make a submission on the Issues Paper. Tabcorp strongly supports the package of reforms outlined in the Issues Paper. These proposals will ensure that captioning is appropriately targeted at channels with a fair audience share and where there is greater benefit to deaf and hearing-impaired audiences and will also assist in simplifying the legal framework.

We would welcome the opportunity to discuss this submission or provide further information when required including participate in any future consultation with respect to captioning.

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Yours sincerely,



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