



## HIGH COURT OF AUSTRALIA

2 March 2016

### TABCORP HOLDINGS LIMITED v STATE OF VICTORIA

[2016] HCA 4

Today the High Court unanimously dismissed an appeal from the Court of Appeal of the Supreme Court of Victoria. The High Court held that Tabcorp Holdings Limited ("Tabcorp") was not entitled to payment by the State of Victoria ("the State") under s 4.3.12(1) of the *Gambling Regulation Act 2003* (Vic) ("the 2003 Act") because there was no "grant of new licences". The appeal was heard concurrently with the appeal in *Victoria v Tatts Group Ltd* [2016] HCA 5.

Tabcorp relevantly held conjoined licences – a wagering licence and a gaming licence – under the 2003 Act. Those licences were to expire in 2012. The gaming licence authorised Tabcorp to conduct gaming on gaming machines at approved venues in Victoria until that time. The licences were dealt with in Pt 3 of Ch 4 of the 2003 Act which included s 4.3.12(1). That section contained what was known as the "terminal payment provision" and relevantly provided that "[o]n the grant of new licences", the holder of the former licences would be entitled to be paid a certain amount by the State.

In 2008, the Premier of Victoria announced that Tabcorp's licences would not be renewed upon their expiry and the 2003 Act was amended so that no further wagering licence or gaming licence could be granted. In 2009, further amendments to the 2003 Act provided for a new authority called a "gaming machine entitlement" ("GME"). A GME permitted its holder to conduct gaming on an approved gaming machine. 27,500 GMEs were created. They came into effect on 16 August 2012, being the day after Tabcorp's wagering licence and gaming licence expired. The result was that the gaming operations which Tabcorp conducted under its gaming licence ceased and were then carried on by the holders of GMEs.

Tabcorp claimed it was entitled to payment under the terminal payment provision. Before the primary judge, it contended that the allocation of the GMEs was the "grant of new licences" within the meaning of s 4.3.12(1) of the 2003 Act because the GMEs were "substantially similar" to the licences held by Tabcorp. The primary judge dismissed Tabcorp's claim on the basis that the "grant of new licences" in s 4.3.12 was confined to new licences granted under Pt 3 of Ch 4 of the 2003 Act. The Court of Appeal dismissed Tabcorp's appeal from that decision. By grant of special leave, Tabcorp appealed to the High Court.

The High Court unanimously held that the phrase "grant of new licences" in s 4.3.12(1) of the 2003 Act meant the grant of a new wagering licence and a new gaming licence under Pt 3 of Ch 4 of the 2003 Act. As no new wagering licence and gaming licence were issued under Pt 3 of Ch 4 of the 2003 Act, Tabcorp was not entitled to payment under the terminal payment provision.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*