

NORTHERN TERRITORY RACING AND WAGERING COMMISSION

DECISION NOTICE AND REASONS FOR DECISION

MATTER:	Gambling Dispute for determination by the Northern Territory Racing and Wagering Commission (pursuant to section 310(4) of the <i>Racing and Wagering Act 2024</i> and section 85(2) of the <i>Racing and Betting Act 1983</i>)
COMPLAINANT:	Mr G
LICENSEE:	Hillside (Australia New Media) Pty Ltd (bet365)
HEARD BEFORE: (on papers)	Mr Alastair Shields (Presiding Member) Ms Cindy Bravos Ms Susan Kirkman
DATE OF DECISION:	9 April 2025

DECISION

1. For the reasons set out below, the Northern Territory Racing and Wagering Commission (**Commission**) is satisfied that Hillside (Australia New Media) Pty Ltd (**the Licensee**) has:
 - i. contravened condition 16 of its licence by not complying with clause 3.2 of the Northern Territory Code of Practice for Responsible Service of Online Gambling 2019 (**2019 Code**) through not initiating an appropriate level of customer interaction with the Complainant on 26 March 2021, that reasonably corresponded to the circumstances.
2. The Commission has determined that it is appropriate to take disciplinary action against the Licensee pursuant to section 80(1)(d) of the *Racing and Betting Act 1983* (**RBA**) for its contravention of condition 16 of its licence as follows:
 - i. for its contravention of condition 16 of its licence, a fine of 85 penalty units being 50% of the maximum penalty available, equating to \$13,430 (2020/2021 financial year penalty unit value was \$158).
3. The Commission has determined that pursuant to section 85(1A) of the RBA, that all bets placed by the Complainant after the sending of the web message by bet365 on 26 March 2021 are not lawful.
4. The Commission has therefore formed the view that it would be appropriate for bet365 to return all deposits that were made into the betting account from 26 March 2021 onwards to the Complainant, being a total of \$999.

REASONS

Background

The Licensee

5. The Licensee is currently authorised by the Commission to conduct the business of a sports bookmaker and in doing so, to operate an online wagering platform under the branding of bet365.
6. The current sports bookmaker licence was granted by the former Northern Territory Racing Commission (**former Commission**) under the licensing regime contained within the now repealed RBA. In accordance with the transitional arrangements contained within the *Racing and Wagering Act 2024 (RWA)*, any licence issued under the repealed RBA that was valid immediately before the commencement of the RWA continues in effect on the commencement of the RWA as a licence under the RWA.
7. For ease of reference and given that the events complained of occurred while the Complainant interacted with the Licensee while using the bet365 branded online wagering platform, the Commission has determined to refer to the Licensee as bet365 throughout the remainder of this Decision Notice.

The Complaint

8. On 29 March 2021, the Complainant lodged an online complaint with the former Commission about his dealings with bet365. The Complainant alleged that bet365:
 - i. allowed him to reopen his betting account prior to the expiry of several self-nominated account closure time periods; and
 - ii. allowed him to wager even though he was displaying signs of experiencing harm from his wagering activity.
9. In submitting the complaint, the Complainant is seeking for bet365 to refund to him an amount of \$4,096, being the deposits he made into the betting account during the last 30 days of its operation.

Commission Hearing

10. In accordance with the transitional arrangements contained at subsection 310(4) of the RWA, any matters under consideration of the former Commission that were not determined under the now repealed RBA before the commencement of the RWA are to be determined by the Commission in accordance with the repealed RBA as if it was not repealed.
11. The complaint subject of this Decision Notice was lodged on 29 March 2021 and had not yet been determined by the former Commission prior to the commencement of the RWA. Given this and in accordance with the transitional arrangements under the RWA, the Commission has determined to hear the dispute and make its determinations pursuant to subsection 85(4) of the RBA.
12. The hearing of the dispute has been conducted in the absence of the parties, based on the evidence before the Commission. That evidence includes submissions to the Commission and the former Commission by both the Complainant and bet365, as well as additional evidence obtained on behalf of the former Commission by the former Commission's betting inspectors.

13. In reviewing the conduct in question, it must be noted that the events complained of occurred some three to four years ago. Since this time, both regulatory and community expectations have evolved considerably however, the Commission notes that it is appropriate any findings that it makes in relation to this complaint, should be grounded in the expectations and standards that were in place at the time the conduct occurred.
14. In accordance with the principles of natural justice, and to ensure that all relevant information and evidence was before the Commission for its consideration prior to the making of its final determinations, a draft of the Commission's preliminary findings and proposed disciplinary action was supplied to both parties for comment. Both bet365's and the Complainant's responses to those preliminary findings have been considered by the Commission during the finalisation of this Decision Notice and referred to where appropriate.

Consideration of the Issues

Account Closure Options

15. As has been explored on several occasions by the former Commission, bet365 customers have three options available to them to proactively stop gambling with the sports bookmaker being 'Self-Exclusion', 'Time Out' or 'Account Closure'. As explained on the bet365 wagering platform, the:
 - i. self-exclusion option is a responsible gambling tool that assists customers to self-exclude themselves from their account for a set period (including permanently) and once a timeframe has been selected it will not be possible for the account to be re-activated for any reason until the set period has expired;
 - ii. time-out function allows customers to take a short break from gambling by restricting their access to gambling for a specific period such as 24 hours, 48 hours, seven or 30 days and once selected, the bet365 customer will not be able to access any of its products excepting for being able to withdraw from the betting account; or
 - iii. account closure options allow customers to close their betting account if they wish to stop gambling with bet365 for any reason and once selected, the customer will be able to withdraw their remaining balance but will not be able to make deposits or place any bets. The information on the bet365 website also clearly states that a person can reopen their account during the period they have selected for it to be closed.
16. The options of self-excluding and taking a time-out allow a bet365 customer to restrict their gambling behaviours with bet365, whereas the account closure option allows a bet365 customer to close their account for other reasons such as being uninterested or unhappy with the bet365 wagering platform or simply because the customer fancies a change as to who they bet with.
17. Bet365 operates as a commercial entity with its end goal, like other commercial entities being to make a profit. Given this, the closing of a betting account due to customer dissatisfaction for one reason or another (and not due to customers experiencing or being at risk of experiencing harm related to their wagering activity) does not invoke any regulatory restrictions on future wagering activities. The account holder who has closed the account, retains the freedom to open betting accounts with other online wagering providers, or return to the same online wagering service provider to reopen their betting account and engage in online wagering.

18. While the self-exclusion and time-out options are understandably not reversible once selected given that each of these options is a responsible gambling tool designed to assist those bet365 customers who may be at risk of harm from their gambling activity, the account closure option differs in that it is reversible and in the Commission's view is an option that bet365 is entitled to make available to its customers.

Account Closures

19. The Complainant opened a betting account with bet365 on 28 April 2016 and went on to close and then reopen the account four times prior to the account being permanently closed as a self-excluded account on 29 March 2021. Details of the closures and reopening of the accounts follows:

CLOSURE	DATE	CLOSURE PERIOD SELECTED	REOPENED
1	17 December 2020	Indefinitely	4 March 2021
2	10 March 2021	12 months	12 March 2021
3	25 March 2021	Until 31 December 2022	26 March 2021
4	29 March 2021	Indefinitely	29 March 2021

20. On each of the occasions, the Complainant chose to close his betting account rather than selecting a time-out or self-exclusion, meaning that he could if he chose to do so, reopen his account at any time.
21. The Commission has listened to a recording of a telephone conversation that the Complainant initiated with bet365 on 29 March 2021. During that call, the Complainant advised bet365 that he had *"...closed his account a few times and reopened it and self-excluded..."* and requested that he be provided with the dates when this occurred. The Complainant also advised bet365 that he wanted his account closed permanently, that he had tried to close his account a few times and he didn't understand why he could keep reopening his account. After being transferred to a bet365 customer service supervisor, the Complainant in responding to several questions from bet365, advised that he had taken a break from his gambling in the past as he was *"...probably gambling too much..."* and that he had thought when he had closed the account, he wouldn't be able to reopen it. Bet365 then processed a permanent self-exclusion for the Complainant's account.
22. It appears through this conversation that it is possible that the Complainant may not have clearly understood the three different type of account closures that had been available to him to use, resulting in his selecting the account closure option which as mentioned earlier, is not a responsible gambling tool and as such, is reversible.
23. Of concern to the Commission from a responsible gambling perspective however, is that the second, third and fourth account closures were quickly followed by the Complainant reopening his account as set out below:
- following closure 2 (10 March 2021), the account was reopened two days later;
 - following closure 3 (25 March 2021), the account was reopened 17 hours later; and
 - following closure 4 (29 March 2021), the account was reopened two minutes later.
24. The Commission expects that online wagering providers are aware of the risks associated with the repeated closing and reopening of a wagering account within a short period of time, as this can be indicative of problem gambling. Bet365's submission that the *"[r]epeated opening and closing of a betting account has, for some time, been one of [its] behaviour identification triggers for a possible sign of a customer having a problem with their gambling"* clearly demonstrates that

bet365 acknowledges this concern. Reopening a wagering account shortly after closing it and/or well within the nominated closure period selected, is a particularly concerning behaviour as these actions suggest a pattern of impulsive decision-making where the individual is unable to resist the urge to return to wagering even after attempting to take a break of some form.

25. Bet365 did identify that the Complainant had closed and reopened his account several times in a short period, as evidenced by it sending a tailored web message to the Complainant on 26 March 2021 (after the account closures on 10 March 2021 and 25 March 2021; and the third reopening of the account on 26 March 2021), in which it advised that:

We notice you have recently closed your account on a number of occasions.

Whilst we recognise customers may choose to close their account for a number of reasons, we are keen to promote gambling as an enjoyable leisure activity, and like to ensure that all of our customers are aware of the tools to help them gamble responsibly.

26. In that web message, bet365 also advised the Complainant of the responsible gambling tools available to him including deposit limits, taking a short break from gambling by taking a time-out or preventing gambling for a longer period of time through self-exclusion.
27. Bet365 has submitted that the web message was displayed to the Complainant when he next accessed his account and that it "...clearly referenced the reason for the personalised interaction". Bet365 has further submitted that the web message was not able to be ignored by the Complainant, because such messages require the customer to take positive action in respect of the message before they are able to access their account and place bets. Bet365 submitted that its internal systems show that the web message was read by the Complainant however, despite the Complainant now being in possession of the responsible gambling tools available to him, the Complainant chose not to engage with any of these responsible gambling tools.
28. Bet365 also submitted that while the Complainant elected not to utilise any of the responsible gambling tools available to him at that time, the web message did have the effect of causing the Complainant to consider his gambling behaviours and to recognise that he had not self-excluded, as was evidenced by the Complainant contacting bet365 to self-exclude three days after he read the web message.

2019 Code of Practice

29. Licence conditions attached to all sports bookmaker licences granted by the former Commission, required licensees to adhere to any Codes of Practice. The 2019 Code came into effect on 26 May 2019 and was approved by the former Commission to provide guidance on responsible gambling practices that must be undertaken by sports bookmakers to minimise the impact of harms that may be caused by online gambling.
30. Clause 3.2 of the 2019 Code requires that:

Where appropriate a customer who displays some, or a number, or a repetition of red flag behaviours should be monitored by an online gambling provider and appropriate customer interaction should take place to assist or protect that customer which reasonably corresponds to the circumstances. Online gambling providers should ensure responsible gambling policies and procedures are in place to allow staff to detect and assist customers who may be experiencing problems with gambling.

31. Having reviewed the Complainant's wagering activity in both December 2020 and March 2021 (the account was closed between 17 December 2020 and 4 March 2021), the Commission notes that while there was an increase in the Complainant's deposits and overall wagering activity, the activity in of itself, may not have been substantial enough to trigger bet365's responsible gambling alerts.
32. However, a primary responsibility of an online wagering operator is to protect the well-being of its customers. When they notice repeated account closures and reopenings within short periods, they should treat it as a potential sign of problem gambling and take appropriate steps to assess the activity on the account further. Had bet365 reviewed the wagering activity on the Complainant's account at this time, it would have identified that in addition to the repeated account closures; prior to the Complainant's first closure of the account in December 2020, he had deposited more in that month than he had in the lifetime of the account to that date, and that he had again deposited a similar amount in March 2021.
33. While bet365 argues that the tailored web message was an appropriate intervention given the identified behaviour and the level of concern it ultimately generated, the Commission is of the view that the single, web message – no matter how well targeted – did not adequately address the concerns that the reopening of an account two days after it was closed for a nominated period of 12 months, followed by another closure less than two weeks later for a period of nine months - with that closure being reversed 17 hours later, should have generated.
34. While a tailored web message may be an effective and appropriate responsible gambling intervention approach when a customer's deposit activity has gradually increased over time or there have been several cancelled withdrawals in quick succession¹, it becomes insufficient when a customer has repeatedly closed and reopened their account in a very short period of time despite having set much lengthier closure periods. This type of behaviour may signal deeper concerns beyond simple fluctuations in wagering activity, such as an inability to cease wagering even after initially having taken action to do so.
35. In the Commission's view, the tailored web message was a positive step, but it did not go far enough in providing the necessary support or follow-up to effectively address the Complainant's potential at risk behaviours. It is also the Commission's view that, although a tailored web message that requires a positive step before a customer can place wagers is likely to be more effective than an email that is capable of being ignored, it is less effective than direct customer contact by phone.
36. Given bet365's concerns at that time as evidenced by the sending of a tailored message to the Complainant referencing two recent account closures, it is the Commission's view that a more comprehensive and personalised approach, including an in-depth review of the Complainant's wagering activity, was required.
37. The fact that the Complainant only took action three days after receiving the web message further demonstrates that the communication was not as effective as it should have been. Had bet365 made direct contact with the Complainant by phone following its sending of the web message, it may have led to the Complainant either clarifying or confirming his understanding of the various account closure options available to him and/or choosing to engage with the responsible gambling tools available.

¹ See NT Racing Commission Decision - L v Hillside, 20 April 2022 (chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://dth.nt.gov.au/__data/assets/pdf_file/0019/1102447/decision-notice-l-v-hillside-australia-new-media-pty-ltd.pdf)

38. The Commission finds that bet365's reliance on the web message alone was inadequate and that a more comprehensive, multi-channel approach was required to effectively identify and intervene in this situation. The delay in action and the Complainant's need to self-identify as a problem gambler underscores the need for a more proactive interaction to have been taken by bet365. In the Commission's view, it is unacceptable that it took the Complainant to self-identify as a problem gambler before any substantial responsible gambling action was taken.
39. It is important to note that the events in question occurred nearly four years ago, at a time when identifying and responding to red flag behaviours may not have been as rigorous or as well-defined as they are today. Notwithstanding this, the Commission has assessed bet365's actions as not meeting the minimum requirements of the time.

DISCIPLINARY ACTION

40. On the weight of evidence before it, the Commission is satisfied that pursuant to section 80(1)(d) of the RBA, bet365 failed to comply with a condition of its licence that was in place at the time of the events subject to this Decision Notice occurring, specifically that it:
 - i. contravened condition 16 of its licence by not complying with clause 3.2 of the 2019 Code through not initiating an appropriate level of customer interaction with the Complainant on 26 March 2021, that reasonably corresponded to the circumstances.
41. Disciplinary action available to be taken by the Commission under the RBA ranges from the issuing of a reprimand, imposing a fine not exceeding 170 penalty units or suspending or cancelling the sports bookmaker's licence.
42. The Commission has determined that it is appropriate to take disciplinary action against the Licensee pursuant to section 80(1)(d) of the RBA as follows:
 - i. for its contravention of condition 16 of its licence, a fine of 85 penalty units being 50% of the maximum penalty available, equating to \$13,430 (2020/2021 financial year penalty unit value was \$158).

LAWFULNESS OF BETS

43. The Commission considers it a matter of judgement to determine whether a contravention of legislation, a Code of Practice or a condition of licence are serious enough to undermine the integrity of a betting transaction itself and in such circumstances, conclude the betting transaction to be not lawful.
44. The Commission and its predecessor have previously determined that bets placed by a self-excluded person are not lawful given the importance placed on self-exclusion provisions being enforced by licensees so as not to allow persons to place bets after they have had the foresight to exclude themselves from using the services of a gambling provider due to recognising the risk to themselves of financial harm. Similarly, bets have been determined to not be lawful where a sports bookmaker has failed to take sufficient action in circumstances where it has identified that a customer may be engaging in risky wagering activity and has then not taken the appropriate action to help that customer to reduce or cease their wagering activity.
45. In this case, despite the well-established legal precedent that places a high threshold of responsibility on the gambler for their own actions, bet365 breached its regulatory obligations by failing to initiate an appropriate level of customer interaction corresponding to the

circumstances. Bet365 identified obvious signs of risky wagering behaviour, specifically the Complainant's repeated closure and reopening of his account in a very short period of time despite having set much lengthier closure periods. This pattern of behaviour did raise immediate concerns regarding the Complainant's vulnerability however, bet365 relied on an insufficient approach through the sending of a single web message to address the Complainant's evident risk.

46. Given this, the Commission has determined that pursuant to section 85(1A) of the RBA, that all bets placed by the Complainant after bet365 sent the web message on 26 March 2021 are not lawful.
47. The Commission is therefore of the view that bet365 should return all deposits made into the betting account from this time to the Complainant, being a total of \$999.

NOTICE OF RIGHTS

48. In accordance with the transitional arrangements contained at section 310(4) of the RWA, any matters under consideration of the former Commission that were not determined under the now repealed RBA before the commencement of the RWA are to be determined by the Commission in accordance with the repealed RBA as if it was not repealed.
49. Section 85(6) of the RBA provides that a determination by the Commission of a dispute referred to it pursuant to section 85 of the RBA shall be final and conclusive as to the matter in dispute.

Alastair Shields
Chair
Northern Territory Racing and Wagering Commission

On behalf of Commissioners Shields, Bravos and Kirkman