

# NORTHERN TERRITORY RACING COMMISSION

## DECISION NOTICE AND REASONS FOR DECISION

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**MATTER:** Gambling Dispute for determination by the Northern Territory Racing Commission (pursuant to section 85(2) of the *Racing and Betting Act 1983*)

**COMPLAINANT:** Mr K

**LICENSEE:** PointsBet Australia Pty Ltd

**HEARD BEFORE:** Mr Alastair Shields (Presiding Member)  
(on papers) Ms Cindy Bravos  
Mr Kris Evans

**DATE OF DECISION:** 30 June 2023

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### DECISION

1. For the reasons set out below, the Northern Territory Racing Commission (the **Commission**) is satisfied that PointsBet Australia Pty Ltd (the **Licensee**) has:
  - a. contravened condition 15 of its licence by not complying with clause 3.2 of the Northern Territory Code of Practice for Responsible Service of Online Gambling 2019 (the **2019 Code**) through not having a system in place that ensured that an appropriate (timely) customer interaction would take place following the generation of its internal 'red flag' report.
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* (**the Act**) as follows:
  - a. for its contravention of condition 15 of its licence, a fine of 50% of the maximum penalty available, equating to \$13,345 (for the 2019/2020 financial year a penalty unit's value was \$157).
3. The Commission has determined that the bets placed by the Complainant are lawful despite the Licensee's breach, noting that this determination does not in any way diminish the severity or significance of the breach itself.

### REASONS

#### **Background**

4. The Commission has granted a licence to PointsBet Australia Pty Ltd (**PointsBet**) to conduct the business of an online sports bookmaker pursuant to section 90 of the Act. PointsBet's current sports bookmaker licence is due to expire on 1 February 2027.
5. In accordance with the Act and its licence conditions, PointsBet is required to comply with the 2019 Code which came into effect on 26 May 2019. Through the 2019 Code, the Commission has mandated that:

- i. online gambling providers must establish and promote mechanisms to recognise and resolve issues relating to customer problem gambling incidents (clause 2.3);
- ii. all staff engaged in customer interaction must have completed responsible gambling training so as to be able to identify problem gambling red flag behaviours (clause 3.1); and
- iii. 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 (clause 3.2).

## **The Complaint**

6. On 21 May 2020, the Complainant lodged a complaint with the Commission in relation to his dealings with PointsBet. The substance of the complaint is twofold being that:
  - a. upon opening a betting account with PointsBet on 22 April 2020, the Complainant's identification was not verified; and
  - b. that after having opened the betting account - at which time the Complainant set a maximum deposit limit of \$100 per week, the Complainant was able to change the deposit limit to an unlimited weekly deposit amount and two weeks after having done so, was able to deposit (and lose) over \$38,000 during an eight-hour period.
7. In respect to the second aspect of the complaint, the Complainant is of the view that PointsBet failed to identify (and act upon) a number of behaviours that should have indicated to it that the Complainant was at risk of experiencing harm from his online wagering activity, with these behaviours being:
  - a. the changing of the \$100 weekly deposit limit to an unlimited weekly deposit limit;
  - b. an increase in the size and frequency of deposits; and
  - c. an increase in the size and frequency of wagers.
8. The Complainant is seeking for the Commission to declare that:
  - a. all bets placed by the Complainant through the use of his PointsBet betting account to be 'not lawful' and for PointsBet to return the monies to him that he had deposited into his PointsBet account due to PointsBet failing to verify his identity; or in the alternative
  - b. declare that each of the bets that he placed with PointsBet after his deposit and wagering behaviour first escalated on the evening of 15 May 2020 to be 'not lawful' and for PointsBet to return the monies to him that he had deposited into his PointsBet account from that same time until the account's closure.

## **Consideration of the Issues**

9. Pursuant to section 85(4) of the Act, the Commission determined to hear the dispute and make its determinations in absence of the parties, based on the evidence before it.

### Identity Verification

10. The Complainant has submitted to the Commission (email dated 27 May 2020) that he has accessed his credit report with a number of credit reporting agencies operating in Australia and after having done so, notes that there is no record of any credit report requests having been made by PointsBet on either of the credit reports provided to him. Given this, the Complainant has drawn the conclusion that PointsBet failed to verify his identity within the legally prescribed timeframes.
11. Licensed online wagering operators in Australia must verify the identity of every customer who opens a wagering account. This regime is governed by the *Commonwealth Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*, made under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*. At the time of publishing this Decision Notice, the timeframe in which a customer's identity must be verified is within a maximum 72 hours from the opening of a betting account whereas at the time the Complainant opened the betting account with PointsBet in April 2020, the timeframe was 14 days. During the intervening period between account opening and a customer's identity being verified, the customer may deposit monies and wager with the online wagering provider but is prohibited from withdrawing any winnings from the betting account.
12. Online wagering providers usually complete the identify verification process by cross checking the information provided by the customers with various government and non-government data sources such as (but not limited to) the Australian Electoral Roll, the Australian Government Documentation Verification Service (which enables checks of biographic information against government issued identity documents including birth certificates, driver licences, passports and visas) and credit history records. Generally, online wagering providers will outsource these verification checks to third party providers.
13. The Commission is of the view that the verification of the identity and the age of customers who open an online wagering account is a critical part of the array of measures to reduce harm from online wagering, particularly in relation to underage online wagering and vulnerable online wagering consumers who have had the foresight to self-exclude themselves from accessing an online wagering operator's service. Given this, the Commission has been advocating for a further reduction in the timeframe in which a customer's identity must be verified - from 72 hours to zero hours. Introducing a measure such as this at a national level in the Commission's view, would reduce the opportunity for a self-excluded person to access the services of any online wagering operator that they have excluded from (or been excluded by), thereby significantly reducing the opportunity for that person to wager and to be exposed to the possibility of financial harm being sustained through their online wagering activity (which in the Commission's experience can on occasion be quite significant in a 72 hour period).
14. While the Commission has recently strengthened its regulatory framework regarding identity verification by introducing a licence condition for all Northern Territory sports bookmakers and betting exchange operators that requires that they must immediately commence the customer verification process and diligently pursue completion of that process as soon as a new customer betting account is opened, the Commission is of the view that the quicker timeframe for verification of online wagering customers would still provide an appropriate balance between allowing legitimate online customers to engage in legal wagering activities and protecting vulnerable people from the potential harm associated with these activities.
15. In order to verify the identity of the Complainant, PointsBet sent the details provided by the Complainant to register the betting account to its third-party identity verification provider on 22 April 2020 (being the same day the Complainant opened the betting account) which provided PointsBet with the advice that following a process of cross checking the information

provided by the Complainant against various government and non-government data sources, the Complainant's identity was verified. Given the identity of the Complainant was verified by PointsBet through its third-party provider on the same day that the Complainant opened his betting account with PointsBet, it is the view of the Commission that PointsBet has fulfilled its obligations under the Commonwealth *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* well within the 14 days provided to it at that time to verify the identity of the Complainant.

16. As the Commission understands it, identity verification checks do not typically show up on a credit report as credit reports primarily contain information related to an individual's credit history and financial activities (credit accounts, payment history, loans etc) whereas identity verification checks are conducted to confirm the identity of an individual and are not directly tied to credit or financial information.
17. Given that the Commission has sighted the third-party identity verification records for the Complainant which clearly show that an identity verification check was undertaken by PointsBet following the Complainant registering for a PointsBet betting account, the Commission has determined to dismiss this aspect of the Complainant's complaint.

#### **Identify and Support Customers Showing Signs of Gambling-Related Issues**

18. The Complainant has submitted to the Commission that PointsBet failed to recognise indicators of gambling-related problems and as a result, neglected to offer any assistance to the Complainant in addressing those behaviours. The Complainant has submitted that the behaviours that PointsBet failed to identify were:
  - a. the changing of the \$100 weekly deposit limit to an unlimited weekly deposit limit;
  - b. an increase in the size and frequency of deposits; and
  - c. an increase in the size and frequency of wagers.

#### **Harm Minimisation Measures - Deposit Limit**

19. In compliance with the 2019 Code, PointsBet must offer a number of harm minimisation measures to its customers, including a voluntary pre-commitment feature that allows a customer to set a maximum deposit limit (clause 5.1). In accordance with the 2019 Code, the customer must be prompted to set up a maximum deposit limit during the process of opening an account however, a customer is not required to do so. Should a customer choose to set a maximum deposit limit, the customer may change that deposit limit at any time - with a decrease in the deposit limit taking effect immediately but any increase to a deposit limit not taking effect until seven days after the request has been made.
20. The evidence before the Commission is that the Complainant did initially set up a deposit limit on his account with that maximum deposit limit being set at \$100. The Complainant has submitted that *"...he thinks he may have removed this whilst in hospital somewhere between 17/4 - 1/5 whilst receiving [medical treatment]. Due to some short term memory loss following the treatments he had no vivid recollection of changing or removing his limit."*
21. The Complainant has provided the Commission with evidence to support that he did receive medical treatment during this period by way of a statement from his treating physician that specifically details the medical treatment provided, the dates of the treatment and the nature of the condition being treated as well as detailing that the Complainant had reported to his treating physician that he *"...reported experiencing some degree of short term memory loss since the treatments."*

22. The PointsBet records show that the Complainant submitted an online request to remove the deposit limit from his betting account on 30 April 2020 which in compliance with the 2019 Code did not take effect until seven days later, being 7 May 2020. As a result, and in accordance with the Complainant's request, there was no longer a maximum deposit limit in place for the Complainant's betting account from 7 May 2020 onwards.
23. While the Commission empathises with the Complainant's experiences of memory lapses following his medical treatment and recognises the challenges that those memory lapses may have posed to him in maintaining accurate records or recalling certain actions, it is difficult for the Commission to find PointsBet at fault in this particular situation.
24. PointsBet, in accordance with the 2019 Code, provided a harm minimisation tool to the Complainant for him to budget for his online wagering activities, particularly in order to assist him to adhere to and avoid excessive or impulse online wagering activity. The Commission is of the view that it is not only difficult, but also improper for it to hold PointsBet accountable for changes made by the Complainant to the available harm minimisation tools during his self-admitted periods of memory lapse regardless of the cause, given that it is extremely unlikely that PointsBet would have been aware of the cognitive challenges that the Complainant was facing at the time of making the change to his deposit limit on his PointsBet betting account. In coming to this view, the Commission is of the opinion that it is important to also acknowledge that the responsibility for ensuring the accuracy and integrity of personal account information requirements rests primarily with the betting account holder.
25. Having come to this view, the Commission has examined the complaint from the perspective as to whether the act of removing a deposit limit from an online betting account serves as direct evidence that a customer may be at risk of experiencing harm from their wagering activities.
26. In the Commission's view, while the removal of a maximum deposit limit by a customer may be considered as a potential indication of risky behaviour given that it may suggest a loss of self-control or an inclination to gamble beyond one's intended limits, removing a deposit limit alone does not definitively indicate a gambling problem. In the Commission's view, the removal of a maximum deposit limit needs to be considered alongside any other behaviours or signs of problem gambling.

*Increase in Size and Frequency of Deposits and Wagers*

27. The Complainant has submitted that on 15 May 2020 (and more specifically after 5:00 p.m. on that date), there was a clear increase in the size and frequency of both the deposits he made into the betting account and the wagers that he placed through the betting account, that should have been detected by and acted upon by PointsBet.
28. The Commission (through its investigating Betting Inspector) has undertaken an examination of the Complainant's betting account records with PointsBet and notes the following:

Table 1

<b>Date</b>	<b>Deposits</b>	<b>Wagers</b>	<b>Wins</b>	<b>Cash Out</b>	<b>Withdrawals</b>
Lifetime	\$40,080.00	\$52,594.00	\$11,425.59	\$2,857.85	\$5,650.00
15 May 2020 (prior to 5 pm)	\$410	\$1,460.00	\$1,885.00	Nil	Nil

15 May 2020 (post 5 pm)	\$39,370.00	\$49,399.50	\$7,419.00	\$2,846.76	\$3,200 (cancelled \$2,200.00)
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Table 2

Date	Minimum Wager	Maximum Wager	Minimum Deposit	Maximum Deposit
15 May 2020 (prior to 5 pm)	\$10	\$300	\$10	\$200
15 May 2020 (post 5 pm)	\$6	\$5,500	\$170	\$12,000

Table 3

Date	Total Deposits	Total Wagers
15 May 2020 (prior to 5 pm)	4	12
15 May 2020 (post 5 pm)	10	37

29. As can be seen from the information detailed in the tables, the Complainant's wagering activity after 5:00 p.m. on 15 May 2020 did differ from the Complainant's previous wagering behaviours since opening the betting account with PointsBet during the previous month.

30. It is not in dispute that the Complainant deposited and wagered nearly \$40,000 between 2:45 p.m. and 9:06 p.m. on Friday 15 May 2020. The PointsBet deposit records show that the Complainant deposited this amount through the following activity:

- 2:45 p.m. - \$100
- 3:12 p.m. - \$100
- 3:18 p.m. - \$200
- 3:24 p.m. - \$10
- 5:30 p.m. - \$200
- 7:40 p.m. - \$400
- 7:41 p.m. - \$600
- 7:51 p.m. - \$1,000

8:02 p.m. - \$5,000

8:15 p.m. - \$170

8:27 p.m. - \$5,000

8:35 p.m. - \$10,000

8:41 p.m. - \$12,000

9:05 p.m. - \$5,000

31. On that same evening at 7:11 p.m., the Complainant made contact with PointsBet via telephone to query the settlement of a bet that he had placed. The Commission has listened to an audio recording of this telephone call and notes that at no time did the Complainant raise any concerns with the PointsBet representative as to the level of money that he had deposited into the betting account by this stage of the day (being \$610) nor any concerns regarding his level of wagering behaviour for that evening. It is clear from the audio recording that the PointsBet representative accessed the Complainant's account records in order to examine the bet which the Complainant was querying however, given there was nothing in the Complainant's telephone demeanour which raised concerns about the Complainant's wagering activity, it is not surprising to the Commission that PointsBet's customer service representative did not examine the Complainant's betting records further at that time. The Commission is of the view that even if the PointsBet representative had done so, the Complainant making five deposits into his betting account totalling \$610 by this stage was of not of such a nature to be classed as a significant irregularity from his previous betting behaviour. This is further supported by the fact that at the time of this telephone call, the Complainant's account balance was at \$1,286.48 due to the settlement of a bet that had resulted in a \$1,520 return and given the Complainant had started the day out with a balance of nine cents, he was actually in profit for the day at the time of this telephone conversation.
32. The next contact between the PointsBet and the Complainant was at 11:15 p.m. that evening when, after a series of deposits totalling \$39,170 had been made and predominantly losing bets had been placed by the Complainant and settled by PointsBet, the Complainant contacted PointsBet via Live Chat and advised it that his phone and wallet had been stolen and that his betting account had been hacked. As a result of the information provided by the Complainant to PointsBet at this time, the Complainant was advised that his betting account would be suspended for further investigation.
33. The following day (being Saturday 16 May 2020) at 11:00 a.m., the Complainant contacted PointsBet via telephone and again advised that his account had been hacked. This claim continued until during a telephone conversation with PointsBet on Wednesday 20 May 2020, where the Complainant admitted that all of the deposits into the account and wagers placed were in fact, actions that he had taken himself. Following this admission, PointsBet permanently closed the Complainant's betting account, registering it as a permanent self-excluded account.
34. PointsBet advised the Commission that the Complainant's increase in deposits and size of wagers did trigger an internal 'red flag' report for its Responsible Gambling Team and that as a result of this report, had the Complainant's account not been suspended due to his allegations of a hacked account that was made on the Friday evening, the Complainant would have been contacted by the Responsible Gambling Team on the next business day, being in this case Monday 18 May 2020 as its Responsible Gambling Officer works Monday to Friday between the hours of 9:00 a.m. and 5:00 p.m.

35. The Commission has sighted this internal report and notes that it references the full suite of deposits that the Complainant made into the betting account on Friday 15 May 2020. Given this, it is evident to the Commission that this internal report would not have caused a responsible gambling led customer interaction with the Complainant at any stage of his increased deposit and wagering activity on the evening of 15 May 2020 regardless of the hours that PointsBet's Responsible Gambling Officer worked at that time.
36. The question before the Commission in this instance however, is not whether the Complainant's wagering activities actually differed from his previous activities (as noted above, it clearly did) or whether the Complainant initially put forth a false allegation to PointsBet about his account being hacked due to a stolen phone and wallet, but whether, in compliance with the 2019 Code, PointsBet had a sufficiently robust system in place to recognise any irregularities and if after having done so, whether PointsBet initiated appropriate customer interaction/s to assist or protect the Complainant, which reasonably corresponded to the circumstances.
37. The nature of online wagering activities involves vast amounts of data and rapid online transactions, making it challenging for all sports bookmakers whether licensed by the Commission or not, to identify every single change in betting behaviour of a customer in real-time. Despite a sports bookmaker's best efforts, some changes to wagering behaviours may go unnoticed due to the sheer volume of betting activities taking place simultaneously.
38. It is evident from the generation of the internal 'red flag' report that the Complainant's behaviour was monitored by PointsBet and his altered wagering activity was detected, as was required by the 2019 Code.
39. The issue before the Commission therefore is whether PointsBet identified the Complainant's altered wagering activity quickly enough and if so, whether the intention of PointsBet to contact the Complainant after the weekend had passed in order to assist or protect the Complainant, was an appropriate customer interaction reasonably corresponding to the circumstances once the activity was detected.
40. Red flag reports contribute to promoting responsible gambling practices by identifying customers who may be exhibiting signs of problem gambling or engaging in behaviours that could lead to harm. By analysing specific indicators or patterns such as large deposits, frequent bets or significant changes in betting behaviour, these reports flag potential high-risk activities that may require further investigation. A red-flag report is not designed to immediately cause the cessation of a customer's online wagering activities but rather, to trigger a process that initiates a customer interaction, enabling the sports bookmaker to reach out to the customer and to engage in a dialogue about their online wagering activities. The Commission is of the view that this dialogue is not limited to person-to-person contact over the telephone but that the dialogue can be by way of in-App notifications, email, text messaging or the like.
41. Given the Commission's views, the Commission considers that a two or more-day gap between identifying potential risks associated with online wagering behaviour and actually engaging in a customer interaction is not of sufficient nature to meet the intended outcome of the requirements contained within the 2019 Code. As such, the Commission has formed the view that PointsBet is in breach of clause 3.2 of the Code in that it did not have a system in place that ensured that an appropriate customer interaction would take place – with this view primarily being formulated on the lack of timeliness of PointsBet's intended customer interaction.
42. As detailed in many previous decisions of the Commission, the Courts have set a very high threshold of responsibility for the gambler as to their own actions. In this respect, the Courts



have ruled that the duty to cease gambling remains with the individual gambler and not the gambling operator. It is suggested by the Courts, that only in the most extreme cases of deliberate and gross misconduct by the operator who has knowledge of the vulnerability of the problem gambler, that there would be any duty owed to prevent loss.

43. With this in mind, the Commission is of the view that despite its determination that PointsBet has not complied with clause 3.2 of the 2019 Code, PointsBet did not have knowledge of the vulnerabilities of the Complainant prior to his call to it at 11:15 p.m. on the night of his wagering activity. While the generation of the red-flag report identified a potential risk that required some form of customer interaction, in reality the Complainant did not make a significantly large deposit (to him) until 8:02 p.m. on the evening of 15 May 2020 and while the financial loss to the Complainant was significant, it was quite rapid in that his final deposit into the account occurred within 1 hour and 3 minutes from the earlier larger deposit.
44. In coming to this determination, it is important to note that the Commission's role in dealing with complaints is not to simply rectify self-inflicted economic losses from wagering following the lodging of a complaint but to make a determination as to whether a sports bookmaker licensed by it has conducted its sports book operations in compliance with the Act, its licence conditions and any relevant Codes of Practice that apply at that time.

### **DISCIPLINARY ACTION**

45. On the weight of evidence before it, the Commission is satisfied that pursuant to section 80(1)(d) of the Act, PointsBet has failed to comply with condition 15 of its licence that was in place at the time of the events subject to this Decision Notice occurring, specifically that it:
- a. contravened condition 15 of its licence by not complying with clause 3.2 of the 2019 Code through not having a system in place that ensured that an appropriate (timely) customer interaction would take place following the generation of its internal 'red flag' report.
46. Disciplinary action available to be taken by the Commission in these circumstances range from the issuing of a reprimand, imposing a fine not exceeding 170 penalty units or suspending or cancelling the sports bookmaker's licence.
47. The Commission has determined that it is appropriate to take disciplinary action against the Licensee pursuant to section 80(1)(d) of the Act as follows:
- a. for its contravention of condition 15 of its licence, a fine of 50% of the maximum penalty available, equating to \$13,345 (for the 2019/2020 financial year a penalty unit's value was \$157).

### **LAWFULNESS OF BETS**

48. As detailed in this Decision Notice, the Commission has found that PointsBet has breached its regulatory obligations in relation clause 3.2 of the 2019 Code. Given these findings, the Commission has turned its mind as to whether the betting transactions that occurred during part of the evening of 15 May 2020 through the Complainant's PointsBet betting account were lawful.
49. The Commission's objectives include ensuring the fairness and integrity of the online wagering industry while promoting responsible gambling practices. After careful deliberation and consideration of the information before it, the Commission has determined that the integrity

of each bet placed by the Complainant with PointsBet during the evening of 15 May 2020 has not been undermined to the extent where each bet should not be enforced, despite the licensee's breach of the 2019 Code and that the Complainant's activity resulted in a financial loss to him.

50. This determination has not been made lightly and has been made so as to ensure a fair and proportionate response to the breach involved in this matter. It must also be noted that this determination does not in any way diminish the severity or significance of the breach itself.

## **NOTICE OF RIGHTS**

51. Section 85(6) of the Act provides that a determination by the Commission of a dispute referred to it pursuant to section 85 of the Act shall be final and conclusive as to the matter in dispute.



Alastair Shields  
Chairperson  
Northern Territory Racing Commission

30 June 2023

On behalf of Commissioners Shields, Bravos and Evans