

# DECISION NOTICE AND REASONS FOR DECISION

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<b>MATTER:</b>	Gambling Dispute for determination by the Northern Territory Racing Commission (pursuant to section 85(2) of the <i>Racing and Betting Act 1983</i> )
<b>COMPLAINANT:</b>	Mr O
<b>LICENSEES:</b>	<b>Crossbet Pty Ltd trading as Crossbet</b>
<b>HEARD BEFORE: (on papers)</b>	Mr Alastair Shields (Presiding Member) Ms Cindy Bravos Ms Susan Kirkman
<b>DATE OF DECISION:</b>	29 February 2024

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## DECISION

1. For the reasons set out below, the Northern Territory Racing Commission (**the Commission**) is satisfied that Crossbet Pty Ltd (**Crossbet**) has contravened condition 15 of its licence by not complying with clause 3.2 of the Northern Territory Code of Practice for Responsible Online Gambling 2019 (**the Code**) through not recognising red flag behaviour nor having appropriate interaction with the customer that reasonably responded 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* (**the Act**) by imposing a fine for its contravention of condition 15 of its licence of 136 penalty units being 80% of the maximum penalty available, equating to \$21,352 (for the 2021/22 financial year the value of a penalty unit was \$157).
3. The Commission has determined that all of the bets placed by the Complainant with Crossbet after 11.18am on 21 May 2022 are not lawful due to the Licensee's breach, which results in the Commission forming the view that the Licensee should refund \$42,750.00 to the Complainant.

## REASONS

### **Background**

4. The Commission granted a licence to Crossbet on 8 January 2021 to conduct the business of a sports bookmaker pursuant to section 90 of the Act.
5. The Complainant opened his account with Crossbet on 20 May 2022, and during the 48-hour period between the date he opened his account and 22 May 2022, he deposited and lost \$88,350.00.
6. On 2 June 2022, the Complainant voluntarily self excluded from all Northern Territory licensed operators.

### **The Complaint**

7. On 10 July 2023, the Complainant lodged a complaint with the Commission in relation to his dealings with Crossbet.

8. The substance of the Complainant's allegations to the Commission is that the Complainant was engaged in a continuous period of wagering for 48 hours, made multiple large and frequent deposits and during this time was under the influence of alcohol and other substances. The Complainant stated that Crossbet failed to identify and act upon the red flag behaviours that he exhibited in this period.
9. The Complainant is seeking that the Commission require Crossbet to repay half of the Complainant's deposits, ie \$44,175.00.

#### Commission Hearing

10. Pursuant to section 85(4) of the Act, the Commission determined to hear the dispute and make its determinations in the absence of the parties, based on the evidence before it.
11. That evidence includes written submissions to the Commission by both the Complainant and the Licensee, as well as additional evidence obtained on behalf of the Commission by Licensing NT officers appointed as betting inspectors by the Commission.

### **Consideration of the Issues**

#### **'Out of Time' Consideration**

12. Regulation 17(1) of the *Racing and Betting Regulations 1984* provides that a dispute must be lodged within 14 days from the result of the event the dispute centres on. However, Regulation 17(2) allows the Commission to accept the submission of a dispute notwithstanding the expiration of that 14-day period if it is warranted by the circumstances.
13. The Commission has determined to accept this dispute, notwithstanding that it was lodged more than 12 months after the date of the events that gave rise to the dispute.
14. The Commission has determined to accept the dispute in this case, partly because the dispute concerns problem gambling, but primarily because the Complainant contacted a Licensing NT officer within the 14-day period and was provided with advice on how to lodge a dispute, and was advised to seek to resolve the dispute directly with Crossbet before formally lodging his dispute.
15. The Commission considers that the interaction between the Complainant and the Licensing NT officer amounted to an acceptance that the dispute would be accepted out of time.

#### **Code of Practice**

16. The Commission provides practical guidance to the sports bookmakers it licences on matters relating to the Act, through the approval of Codes of Practice. The Northern Territory Code of Practice for Responsible Service of Online Gambling 2019 (**the Code**) was approved by the Commission to provide guidance on responsible gambling practices that must be implemented by sports bookmakers so as to minimise the potential for any harms that may be caused by online gambling.
17. The Act and the licence conditions attached to all sports bookmaker licences granted by the Commission make it mandatory for sports bookmakers to adhere to any Codes of Practice approved by the Commission.
18. Specific to this complaint are the following clauses in the Code:

##### 3.1 New staff

All new staff, engaged in customer interaction, must complete appropriate responsible gambling training within one (1) month of commencing employment. Training should include:

- identifying problem gambling Red Flag behaviours
- ...

Problem gambling **Red Flag behaviours** may include, but are not limited to:

- gambling for an extended period
- changing gambling patterns
- increase in deposit frequency
- escalating sums of money deposited
- admissions of being drunk or under the influence of other drugs

### 3.2 Recognising potential problem gamblers

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.

## Red Flags

19. The Complainant has alleged that Crossbet failed to detect and act on red flag behaviours of the Complainant during the 48-hour period of betting activity on the account, contrary to clause 3.2 of the Code, which requires that where a customer displays some, or a number, or a repetition of red flag behaviours, they should be monitored, and appropriate customer interaction should take place to assist or protect that customer.
20. The Complainant has alleged the behaviour which Crossbet should have monitored are:
  - a. being drunk or under the influence of other drugs;
  - b. escalating sums of money deposited;
  - c. gambling for extended periods; and
  - d. changes in betting patterns.

## Complainant's Account Activity

21. The Commission has carefully reviewed the Complainant's betting activity and the interactions between Crossbet and the Complainant during the 48-hour period that he was actively betting and before his account was closed. During this period, he placed a total of 349 bets for a total stake of \$565,358.91.
22. The Commission has observed that after the Complainant opened his account with Crossbet on 20 May 2022, he commenced betting at 8.33 am on that day and continued his betting activity for 19 hours and 41 minutes, during which time he lost \$26,907.38. He then had a break of 3 hours and 31 minutes between 4.25 am and 7.46 am on 21 May 2022.
23. He then commenced betting again at 7.46 am on 21 May and continued for 10 hours and 18 minutes until 6.04 pm that day, during which time he lost \$39,692.62. He had a break of 3 hours and 44 minutes (with the exception of one deposit and one bet placed during the period

of the break), and he commenced betting again at 9.48 pm on 21 May and continued for 4 hours and 55 minutes until 2.44 am on 22 May 2022, during which time he lost \$21,750.00.

Being drunk or under the influence of other drugs

24. In their response to this aspect of the complaint, Crossbet advised that “[w]hilst a red flag behaviour is an admission of being drunk or under the influence of drugs, in [the Complainant’s] case, [the Complainant] has only made this admission on 22 May 2022 and 25 May 2022 after his betting with CrossBet had ceased and never during the period of his betting. Assuming it is factually correct that [the Complainant] was under the influence, there was no way for CrossBet to know that [the Complainant] was impacted by alcohol or drugs. On the contrary, there is no indication from the live chats that occurred between [the Complainant] and CrossBet in the period that the account was active to suggest that [the Complainant] was under the influence. [The Complainant’s] livechats with CrossBet during this period were calm and rational discussions about the resulting of certain bets. There is nothing that could be taken from these discussions by CrossBet to suggest that [the Complainant] was under the influence of alcohol or drugs. In fact, the livechats show calm rational behaviours that more likely indicates that at least until the morning of 22 May 2022, [the Complainant] was not significantly impacted by drugs or alcohol.
25. As noted above, the Commission has carefully reviewed the Complainant’s betting activity and interactions with Crossbet. Although the Commission cannot verify whether or not the Complainant was under the influence of alcohol or other drugs, the Commission was unable to locate any evidence that suggested that that was the case until the Complainant contacted Crossbet by live chat at 3.07 am on 22 May 2022 in response to a request by Crossbet that the Complainant verify his email address. In the live chat message, the Complainant stated “I got no money left anyway I don’t even putting my whole bank through haven’t slept all weekend”. Surprisingly, Crossbet does not appear to have responded to this live chat message, other than to credit his account with a \$2,500.00 bonus bet, which Crossbet later said was in error and was reversed.
26. Three days later, on 25 May 2022, at 7.52 am, the Complainant initiated another live chat message with the following: “I am emailing you in regards to an account created in my name some time on Friday 20<sup>th</sup> of may 2022. I made the account whilst under the influence of alcohol and other substances I was abusing. I am a transitioning member from the [...] and currently speak to my treating rehab manager, psychiatrist and psychologist about my medical condition and ways of controlling them are through medications and substance use. As I woke up Sunday 22 of may some time I could not find my phone and called my bank to cancel my cards ect. As I could not recall what had happened. As I came to, I found my phone several [sic] days later and came to the conclusion I had another panic attack due to my medical conditions whilst sustained in the [...]. I am asking why wasn’t my behaviours red flagged in your responsible gambling department as suspicious behaviours. I made very large desoposits [sic] on an account that had just been created with a prolonged session time as my bank statements suggest I made continuous bets for 3 days straight. I was advised by my rehab delegate to get in contact with you guys and the NT racing commission just for an answer as to why my account wasn’t flagged as suspicious and stopped after the first 24 hours of betting”.
27. In response to that live chat, at 8.04 am Crossbet immediately blocked the Complainant’s account, and it was subsequently closed when the Complainant self-excluded from all NT licensees.

Gambling for long periods / change in betting patterns/ escalating deposits

28. As noted above, the Complainant opened his account on 20 May 2022 and it was only active for a period of 48 hours, which made it difficult for Crossbet to establish clear a baseline of

betting patterns and whether the Complainant was gambling for longer than normal periods or escalating his deposit amounts.

29. In Crossbet's response on this aspect of the dispute, Crossbet stated that when the account was opened, they performed a number of checks and that nothing of concern was flagged at that time, however "[a]cross the next 24 hours [the Complainant's] betting however was flagged and on 21.05.23 @ 11:18 we contacted him directly via email pointing him to RG tools that were available to him..... We also attempted a phone call but no answer, and it later became apparent that he had lost his phone."
30. There seems to be some confusion about whether this email was received by the Complainant (the Complainant states that he received it and he has provided a copy of it to the Commission, but Crossbet says that they received a bounce back). In any event, the Commission has reviewed the email, and it appears to be more in the nature of a welcome email than an interaction following the flagging of betting activity that required an intervention. The email is reproduced below:

*"Hi [name of Complainant], Hope you are well. Just wanted to drop you a quick intro email and to welcome you to Crossbet. My name is [name of CRM manager], I'm the head of CS and VIP at Crossbet. I trust everything is good so far, however if you do need anything from us, feel free to reach out to myself directly via this email, or our CS team who are available 9am-11pm 7days. At Crossbet we encourage, promote, and openly discuss Responsible Gambling. Should you need them, we have RG tools (deposit/loss limits and 'Take A Break functions) available 24/7 within My Account. Once again, welcome to Crossbet, and best of luck over the weekend. Cheers"*

31. It is at the point where Crossbet flagged the Complainant's betting activity that the Code required Crossbet to have an appropriate customer interaction with the Complainant which reasonably corresponded to those circumstances. In the first 24 hours of betting activity on the Complainant's account which led Crossbet to flag his account, he had gambled continuously for almost 20 hours and had a break of less than 4 hours, whilst depositing and losing more than \$26,000.00.
32. Having reviewed the email which Crossbet states was sent in response to the Complainant's betting activity in the first 24 hours of betting, the Commission is of the view that it was not an appropriate customer interaction, because although it mentioned a number of available responsible gambling tools, it did not make any enquiry as to whether the Complainant was gambling within his means, or taking a sufficient break from his long period of gambling activity.

### **DISCIPLINARY ACTION**

33. On the weight of evidence before it, the Commission is satisfied that pursuant to section 80(1)(d) of the Act, Crossbet has failed to comply with condition 15 of its licence, specifically that it contravened condition 15 of its licence by not complying with clause 3.2 of the Code through not having an appropriate interaction with the Complainant when Crossbet flagged his gambling activity as requirement an intervention.
34. 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.
35. The Commission has determined that it is appropriate to take disciplinary action against the Licensee pursuant to section 80(1)(d) of the Act for its contravention of condition 15 of its

licence by imposing a fine of 136 penalty units being 80% of the maximum penalty available, equating to \$21,352.

### **LAWFULNESS OF BETS**

36. As detailed in this Decision Notice, the Commission has found that Crossbet has breached its regulatory obligations by failing to have an appropriate interaction with the Complainant when his account was flagged after his first 24 hours of betting activity, and again after the Complainant contacted Crossbet by live chat on 22 May 2022 and stated that he “*had no money left*”. Given this finding, the Commission has turned its mind as to whether the betting transactions that occurred through the Complainant’s Crossbet betting account after 11.18 am on 21 May 2022 were lawful.
37. The Commission has long taken the view that it is a matter of the Commission’s judgement as to whether a contravention of the Act, a Code of Practice, a condition of licence or other circumstance may be regarded as being so serious as to undermine the integrity of the betting transaction itself and in such circumstances, conclude that the betting transaction to be not lawful. By way of example, the Commission has often determined that the betting transactions involving a self-excluded person are not lawful given the importance the Commission places 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 wagering provider due to recognising the risk to themselves of financial harm.
38. The Commission is however, of the view that it was also the intention of the legislature to provide the Commission with jurisdiction to also enable bets to be enforced when it furthers the objects of the integrity and probity of betting and racing to do so, and to accept a bet as being lawful even if there is a breach of the Act, a Code of Practice or a licence condition by a licensee.
39. 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 failure of Crossbet to initiate an appropriate interaction with the Complainant when Crossbet flagged the Complainant’s account, and sent an email at 11.18 am on 21 May 2022 is sufficiently serious so as to undermine the integrity of each bet placed by the Complainant after that time.
40. Given this, the Commission has formed the view that all bets placed by the Complainant after 11.18 am on 21 May 2022 to be not lawful under the prevailing regulatory frameworks in place during that period of time. The Commission is therefore of the view that Crossbet should return the account balance that existed at that time as well as all deposits made by the Complainant into his Crossbet account from that time until its closure (minus any withdrawals), which according to the data before the Commission equates to \$42,750.00 .

### **NOTICE OF RIGHTS**

41. 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  
Chair, Northern Territory Racing Commission

And on behalf of Commissioners Shields, Bravos and Kirkman