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# NORTHERN TERRITORY RACING COMMISSION

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## Decision Notice

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<b>Complainant:</b>	Mr L
<b>Licensee:</b>	Sportsbet Pty Ltd
<b>Proceedings:</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>Heard Before: (on papers)</b>	Mr Alastair Shields (Presiding Member) Ms Cindy Bravos Mr Kris Evans
<b>Date of Decision:</b>	12 April 2023

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### Background

1. The Northern Territory Racing Commission (**the Commission**) has granted a licence to **Sportsbet** Pty Ltd (**Sportsbet**) to conduct the business of a **Sports Bookmaker** pursuant to section 91 of the *Racing and Betting Act 1983* (**the Act**).
2. On 31 August 2020, the **Complainant** lodged a complaint with the Commission in relation to his dealings with Sportsbet some 10 months earlier, being early October 2019. In that complaint, the Complainant has suggested to the Commission that Sportsbet failed to implement sufficient responsible gambling practices to minimise the harm that he has experienced from his wagering behaviour. Specifically, the complainant alleged that Sportsbet failed to identify that his betting behaviour increased significantly following the receipt of an inheritance from a family member.
3. The Complainant had also lodged a similar complaint with the Commission in relation to Hillside (Australia New Media) Pty Ltd which operates the betting platform bet365. The findings of the Commission's investigation into that complaint were published by the Commission on 20 April 2022 (L v Hillside (Australia New Media) Pty Ltd - trading as bet365) and can be found on the Commission's website.
4. In lodging the complaint, the Complainant is seeking for the Commission to find that Sportsbet has breached the Act and/or its licence conditions and as a result, to take disciplinary action against the sports bookmaker. In addition, the Complainant is seeking for the Commission to declare that all or some of the bets struck between 1 October 2019 (being the date that the Complainant opened a betting account with Sportsbet) and 6 October 2019 (being the last day that the Complainant placed a bet with Sportsbet) to be 'not lawful' and as a result, form the view that Sportsbet should return all or some of the monies that the Complainant had deposited into the Sportsbet betting account to him.
5. Information was gathered from the parties involved by Licensing NT officers appointed as Betting Inspectors by the Commission and provided to the Commission, which determined that there was sufficient information before it to consider the complaint on the papers.

### Consideration of the Issues

6. Pursuant to the Act and licence conditions, all Northern Territory licensed sports bookmakers are required to comply with the Northern Territory Code of Practice for Responsible Service of Online Gambling 2019 (**the 2019 Code**). The 2019 Code came into effect on 26 May 2019,

having replaced the Northern Territory Code of Practice for Responsible Gambling 2016. The 2019 Code provides guidance to online gambling providers licensed in the Northern Territory on responsible gambling practices so as to minimise the harm that may be caused by online gambling.

7. The 2019 Code among other things, mandates at clause 3.1 that all staff of an online gambling provider that are engaged in customer interaction must receive training that will enable them to identify problem gambling 'red flag' behaviours. While not exhaustive, the 2019 Code details that 'red flag' behaviours may include activities such as gambling for an extended period of time, changing gambling patterns, increases in deposit frequency and escalating sums of money deposited.
8. The 2019 Code further requires at clause 3.2 that online gambling providers are to have in place responsible gambling policies and procedures to allow staff to detect and assist customers who may be experiencing problems with their gambling. Where an online gambling operator's customer displays some, or a number, or a repetition of red flag behaviours, the 2019 Code requires that they should be monitored and that appropriate customer interaction should take place to assist or protect that customer.
9. Evidence before the Commission shows that the Complainant opened a betting account with Sportsbet on 1 October 2019. At that time (and in compliance with the 2019 Code), the Complainant was prompted by Sportsbet to set a voluntary maximum deposit limit on the account so as to limit the amount of money that could be deposited into the betting account by the Complainant. While the 2019 Code mandates that a new customer must be prompted to set up a maximum deposit limit during the process of opening a betting account, it is currently not mandated that the new customer is required to do so. At the time of opening the betting account with Sportsbet, the Complainant chose not to set a maximum deposit limit on his betting account.
10. On the same day that the Complainant opened a betting account with Sportsbet, he deposited \$100 at 11:49 pm and then placed three losing bets resulting in a nil balance in the betting account. The complainant deposited a further \$100 and continued his wagering activity with predominantly losing bets with stakes of between \$10 and \$50 until shortly after midnight when again his betting account balance reached nil. The complainant deposited a further \$100 and after placing two further bets with stakes of \$50, ceased wagering for the night at 12:32 am at which time, the Complainant's betting account balance was again nil and he had sustained an overall loss of \$300.
11. The complainant commenced wagering again later that day at 2:53 pm after having made a deposit of \$100 and continued his wagering activity over the next 12 hours until 2:54 am the following morning, being 3 October 2019. During this time, the complainant deposited a total of \$5,396.45 (with individual deposits ranging up to \$500) and placed over 250 winning and losing bets with stakes also up to \$500 and payouts of up to \$1,218 on the winning bets. During the same period, the Complainant made numerous withdrawal requests totalling \$14,000 but also later cancelled \$10,000 of these withdrawal requests resulting in a total of \$4,000 being requested to be withdrawn from the betting account. By the end of this period of wagering activity, the Complainant had sustained a total loss of \$1,396.45 and had a betting account balance of nil.
12. Later that day being 3 October 2019, the Complainant again commenced wagering at 09:04 am, following a break in his wagering of just over six hours. To enable this next period of wagering to occur, the Complainant cancelled his withdrawal request of \$4,000 resulting in his betting account balance now having \$4,000 of funds with which to wager. The Complainant again placed numerous winning and losing bets with stakes ranging up to \$500 and winning

payouts of up to \$840 and ceased wagering some five hours later with a betting account balance of just four cents. During this period of wagering activity, the Complainant made no further deposits into his betting account and requested to withdraw \$11,500 however, in addition to the cancelled \$4,000 withdrawal request previously mentioned, the Complainant also requested to cancel \$11,500 of the withdrawal requests that he had made, resulting in an overall loss for the Complainant of \$4,000 for this period of wagering activity.

13. The following day being 4 October 2019, the Complainant commenced another period of wagering activity at 9:00pm when he deposited \$100 into his betting account and wagered for the next three hours, finishing just after midnight. During this period, the Complainant deposited \$1,780 into his betting account and made no withdrawals, finishing the evening with an account balance of zero. The complainant's bet stakes during this period usually ranged up to \$500 however, the Complainant also placed three separate \$1,000 bets, one of which resulted in a winning payout of \$3,000, being his biggest winning payout during this period. The overall loss for the Complainant on this day was \$1,780.
14. As can be seen from the above, during the first four days of the Complainant operating a betting account with Sportsbet, the Complainant bet often and in spurts of anywhere between one to twelve hours; placed bets of up to \$1,000; tended to cancel withdrawal requests made so as to be able to continue to wager; and while some bets that the Complainant placed resulted in relatively large payouts, the Complainant's overall activity during this four day period demonstrated that he was not a particularly successful gambler, given that he sustained an overall loss of \$7,476 during the first four days of his betting activity with Sportsbet.
15. On the afternoon of 5 October 2019, the Complainant again commenced wagering with Sportsbet. The Complainant initially deposited \$500 into his betting account followed by a further seven deposits of \$4,649.92 over the next hour and a half. The stakes of the bets placed by the Complainant during this period ranged up to \$500.
16. The Complainant then continued to wager until 5:18 pm that afternoon at which time he made a withdrawal request for \$2,000 bringing his betting account balance to zero. However, the Complainant cancelled this withdrawal request seven minutes later and continued to wager, placing hundreds and hundreds of bets with no obvious break until 12:57 pm the following day - a period of just under 24 hours.
17. During this period between 2:12 pm on 5 October 2019 and 12:57 pm on 6 October 2019, the Complainant deposited a total of just over \$16,000 (\$16,040.07). While the Complainant made several withdrawals throughout the period, he also cancelled each of these withdrawals excepting one withdrawal of \$1,000. As a result, the Complainant's overall losses during this one lengthy session of wagering amounted to just over \$15,000.
18. At 1:40 pm on 6 October 2019, and shortly after the Complainant had ceased wagering, Sportsbet attempted to call the Complainant to discuss his betting activity. As Sportsbet were unable to reach the Complainant, Sportsbet suspended the Complainant's betting account and sent an email to the Complainant to advise him that it had done so. Sportsbet has advised the Commission that the reason for attempting to contact the Complainant was due to its monitoring of newly created accounts for deposits greater than \$20,000 in the first month of being opened. This monitoring trigger clearly activated given the Complainant's deposit activity following the opening of the betting account on 1 October 2019.
19. Later that same day, the Complainant contacted Sportsbet and after stating that he had been locked out of his account, spoke with a member of Sportsbet's Responsible Gambling Team. The Commission has listened to a recording of that conversation and notes that during that call, the Complainant stated that he was betting within his limits however, due to the recent

loss of a close family member he had been using gambling as a distraction. As a result of the conversation, the Complainant agreed to put a deposit limit on his account that limited him to depositing no more than \$500 a month (an amount that the Complainant stated was affordable for him) and to leave the betting account in a suspended state so that he would not be able to place anymore bets but would still allow him to withdraw any monies if any of his pending bets were successful. Subsequently, at 3:54 pm, the Complainant requested to withdraw \$1,000 from the betting account.

20. The following day, the Complainant again contacted Sportsbet and requested that the block be removed from his betting account so that he could place bets using bonus bets but not be able to deposit any monies. The Commission has also listened to the recording of this conversation and notes that following the Complainant making admissions that he had been betting online elsewhere, the Complainant agreed to the balance of his betting account being withdrawn and a 30-day suspension to be placed on the betting account.
21. Late in the evening on 17 November 2019 which was approximately six weeks after he had placed his last bet with Sportsbet, the Complainant emailed Sportsbet and advised that he was not in control of his gambling and that he had decided to stop gambling and seek help. The Complainant advised Sportsbet that while he recognised he was the one that had lost the money, he hoped that Sportsbet would give some money back to help him build his life back up.
22. In response to the Complainant's email, Sportsbet again contacted the Complainant by telephone and discussed the Complainant's wagering activity with him. In that conversation the Complainant stated that he had been chasing his losses and betting with another sports bookmaker. At the Sportsbet's representative suggestion, the Complainant agreed that it would be best for the betting account with Sportsbet to be permanently closed. Sportsbet also offered to assist the Complainant to self-exclude from all other sports bookmakers licensed in the Northern Territory through the Commission's self-exclusion facility and to contribute \$2,000 towards counselling fees.
23. Given the requirements of the 2019 Code detailed earlier in this Decision Notice, at the forefront of the Commission's determinations is whether Sportsbet firstly identified that the Complainant may be experiencing harm from his wagering activity and secondly, if it did - did Sportsbet then have any meaningful interaction with the Complainant.
24. It is evident from Sportsbet's actions on 6 October 2019 when it decided to suspend the Complainant's betting account, that it did identify that the Complainant may be at risk from his wagering behaviour and as a result had a meaningful interaction with the Complainant that resulted in the Complainant not being able to deposit any further monies into the betting account. Further interactions with the Complainant ultimately resulted in the Complainant agreeing to Sportsbet permanently closing his betting account with it.
25. While it is clear that the interactions by Sportsbet with the Complainant when they did occur were sufficient in themselves and were taken in accordance with the 2019 Code, the Commission has some concern that the first interaction with the Complainant did not occur until after the Complainant had deposited over \$20,000 into his Sportsbet betting account in a six-day period.
26. In the Commission's view, the continuous wagering activity of the Complainant between 5 October 2019 and 6 October 2019 should have at some point in that 24-hour period of wagering, caused Sportsbet to consider that the Complainant may be an 'at-risk' customer given that he deposited some \$16,000 and actively placed hundreds of bets during this period without an apparent break. The Commission notes that this activity occurred over a weekend

and mostly at night and that Sportsbet did take proactive action late on the Sunday afternoon of 6 October 2019 however by this time, significant financial harm to the Complainant had already occurred.

27. While Sportsbet did identify that the Complainant had deposited escalating sums of money from the time of the betting account's opening (and took appropriate action when it did so), it did fail to identify that the Complainant was wagering over an extended period during the early afternoon of 5 October 2019 through to the early afternoon on 6 October 2019 and did not take any action until the Complainant's depositing activity reached Sportsbet's own 'red flag' threshold of a customer depositing more than \$20,000 in the first month of opening a betting account.
28. In the Commission's view, Sportsbet should have engaged with the Complainant earlier than it did. While this engagement may not have led to a significantly different outcome, an interaction by Sportsbet with the Complainant at some point during this 24-hour period of wagering may have led to the Complainant reconsidering the considerable amount of betting activity he was engaging in at that time.
29. As enunciated in numerous Commission decisions, it is well established that the Courts have set a very high threshold of responsibility for the gambler as to their own actions. It is suggested 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.
30. While the Commission is not of the view that Sportsbet's lack of action during the Complainant's 24-hour period of wagering between 5 October 2019 and 6 October 2019 was deliberate or that it amounted to gross misconduct on its part and therefore placed a duty on it to prevent loss to the Complainant, the Commission has formed the view that Sportsbet did fail to identify that the Complainant was wagering for an extended period of time without a break and that this period of wagering differed to his previous wagering activity with Sportsbet (albeit that he had only been a customer of Sportsbet for some four days before this wagering activity took place and therefore Sportsbet had a limited customer history with which to compare).
31. In the Commission's view, regardless of a customer's previous wagering history, gambling for 24 hours straight with no break is not indicative of a person who is in control of their wagering behaviour and as a result in the Commission's view, some form of interaction with the Complainant should have taken place well before the Complainant himself stopped wagering. Given this, the Commission considers that Sportsbet's failure to identify this significant 'red flag' is in breach of clause 3.2 of the 2019 Code.
32. During the course of the Commission's investigation of this matter, the Complainant had stated that he held an account with Sportsbet between 2008 and 2010 and that the betting account had been closed due to concerns about his wagering activity at that time. In this respect, there is no evidence before the Commission that the Complainant had permanently self-excluded from Sportsbet at that time nor do the Sportsbet records indicate that a betting account was held by the Complainant with it during that time. Given this, the Commission has determined not to investigate the Complainant's assertions in this regard any further.

## Decision

33. On the weight of evidence before it, the Commission is satisfied that pursuant to section 80(1)(d) of the Act, Sportsbet 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 - in that it failed to

have in place responsible gambling policies and procedures to allow its employees to detect and assist customers who may be experiencing problems with their gambling and as a result it failed to initiate an appropriate customer interaction to assist or protect the Complainant as is required by the 2019 Code.

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 to impose a fine equivalent 50% of the maximum penalty of 170 penalty units, being 85 penalty units (in October 2019 a penalty unit's value was \$157) which is equivalent to \$13,345.
36. In applying this disciplinary action, the Commission has taken into account that due to its monitoring processes, Sportsbet did eventually make contact with the Complainant albeit that in the Commission's view, the systems and processes that it had in place at that time were deficient.
37. Given the Commission's determination above, the Commission has turned its mind as to whether the betting transactions that occurred during the Complainant's 24-hour period of wagering between 5 October 2019 and 6 October 2019 were lawful. In this respect, 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 the betting transaction/s to be not lawful.
38. As detailed at paragraph 29 above, while the Commission has formed the view that Sportsbet did fail to identify that the Complainant was wagering for an extended period without a break and that this period of wagering differed to his previous wagering activity, the Commission has not formed the view that Sportsbet's lack of interaction was deliberate or that it amounted to gross misconduct.
39. Given this, the Commission has formed the view that despite the failings of Sportsbet with respect to its compliance with its licence conditions and 2019 Code, the integrity of each bet placed by the Complainant with Sportsbet during this period has not been undermined to the extent where each bet should not be enforced, even though the Complainant's activity resulted in a financial loss to him.

#### **Review of Decision**

40. 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

12 April 2023