

# NORTHERN TERRITORY RACING COMMISSION

## Reasons for Decision

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<b>Complainant:</b>	Mr A
<b>Licensee:</b>	Hillside (Australia New Media) Pty Ltd (trading as bet365)
<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>	Ms Cindy Bravos (Presiding Member) Ms Amy Corcoran Mr James Pratt
<b>Date of Decision:</b>	20 April 2022

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### Background

1. On 16 September 2020, pursuant to section 85(2) of the *Racing and Betting Act 1983* (the Act), the complainant lodged a gambling dispute with the Northern Territory Racing Commission (the Commission) against the licensed sports bookmaker, Hillside (Australia New Media) Pty Ltd which operates the online sports betting platform known as bet365. For the purposes of this decision notice, the licensee will be referred to as bet365.
2. In lodging the gambling dispute, the complainant has submitted to the Commission that bet365 failed to implement sufficient responsible gambling practices to minimise the harm that he has experienced from his gambling behaviour. Specifically, the complainant alleges that bet365:
  - a. failed to make contact with him despite an increase in the amount of money he was depositing into his betting account; and a change in his betting behaviour which included betting in the middle of the night and betting all of his winnings until he lost them;
  - b. proactively encouraged him to bet by providing incentives by way of bonus bets into his betting account after he had stopped betting which he would use, then lose, and then deposit more money into his betting account in order to continue betting; and
  - c. prompted him each time he visited the bet365 website to re-open his betting account that he had closed for a three month period.
3. The outcome the complainant is seeking is for the Commission to determine that the bets made during the period that the complainant operated his bet365 betting account were not lawful and for bet365 to refund all of the monies that he deposited into the betting account.
4. 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 gambling dispute on the papers.

### Consideration of the Issues

#### Red Flag Behaviour

5. For many people, gambling is a harmless entertainment. As detailed in many previous decisions of the Commission, the Commission recognises that this is not the case for all people who engage in gambling activity and that in some circumstances, some people are unable to control

the urge to gamble despite knowing that it is having a negative impact on their lives. With this in mind and in order to minimise the harm that may be caused by online gambling, the Commission introduced the Northern Territory Code of Practice for Responsible Service of Online Gambling 2019 (the 2019 Code) which came into effect on 26 May 2019, having replaced the Northern Territory Code of Practice for Responsible Gambling 2016 (the 2016 Code).

6. The 2019 Code among other things, requires 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.
7. 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.
8. Given the requirements of the 2019 Code, at the forefront of the Commission's considerations with respect to this gambling dispute is whether the complainant's betting behaviour should have prompted bet365 to identify that he may be experiencing harm from his gambling behaviour.
9. With regard to this, the complainant has submitted to the Commission that his gambling behaviour had started to become an issue for him in late May/early June 2020 and that by 26 June 2020, it had become a clear issue as he deposited over \$18,500 between 26 June 2020 and 11 September 2020 with just \$533 in withdrawals made in this same period. Given the precise nature of the complainant's submission, it is readily apparent to the Commission that the complainant has with the benefit of hindsight, reviewed his betting activity with bet365 and nominated these specific trigger points as ones that should have created a positive obligation on bet365 to interact with him from a responsible gambling perspective.
10. The Commission has reviewed the complainant's betting activity with bet365 and notes that in November 2019, the complainant decided to access a bet365 responsible gambling tool known as 'time-out'. This time-out function allows a bet365 customer to take a short break from gambling through the customer choosing to restrict their access to gambling for a specific period of time such as 24 hours, 48 hours, seven or 30 days; or for specific days of the week or times of the day. During the period that the time-out is selected for, the bet365 customer will not be able to access any of the bet365 products excepting for being able to withdraw from the betting account. The bet365 time-out feature is not able to be changed until the selected time-out period has expired.
11. While the complainant had selected a 30 day time-out period in November 2019, it was not until some five and a half months later on 2 May 2020 that the complainant began to again actively use his bet365 betting account. Given this relatively large break in betting activity and the complainant's own submission that it was not until late May 2020 that he now feels that his betting activity began to be an issue for him, the Commission has focused on the complainant's activity from this date forward. In this respect, the Commission notes that the complainant's betting activity in both total deposit amounts and the number of bets struck for the months of June 2020 and July 2020 were less than those in May 2020 and as such, it would

be difficult for the Commission to come to a conclusion that at some point during this period that bet365 should have identified that he was experiencing harms from his gambling behaviour.

12. In examining the complainant's overall betting activity for the months of August 2020 and September 2020, it is apparent to the Commission that there was an increase in the complainant's betting activity, both in the total value of deposits made each month as well as in the number of bets placed. Also during this period, the complainant's gambling activity was not particularly successful given that he lost \$6,746 and \$8,100 for each of these months respectively. While this may be the case, it is not possible for the Commission to automatically draw the inference that bet365 should have identified that the complainant was experiencing harms associated with his gambling activity simply because his betting activity did not result in a profit for him, especially given that an inherent risk that cannot be avoided in the activity of gambling is a loss of money.
13. Throughout May, June and July 2020, the complainant tended to place bets with a stake of \$20 to \$50 with an occasional bet with a stake of \$100, as well as a higher value bet on the odd occasion. On 3 August 2020, the complainant placed one of these higher value bets with a \$650 stake on the outcome of a greyhound race at Angle Park (which resulted as a losing bet) but then continued to bet in the same manner as previously with respect to the value of the stakes until 28 August 2020 where it appears that the complainant may have been attempting to chase his losses through the placement of four \$500 bets. The complainant then returned to placing bets with generally lower stakes until 5 September 2020 where he again placed several bets with higher stakes (some of which were successful) over the next few days. The complainant's bet stakes then increased between 9 September 2020 to 11 September 2020 with bets of \$100 to \$500 regularly being placed until such time as the complainant closed his account.
14. Betting activity is rarely linear or metronomic and there can be significant deviations in the amount deposited and wagered by the same sports bookmaker customer from one day to the next; as is also the case with the amounts won or lost by that same customer. Taking this into account and having reviewed the complainant's betting activity with bet365, the Commission is of the view that the complainant's betting activity was not of such a nature that should have triggered bet365 to identify that the complainant may have been experiencing harms from his gambling behaviours.
15. With respect to the complainant's submission that the timing of his betting behaviours changed as he was now betting through the middle of the night, the Commission notes that since the re-opening of the betting account in 2019 that while it was not an everyday event, it was not a particularly unusual event for the complainant to place several bets late in the evening or early hours of the morning. As such, it would again be difficult for the Commission to conclude that bet365 should have identified that the complainant was experiencing harms from his gambling activity based on this behaviour.

#### Inducements

16. The complainant has submitted to the Commission that bet365 failed to implement sufficient responsible gambling practices to minimise the harm that he has experienced from his gambling behaviour as it proactively encouraged him to wager by providing incentives by way of bonus bets into his betting account after he had stopped betting which he would use, then lose, and then deposit more money into his betting account in order to continue betting.
17. The Commission is cognisant of the right of sports bookmakers to create effective marketing programs that promote their services to their customers. In alignment with this view, the 2019

Code requires that any marketing that is delivered, is to be done in an honest and responsible manner with consideration given to the potential impact on people adversely affected by gambling.

18. Given that the Commission is of the view that the complainant's betting behaviour with bet365 was not of such a nature to warrant a responsible gambling intervention from bet365, the Commission does not consider that bet365's actions in promoting its services to the complainant by the offering of bonus bets was inappropriate or in breach of the 2019 Code.

### Account Closure

19. The complainant's submissions to the Commission also included his dissatisfaction that each time he logged on to the bet365 website after having closed his betting account for a three month period, he was prompted to re-open his betting account via a 'pop-up' message.
20. The Commission notes that bet365 customers have three options available to them to proactively take a break from gambling with the sports bookmaker being:
  - a. Self-Exclusion;
  - b. Time Out; or
  - c. Account Closure.
21. On 11 September 2020, the complainant chose the Account Closure option and nominated a period of three months. This option allows a bet365 customer to close their betting account if they wish to stop gambling with bet365 for any reason. The account closure information details that once an account is closed, the customer will be able to withdraw their remaining balance however, will not be able to make deposits or place any bets. The information provided also clearly states that a person is able to re-open their account during the period they have selected for it to be closed, by answering additional security questions.
22. While the self-exclusion and time-out options are understandably not reversible once selected given that these two options are responsible gambling tools designed to assist those bet365 customers who may be at risk of harm from their gambling, the account closure option differs in that it is reversible.
23. In the Commission's view, the ability to re-open a closed account is an option that bet365 is entitled to make available to its customers (in this case through the 'pop-up' message after the complainant had logged into his betting account) and is not in breach of the 2019 Code. Bet365 operates as a commercial entity with its end goal, like other commercial entities being to make a profit and as such, offering its customers (unless self-excluded) with the ability to re-open their betting accounts is not an unreasonable business decision to take.

### **Decision**

24. As detailed earlier in this decision notice, an inherent risk that cannot be avoided in the activity of gambling, is a loss of money. The Commission's role in dealing with this gambling dispute is not to simply rectify self-inflicted economic losses from gambling following the lodging of a gambling dispute with the Commission but rather, to make a finding as to whether the sports bookmaker has acted in compliance with the Act, its licence conditions and the relevant Code in place at the time.
25. On the weight of the evidence before it, the Commission is satisfied that there has been no breach of the Act, licence conditions or the 2019 Code by bet365 in relation to the

complainant. Given this, the Commission is not of the view that any monies deposited by the complainant into the betting account should be returned to him.

### **Review of Decision**

26. 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.



Cindy Bravos  
Presiding Member  
Northern Territory Racing Commission

20 April 2022