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# NORTHERN TERRITORY RACING COMMISSION

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## Reasons for Decision

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<b>Complainant:</b>	Mr G
<b>Licensee:</b>	Hillside (Australia New Media) Pty Ltd - bet365
<b>Proceedings:</b>	Gambling Dispute for determination by NT 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) Mr Kris Evans Mr James Pratt
<b>Date of Decision:</b>	9 March 2023

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### Background

1. The Northern Territory Racing Commission (**the Commission**) has granted a licence to Hillside (Australia New Media) Pty Ltd (**Hillside**) to conduct the business of a Sports Bookmaker pursuant to section 90 of the *Racing and Betting Act 1983* (**the Act**). Hillside operates its sports bookmaking business under the trading name **bet365**.
2. For ease of reference, the Commission will refer to the Sports Bookmaker as bet365 throughout this Decision Notice.
3. On 7 April 2021, the **Complainant** lodged a complaint with the Commission in relation to his dealings with bet365. In that complaint, the Complainant has alleged that he was able to open a new betting account with bet365 in May 2020 despite having previously excluded himself on a permanent basis in 2019, from using the wagering services of bet365.
4. In lodging the complaint, the complainant is seeking for the Commission to declare that all bets struck during the lifetime of the Complainant's bet365 betting account, opened by him in May 2020, to be 'not lawful'; and as a result, form the view that bet365 should return all monies that the Complainant had deposited into the bet365 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

#### Self-Exclusion

6. The Commission notes that gambling is a legitimate recreational activity enjoyed by most people for entertainment purposes however, this is not the case for all people who engage in gambling activities. Unfortunately, there are some people who are unable to control the urge to gamble despite knowing that it is having a negative

impact not only on themselves as an individual but also on their families and friends and the Australian community at large.

7. 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.
8. Clause 4.2(e) of the 2019 Code mandates that where a person requests that they be permanently self-excluded for any reason or is permanently excluded by the online gambling provider due to problem-gambling concerns, the online gambling provider must not knowingly permit that person to re-open or open a new account.
9. It is a requirement of bet365's licence (condition 15) that bet365 complies with the 2019 Code.
10. The Commission currently provides the opportunity for a person who wishes to stop themselves from gambling with one or more Northern Territory licensed online gambling providers, to apply for a **Self-Exclusion**. This is done by way of the completion and submission of a Self-Exclusion Notice to Licensing NT staff who provide administrative and regulatory assistance to the Commission. Once received, Licensing NT then provide the Self-Exclusion Notice to each of the Sports Bookmakers and or Betting Exchange Operators nominated on the Self-Exclusion Notice.
11. The expectation from the Commission is that upon receipt of a Self-Exclusion Notice, the Sports Bookmaker or Betting Exchange Operator will then ensure that the person subject of the Self-Exclusion Notice will no longer be able to use its services, regardless if they are a current customer or not.
12. On 13 May 2019, the Complainant submitted a Self-Exclusion Notice to Licensing NT requesting that he be permanently excluded from using the gambling services of all Northern Territory Sports Bookmakers and Betting Exchange Operators. The following day, the Self-Exclusion Notice was sent to all Northern Territory Sports Bookmakers and Betting Exchange Operators including bet365.
13. On 14 May 2019, bet365 sent an email to Licensing NT advising that it had excluded the Complainant in accordance with the Self-Exclusion Notice and that it had added the Complainant to its 'barring list'.
14. In addition, bet365 also sent an email to the Complainant on 14 May 2019 confirming that the self-exclusion for his betting account had been applied as per the Complainant's request. The Complainant was also advised that neither he nor anyone from bet365 would be able to overturn the self-exclusion.
15. The Commission notes that at the time the Complainant submitted his Self-Exclusion Notice, he had an active betting account with bet365. Having reviewed the betting statement for that account, the Commission also notes that the last bet struck on this account occurred on 9 May 2019, being several days before the betting account was permanently closed.

### Complainant's Attempt to Open New Betting Account - March 2020

16. When completing the Self-Exclusion Notice referred to above, the Complainant acknowledged that he understood and agreed to a number of statements including the following:

*During the Exclusion Period:*

- a. I will not wager or attempt to wager with the nominated Sports Bookmaker(s)/Betting Exchange Operator(s), including via websites, mobile apps and telephone wagering; and*
- b. The nominated Sports Bookmaker(s)/Betting Exchange Operator(s) may restrict my ability to access my account(s) and their websites, mobile apps and telephone wagering facilities.*

17. Despite having agreed to the above statement, the Complainant did attempt to again wager with bet365 on several occasions, the first of which was on 8 March 2020 when he attempted to open a new betting account with bet365 using the same registration details that he had used to open his original bet365 account.
18. However, bet365 has advised the Commission that due to the Complainant using the same registration details that he had used to create the first account with bet365, it was able to match the Complainant to his previously self-excluded betting account and as a result, was able prevent the Complainant from using its gambling services prior to the Complainant depositing any monies into the betting account.
19. After this occurred, the Complainant made contact with bet365 via Live Chat (a transcript of which has been viewed by the Commission) to query the status of the newly opened betting account that was now showing as permanently closed, stating that he thought he had previously only excluded for a period of 6 months and that he wanted the betting account to be re-opened.
20. In response and despite the Complainant's request to have the matter escalated to bet365 management for review, he was advised that the permanent exclusion would remain on the betting account and that bet365 would continue to do all it could reasonably do to stop the Complainant from opening a new betting account with bet365.
21. Of interest to the Commission in respect to the above attempt by the Complainant to open a new betting account with bet365 is that the Complainant in his submissions to the Commission with respect to this complaint, openly made admissions that in 2020 he had, "...opened or tried to open an account from [sic] companies I was self-excluded from..."

### Complainant Opens New Betting Account - May 2020

22. On 9 May 2020, the Complainant again attempted to open a new betting account with bet365 however, on this occasion as he used a number of registration details that differed to those that he had used when opening the original bet365 betting account and as contained in the Self-Exclusion Notice, bet365 did not detect that the Complainant was a person who was permanently excluded from using its wagering services.

23. As a result, the betting account was activated and the Complainant was able to deposit a total of \$7,000 on the day of the opening of the account and go on to place numerous winning and losing bets with bet365 over the next five hours.
24. After gambling through the deposits he had made into the betting account, the Complainant contacted bet365 through its Live Chat service and advised bet365 that he was, "...self excluded and was still able to sign up and deposit..." and given this, he should have the deposits he made into the betting account refunded to him.
25. In response, bet365 advised the Complainant it had now closed the most recently opened betting account but it would not be refunding any monies that the Complainant had deposited into the betting account to him.

#### Complainant's Attempts to Open New Betting Accounts - May 2020 & October 2020

26. On 24 May 2020, 31 May 2020 and 3 October 2020, the Complainant again attempted to use the wagering services of bet365.
27. On each of the aforementioned dates, the Complainant either attempted or was successful in opening a betting account with bet365 however on each of these occasions, the Complainant was identified by bet365 as a self-excluded person prior to the Complainant being able to use the betting account to engage in gambling activity.
28. As detailed above at paragraph 21, the Complainant has openly admitted to the Commission that he continued to attempt to open betting accounts with bet365 and a number of other Northern Territory licensed Sports Bookmakers, despite having submitted the Self-Exclusion Notice in 2019.

#### Commission Assessment

29. Unfortunately on occasion, the Commission receives complaints in which it is evident that despite a person proactively taking steps to prevent themselves from gambling, they have been unable to do so.
30. In this respect, it is generally recognised under Australian law that the operators of gambling services do not owe their customers a duty of care to prevent them from suffering economic loss, except in exceptional circumstances. While there is little judicial guidance as to what circumstances would likely be considered as exceptional, it is generally accepted that there would need to be some form of evidence demonstrating that a gambling operator was deliberately seeking to take advantage of a person and be acting with a predatory state of mind.
31. To ensure compliance with clause 4.2(e) of the 2019 Code, it is the responsibility of the Sports Bookmaker to put procedures in place to prevent a self-excluded customer from using its services. While the Commission has not mandated what checks must be undertaken by the Sports Bookmaker to limit the possibility of a self-excluded customer opening a new betting account, it does expect licensees to take all reasonable steps to refuse service or to otherwise prevent a self-excluded person from using its gambling services.
32. Therefore, at the forefront of the Commission's considerations in considering complaints of this nature, is whether the system utilised by the Sports Bookmaker

at the time of the opening of the betting account subject of the complaint, was sufficient to prevent self-excluded customers from returning to use its services.

33. Following the Complainant's self-exclusion from using the wagering services of bet365, the Complainant attempted to open a new account with bet365 on five separate occasions. On four of these five occasions, the system bet365 had in place to identify and prevent self-excluded persons from opening a betting account successfully detected that the Complainant was a self-excluded person and as a result, the Complainant was prevented from using bet365's wagering services.
34. On the one occasion that the Complainant was successful in opening a betting account with bet365 after having self-excluded, the Complainant appears to have deliberately taken steps to avoid being identified by bet365 as is evidenced through his own admission to the Commission of the use of an "...*incorrect name to sign up...*"
35. The Commission has sighted evidence that the registration details used by the Complainant to open the bet365 betting account subject of this complaint and notes that several identification details do differ from those that he used to open his first bet365 betting account and from those contained in the Self-Exclusion Notice.
36. On the evidence before it, the Commission is of the view that the policies and practices that bet365 had in place during the period of time subject of this complaint, with respect to not knowingly permitting a person to re-open or open a new betting account appear to have been appropriate and reasonable given that on four out of five occasions, bet365 were able to identify that the Complainant was subject of a Self-Exclusion Notice.
37. Given the fact that on the one occasion that the Complainant was successful in circumventing bet365's identification systems, he provided different identification details from those contained in the Self-Exclusion Notice, it is not possible for the Commission to draw the conclusion that bet365 was deliberately seeking to take advantage of the Complainant nor that it knowingly permitted the Complainant to open a betting account.
38. The Commission also notes that the Complainant lodged his complaint in April 2021, more than 12 months after having successfully opened the bet365 betting account subject of this Decision Notice and after unsuccessfully attempting to open new betting accounts with bet365 on three more occasions. This unreasonable delay in lodging the complaint, inevitably gives rise to suspicion for the motivation of the Complainant in lodging the complaint; in particular as to whether the Complainant genuinely considers that bet365 failed to have adequate systems in place to prevent self-excluded persons from opening betting accounts with it, or whether the Complainant is attempting to utilise the complaints process to recover economic losses sustained by his own deliberate and voluntary acts.

## **Decision**

39. On the weight of evidence before it, the Commission is not satisfied that bet365 knowingly permitted a self-excluded person to open a new betting account with it.

40. Given the Commission's determination, the Commission is of the view that all bets made during the lifetime of the Complainant's bet365 betting account opened by the Complainant on 9 May 2020 should stand as lawful bets and as a result, is not of the view that any monies should be returned by bet365 to the Complainant.

### **Review of Decision**

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.

Cindy Bravos



Presiding Member  
Northern Territory Racing Commission

9 March 2023