

# NORTHERN TERRITORY RACING COMMISSION

## DECISION NOTICE AND REASONS FOR DECISION

---

**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 O

**LICENSEE:** Mailbag Wagering Pty Ltd (BaggyBet)

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

**DATE OF DECISION:** 24 April 2024

---

### DECISION

1. For the reasons set out below, the Northern Territory Racing Commission (**the Commission**) is satisfied that Mailbag Wagering Pty Ltd (**the Licensee**) has:
  - i. contravened condition 15 of its sports bookmaker licence by not complying with:
    - a. clause 8.6 of the Northern Territory Code of Practice for Responsible Service of Online Gambling 2019 (**the 2019 Code**) through its contact with the Complainant on 14 October 2022 and on 27 October 2022, during which it urged the Complainant who was not a customer of BaggyBet to use BaggyBet's online wagering services;
    - b. clause 5.5(a) of the 2019 Code through its offering of an inducement by way of a deposit match to the Complainant on 14 October 2022 and on 27 October 2022, if he were to open a betting account with BaggyBet; and
  - ii. contravened condition 15 of its licence by not complying with:
    - a. clause 3.2 of the 2019 Code through it not engaging in appropriate customer interactions with the Complainant on 30 October 2022.
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:
  - i. for its contravention of condition 15 of its licence by way of its breach against clause 8.6 of the 2019 Code, a fine of 170 penalty units being 100% of the maximum penalty available, equating to \$27,540 (for the 2022/23 financial year a penalty unit's value was \$162);
  - ii. for its contravention of condition 15 of its licence by way of its breach against clause 5.5(a) of the 2019 Code, a fine of 170 penalty units being 100% of the maximum penalty available, equating to \$27,540; and
  - iii. for its contravention of condition 15 of its licence by way of its breach against clause 3.2 of the 2019 Code, a fine of 170 penalty units being 100% of the maximum penalty available, equating to \$27,540.

3. The Commission has determined that all bets struck from 1:46 p.m. on 1 November 2022 up until the betting account was designated as a self-excluded betting account, are not lawful.
4. As a result of this determination, the Commission has formed the view that all deposits made by the Complainant into the BaggyBet betting account from 1:46 p.m. on 1 November 2022 up until the betting account was designated as a self-excluded account – minus all withdrawals made from the betting account – should be returned by BaggyBet to the Complainant. On the data before the Commission, this equates to \$41,500, (being deposits of \$44,500 minus withdrawals of \$3,000).

## REASONS

### **Background**

#### The Licensee

5. The Commission granted a licence to the Licensee in 2022 to conduct the business of a sports bookmaker pursuant to section 90 of the Act. Under that licence, the Commission authorised the Licensee to operate an online wagering platform under the branding of BaggyBet.
6. The Licensee's sports bookmaker licence was due to expire in 2027 however, since the lodgement of the complaint subject of this Decision Notice, the Licensee has sought to cancel its sports bookmaker licence. At the time of the Commission's determination of the complaint subject of this Decision Notice, the Licensee is no longer operating as a sports bookmaker under its Northern Territory sports bookmaker licence however, the licence remains valid pending the Commission's determination of this complaint.
7. For ease of reference and given that the events complained of occurred while the Complainant interacted with the Licensee while using the BaggyBet branded online wagering platform, the Commission has determined to refer to the Licensee as **BaggyBet** throughout the remainder of this Decision Notice.

#### The Complaint

8. The Complainant lodged a complaint with the Commission about his dealings with BaggyBet on 16 November 2022. In that complaint, the Complainant alleged that:
  - i. while not a customer of BaggyBet, he was approached by a BaggyBet representative and encouraged to open a betting account with the sports bookmaker;
  - ii. after opening a betting account with BaggyBet, he displayed numerous red flag behaviours that indicated that he was experiencing harm from his wagering activities however, BaggyBet failed to identify and act upon those behaviours until the last days of him using the betting account - in part due to one of its employees being intoxicated while interacting with him; and instead constantly provided bonus offers that enticed him to make more deposits into his betting account; and
  - iii. he received marketing material from BaggyBet after he was self-excluded from the sports bookmaker.
9. The Complainant attempted to resolve his complaint directly with BaggyBet however, remained dissatisfied with BaggyBet's response to his complaint.

### Codes of Practice

10. 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 current Code of Practice which came into effect on 26 May 2019, was approved by the Commission to provide guidance on responsible gambling practices that must be implemented by sports bookmakers so as to minimise the impact of any harms that may be caused by online gambling. The Act and the licence conditions attached to all sports bookmaker licences granted by the Commission require licensees to adhere to any Codes of Practice approved by the Commission.

### Commission Hearing

11. 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.
12. That evidence includes written submissions to the Commission by both the Complainant and the Licensee, as well as additional evidence obtained by Licensing NT officers appointed as betting inspectors by the Commission.

## **Consideration of the Issues**

### Opening of the Account

13. The Complainant submitted to the Commission that on 14 October 2022, he received an unsolicited message from a BaggyBet relationship manager enticing him to gamble with BaggyBet through the offering of a deposit match offer.
14. Clauses 5.5 and 8.6 of the 2019 Code as set out below are relevant to the Complainant's allegation:

#### **Clause 5.5 Inducements**

- a. Online gambling providers must not offer any credit, voucher or reward to a person to open a betting account or to an account holder as an inducement to refer another person to open a betting account.

#### **Clause 8.6 Urging to Buy**

Online gambling providers are not to call or otherwise urge non-gambling customers to use their gambling services.

15. BaggyBet through its legal representative, submitted to the Commission that a text message was sent to the Complainant by a BaggyBet affiliate on 14 October 2022 and that the Complainant responded to this message on 27 October 2022. Shortly after that exchange, on the same evening, the Complainant opened a betting account with BaggyBet.
16. A transcript of that text exchange appears below:

### 14 October 2022

*BaggyBet Affiliate: Hi [Complainant's first name], Hope you've been well. Just letting you know I've parted ways with [another sports bookmaker] to somewhere else. Please feel welcome to contact if you wanted to try where I'm at someday [thumb's up emoji] [First name of the sender of the text]*

27 October 2022

Complainant: Thanks [name of sender of earlier text] – which bookie you are at now?

BaggyBet Affiliate: It's called BaggyBet. If you wanted to give us a try can organise a match

Complainant: Can you deposit using poli?

BaggyBet Affiliate: Yep

Complainant: You will do a 100% match on say \$5k

BaggyBet Affiliate: I can do 3.5k bonus on 5k deposit mate

Complainant: Ok will deposit now

17. In relation to the above interaction, BaggyBet submitted that:

- i. [the Complainant] and [the BaggyBet affiliate] had had prior dealings with each other when [the BaggyBet affiliate] was with [another sports bookmaker], including on the same mobile phone number;
- ii. [t]here was no luring or setting of a vicious trap as [the Complainant] alleges. There was simply a polite update as to [the BaggyBet affiliate's] movements and an invitation for [the Complainant] to contact [the BaggyBet affiliate] if the [Complainant] wanted to 'try where [he was] at'.
- iii. [t]his was not an inducement or even an urging to buy – it was simply what the message says on its face – a polite update as to [the BaggyBet affiliate's] movements.
- iv. [the Complainant] responded to this message some two weeks later on 27 October 2022, thereby indicating that he wanted to try the bookmaker that [the BaggyBet affiliate] had moved to;
- v. [i]t was only after this intention was communicated by [the Complainant] to [the BaggyBet affiliate] that there was further discussion between them.

18. The Commission however, disagrees with the position proffered by BaggyBet as to the purpose of its contact (through its affiliate) with the Complainant. It is the view of the Commission that the contact with the Complainant by the BaggyBet affiliate was for no other purpose than to urge the Complainant (which included the offering of a deposit match inducement) to open a betting account with BaggyBet and to commence wagering with it.

19. Given this, the Commission has determined that BaggyBet is in breach of:

- i. clause 8.6 of the 2019 Code through its contact with the Complainant firstly on 14 October 2022 and subsequently its contact on 27 October 2022, during which it urged the Complainant who was not a customer of BaggyBet to use BaggyBet's gambling services; and
- ii. clause 5.5(a) of the 2019 Code through its offering of a deposit match to the Complainant firstly on 14 October 2022 and then subsequently on 27 October 2022, if he were to open a betting account with BaggyBet.

20. The Commission notes that while the Complainant has also raised concerns about how his contact details were obtained by BaggyBet and BaggyBet's submissions that its affiliate had previous dealings with the Complainant, it is not within the Commission's regulatory jurisdiction to make findings as to whether BaggyBet or its affiliate has breached any privacy principles or associated privacy legislation.

#### Account Activity

21. The Complainant has submitted that over a period of one month, he lost over \$100,000 due to his wagering activity with BaggyBet. During this time, the Complainant has alleged that:

- i. on numerous occasions he conveyed to BaggyBet through its 'Live Chat' messaging system that his family was "...not happy..." with his high losses;
- ii. limited assistance was provided to him when he indicated to BaggyBet that he wanted to take a break from wagering with it;
- iii. he bet large amounts "...around the clock..." but was offered no assistance from BaggyBet until the last one or two days of him using the betting account when BaggyBet suggested that he take a break from wagering with it; and
- iv. he was continually offered bonuses throughout this time that enticed him to gamble further.

22. In relation to this series of allegations, the following clause of the 2019 Code is relevant:

#### **Clause 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.

23. BaggyBet, again through its legal representative has submitted to the Commission that:

- i. the Complainant's BaggyBet account was open for a period of five days (27 October 2022 to 2 November 2022) during the busy Spring Carnival period;
- ii. the Complainant:
  - a. represented himself to BaggyBet "*...as a sophisticated and experienced racing punter, and made it known to BaggyBet that [the Complainant] was actively participating in the Spring Carnival and concurrently betting with other online bookmakers and on course bookmakers*";
  - b. was known to the BaggyBet affiliate as a "*...sophisticated and experienced racing punter*";
  - c. indicated to BaggyBet that his wife was fully aware of his betting and "*...required [him] to win more (not gamble less)*";
- iii. the Complainant's wagering activity:

- a. was “...consistent with the understanding BaggyBet had of [the Complainant’s] profile”;
- b. resulted in him being in profit following the first two of six sessions of wagering;
- c. during his third wagering session, \$30,000 in deposits were from the winnings of his first wagering session;
- d. during his third and fifth wagering sessions saw an increase in the number of bets struck however, this was consistent with an experienced and sophisticated racing gambler on major race days being Derby Day and Melbourne Cup;
- e. consisted of the same average bet size throughout all six wagering sessions; and
- f. did not raise any ‘red flags’ with BaggyBet until 2 November 2022 at which time BaggyBet did interact with the Complainant from a responsible gambling perspective, with that interaction resulting in the Complainant putting a 30-day ‘time out’ in place on his betting account.

24. The Commission has reviewed detailed betting statements and audit logs for the Complainant’s wagering activity with BaggyBet as well as numerous Live Chat and text message records between the Complainant and BaggyBet and notes that:

- i. shortly after opening the betting account on 27 October 2022 at 10:03 p.m., BaggyBet welcomed the Complainant to BaggyBet via Live Chat, offered a deposit match bonus and encouraged him to set a deposit limit on his account (which the Complainant did not do);

Wagering Session 1 (27-28 October 2022)

- ii. the Complainant then engaged in a wagering session between 27 October 2022 (10:09 p.m.) and 28 October 2022 (3:05 a.m.) during which:
  - total deposits of \$20,000 were made (four separate \$5,000 deposits);
  - the total amount wagered including re-invested winnings was just over \$110,000;
  - 64 bets were struck with the largest bets being of \$4,000 each (12:12 a.m. and 12:34 a.m.);
  - the account balance reached \$37,300.50 at 2:47 a.m.;
  - one withdrawal of \$30,000 was made at 3:05 a.m. at which time the session finished and a balance of \$2,500.50 remained in the betting account;
- iii. on 28 October 2022 at 1:01 p.m., the Complainant received a generic promotional offer;

Wagering Session 2 (28 October 2022)

- iv. the Complainant then engaged in a wagering session on 28 October 2022 between 2:16 p.m. and 7:21 p.m., during which:
  - a. one deposit of \$5,000 was made;

- b. the total amount wagered including re-invested winnings was just over \$50,000;
  - c. 34 bets were struck with the largest bet being of \$3,400 at 6:44 p.m.;
  - d. the account balance reached \$21,459.95 at 6:11 p.m.;
  - e. one withdrawal of \$10,000 was requested at 6:59 p.m. but later cancelled at 7:14 p.m.;
  - f. one withdrawal of \$15,000 was requested at 7:14 p.m. (but later cancelled the following evening at 6:36 p.m. on 29 October);
  - g. the session finished at 7:21 p.m. and a zero-balance remained in the betting account;
- v. prior to engaging in a third session of wagering on 29 October 2022, the Complainant contacted BaggyBet via Live Chat and advised that he has been speaking with a BaggyBet affiliate who agreed to provide a bonus if the Complainant cancelled his \$15,000 withdrawal request from the previous evening. Once confirmed, the withdrawal was cancelled and BaggyBet provided the Complainant with a \$4,000 bonus;
- vi. after the bonus was confirmed, the Complainant stated:
- a. *"Give me some tips! Been a shit day at the track for me";*
  - b. *"Dropped like \$40k at the bookies";*

Wagering Session 3 (29-30 October 2022) – Derby Day

- vii. the Complainant then engaged in a wagering session on 29 October 2022 that started at 6:36 p.m. and lasted until the early morning of the following day (3:36 a.m. on 30 October 2022), during which:
- total deposits of \$30,000 were made (six separate \$5,000 deposits) plus the cancelled withdrawal of \$15,000;
  - total amount wagered including re-invested winnings was just over \$225,000;
  - 101 bets were struck with the largest bet being of \$4,500 at 3:20 a.m.;
  - account balance reached \$33,250.50 at 9:13 p.m.;
  - nil withdrawals were made;
  - at 3:36 a.m. the session finished and a balance of \$6,000 remained in the betting account;
- viii. during the Wagering Session 3, the Complainant continued to engage with BaggyBet via Live Chat, as follows:
- a. 8:07 p.m. – *"Hey if I do \$10k deposit can you guys do a 100% match – lost that \$15k in full"* to which BaggyBet agreed to match the deposit with \$6,500;
  - b. 8:29 p.m. –

- Complainant - *"Now give me some tips! I am down \$50k all day now!"*
  - BaggyBet - *"Rough day at the track? Were you at eagle Farm?"*
  - Complainant - *"Yea 40k down at the track then \$15k earlier with you. So last 10k before the wife chops my dangling thing!"*
  - BaggyBet - *"bahahahaha"*
- c. 10:53 p.m. (following a dispute about payment of a bet)–
- Complainant - *"It's not late – you guys can resolve it, I need that extra \$5k I am playing now and had a terrible day, j (sic) am down over \$60 k now"*
  - BaggyBet - *"...You didn't lose 60k with us so that is irrelevant"*
- d. 11:00 p.m. – BaggyBet advises the Complainant that it has added \$5,000 in bonus bets to his betting account
- ix. During this same wagering session, the Complainant and the BaggyBet affiliate engaged in a text message exchange during which the Complainant advised BaggyBet that he:
- a. *"[I]lost over \$25k with you today, 60k in total";*
  - b. and after being asked whether he still had a withdrawal request in place *"Already gambled that – so I will be depositing new money. Try 100% as I am down \$25k with you todsg (sic) and overall \$60k".*

Wagering Session 4 (30 October 2022)

- x. following a break from wagering of just over 5 hours, the Complainant then engaged in a wagering session between 8:36 a.m. and 12:45 p.m., during which:
- a. total deposits of \$10,000 were made;
  - b. the total amount wagered including re-invested winnings was just over \$70,000;
  - c. 37 bets were struck with the largest bet being of \$4,000 at 9:19 a.m.;
  - d. the account balance reached \$14,550 at 11:52 a.m.;
  - e. there were nil withdrawals;
  - f. at 12:45 p.m. the session finished, and a zero-balance remained in the betting account;
- xi. just as Wagering Session 4 commenced, BaggyBet contacted the Complainant via Live Chat and advised that it had placed a \$10,000 deposit match bonus into the Complainant's betting account and at 8:47 a.m. asked the Complainant, *"Do you ever sleep mate haha"*, to which the Complainant replied, *"(crying face emoji), not with these losses"*.
- xii. The following statements were also made by the Complainant during this Live Chat exchange:

- a. *"If I can convince my wife last \$10k deposit would you be able to give me 100% match? I from the (sic) close to \$80k I lost yesterday I can show a small withdrawal I can keep her happy!"*
  - b. *"On top of that on thr (sic) track I lost \$40k"*
  - c. *"So yea if you can do the 100% mate - objective is to get \$20-30k win and withdraw a small amount"*
  - d. *"...wife is not happy at all. I need everything to get a \$20-30k withdrawal. I think I am upto (sic) \$80k yesterday only."*
- xiii. Following these statements, the BaggyBet Live Chat representative said, "Good luck mate!"
- xiv. After the Complainant ceased wagering on 30 October 2022 and at which time he had a zero-balance in his betting account, the Complainant contacted BaggyBet via Live Chat and made the following statements during the interaction with BaggyBet over the next hour and a half:
- a. *"Hey [...] dropped all My money - any chance you can chuck in a \$5,000 bonus for all the losses. Some play money. I can't deposit any more today - maxed it"*
  - b. *"I lost like 60k with you guys last 24 hrs and I can't deposit - just some play money until I can deposit tomorrow"*
  - c. *"I know you guys have given me a lot of bonus but net impact you are ahead big times [smiley emoji] I would have deposited but I already maxed deposit with my bank. A 5k play money (upping the bonus for yesterday) will be appreciated"*
  - d. *"Some play money mate I will deposit tomorrow and"*
  - e. *"I just reached my maxi on Poli - did 40k already"*
  - f. *"It will be appreciated given the size of the deposit I make - you can take it tomorrow when I deposit again"*
  - g. *"I just can' make anything today - I am sure you know the Poli limits"*
- xv. During this Live Chat, there was little interaction from BaggyBet excepting the following response:
- a. *"5k bonus? No chance haha"*

Wagering Session 5 (1-2 November 2022) - Melbourne Cup Day

- xvi. the Complainant then engaged in a wagering session between 1 November 2022 (1:46 p.m.) and 2 November 2022 (1:41 a.m.) during which:
- a. total deposits of \$39,500 were made;
  - b. the total amount wagered including re-invested winnings was just over \$70,000;
  - c. 37 bets were struck with the largest bet being of \$4,000 at 9:19 a.m.;
  - d. the account balance reached \$14,550 at 11:52 a.m.;

- e. there were nil withdrawals;
  - f. at 12:45 p.m. the session finished and a zero-balance remained in the betting account;
- xvii. During this session, the Complainant again entered into a Live Chat with BaggyBet during which he requested deposit matches and again asked for tips from BaggyBet which on this occasion, it suggested several horses for the Melbourne Cup. During this Live Chat interaction, the Complainant stated:
- a. *"Mate trying to convince my wife got \$10k can you do the 100% on this balnqxs (sic) and any remaining we do 50%";*
  - b. *"Tell me some tips to get \$20iah (sic) k todsy (sic) mate really need some withdrawal - wife is so unhappy";*
  - c. *"Hey [...] Shitty day again mate";*
  - d. *"Need a saviour";*
  - e. *"...need to go and get that money first from the wifey";*
  - f. *If I was not in [s]uch a losing streak would not have asked :)";*
- xviii. The Complainant then explained to BaggyBet that he was trying to deposit monies into his betting account however, there appeared to be some issue with the transactions being processed, to which BaggyBet responds that no other customers were experiencing the same issues.
- xix. On the afternoon of 2 November 2022 at 1:19 p.m., BaggyBet initiated a Live Chat exchange with the Complainant during which it sent a responsible gambling message signed off by the 'BaggyBet Team' and in which it advised:
- a. that it wants to *"check in ... and ensure you [are] ok with your gambling and you're betting within your means";*
  - b. that there is a number of responsible gambling tools available;
  - c. that if gambling has become a problem, suggest contacting gambling help online.
- xx. Just over an hour after the responsible gambling message, the Complainant responded and advised BaggyBet, *"Thanks all good"* and further advised that he is wanting to make a \$5,000 deposit and wanted to know if BaggyBet could do a 100% match to which it responded that it can;
- Wagering Session 6 (2 November 2022)
- xxi. The Complainant then commenced a wagering session less than 30 minutes after this message, between 1:46 p.m. and 3:48 p.m., during which:
- a. total deposits of \$5,000 were made;
  - b. the total amount wagered including re-invested winnings was just under \$30,000;
  - c. 15 bets were struck with the largest bet being of \$3,250 at 3:39 p.m.;

- d. the account balance reached \$12,500.25 at 2:44 p.m.;
  - e. one withdrawal of \$3,000 was made at 3:48 p.m. at which time the session finished, and a zero-balance remained in the betting account;
- xxii. At 3:49 p.m., the Complainant set a 30-day time-out break on his account and some seven hours later lodged a complaint with BaggyBet; and
- xxiii. Just over an hour after the complaint was lodged, BaggyBet placed a self-exclusion on the betting account.
25. While some of BaggyBet's submissions to the Commission may be factual, such as that the Complainant presented himself as a sophisticated and experienced gambler who wagered concurrently with various bookmakers both on and off track and that the Complainant's bet size did not change significantly between his wagering sessions, it is difficult for the Commission to come to the same conclusion in relation to BaggyBet's submissions that the Complainant did not display any red flag behaviour indicative of a potential problem gambler prior to the Complainant's fifth wagering session that took place over 1 and 2 November 2022.
26. It is evident from the above chronology that the Complainant made numerous comments either via Live Chat or text message to BaggyBet that should have caused BaggyBet to pause; consider whether the Complainant was at risk of experiencing harm from his wagering activities with BaggyBet; and determine whether an appropriate customer interaction should occur.
27. Comments such as:

28 October 2022

- *"Been a shit day at the track for me...Dropped like \$40k at the bookies";*

29 October 2022

- *"Now give me some tips! I am down \$50k all day now!...Yea 40k down at the track then \$15k earlier with you. So last 10k before the wife chops my dangling thing";*
- *"It's not late - you guys can resolve it, I need that extra \$5k I am playing now and had a terrible day, j (sic) am down over \$60 k now";*

30 October 2022

- *"If I can convince my wife last \$10k deposit would you be able to give me 100% match? I from the (sic) close to \$80k I lost yesterday I can show a small withdrawal I can keep her happy!";*
- *"So yea if you can do the 100% mate - objective is to get \$20-30k win and withdraw a small amount...wife is not happy at all. I need everything to get a \$20-30k withdrawal. I think I am upto (sic) \$80k yesterday only";*

30 October 2022 (post wagering session 4)

- *"Hey [...] dropped all My money - any chance you can chuck in a \$5,000 bonus for all the losses. Some play money. I can't deposit any more today - maxed it...";*
- *"I lost like 60k with you guys last 24 hrs and I can't deposit - just some play money until I can deposit tomorrow";*

- “I know you guys have given me a lot of bonus but net impact you are ahead big times [smiley emoji] I would have deposited but I already maxed deposit with my bank. A 5k play money (upping the bonus for yesterday) will be appreciated”;
- “Some play money mate I will deposit tomorrow...”

were simply ignored, treated as humorous, defended (“you didn’t lose 60k with us so that is irrelevant”) or prompted the offering of bonuses.

28. While it is well understood that customer service personnel (be they personally assigned to a customer or those providing a more generic function) play a vital role in assisting customers with their gambling needs while fostering a positive relationship aimed at customer retention, it is the Commission’s view that the identification of red flag behaviour cannot be relegated to a secondary function of the customer service role. Rather, this integral part of providing a responsible gambling environment must be conducted concurrently and seamlessly within the provision of the overall customer service to a customer.
29. It is evident to the Commission that BaggyBet neglected to do so when dealing with the Complainant from as early as 28 October 2022. While BaggyBet may have prompted the Complainant to set a deposit limit on several occasions, which the Complainant chose not to do – this lack of self-responsibility on the Complainant’s behalf did not abrogate BaggyBet of its regulatory responsibility to monitor the Complainant’s wagering activity for any sign that he may be experiencing harm associated with his wagering activity.
30. BaggyBet through its legal representative, has submitted, that following a “...*final comprehensive responsible gambling interaction by BaggyBet...*” on 2 November 2022, the Complainant initiated a 30-day time-out from using his BaggyBet betting account. In the Commission’s view, this interaction by BaggyBet with the Complainant was ‘a little too late’ and only addressed the Complainant’s concerning comments well after the optimal time had passed and was certainly not as effective or impactful as it could have been, if done earlier.
31. At the absolute minimum, the Commission is of the view that following the Complainant’s wagering activity on 30 October 2022 (wagering session 4) and following the Complainant pleading for BaggyBet to provide him with bonus bets due to having lost over \$60,000 through gambling and not being in a position to deposit any more money until the next day, BaggyBet should have interacted with the Complainant from a responsible gambling perspective. If it had done so, it should have made inquiries to ascertain whether the Complainant was in a position to wager the funds that he had already wagered with BaggyBet and whether he should be able to continue wagering with it.
32. Instead of taking this action in accordance with its regulatory responsibilities, BaggyBet responded to the Complainant’s pleading with, “5k bonus? No chance haha”. This response is clearly not the response expected of a wagering service provider chartered with providing a responsible gambling environment within which its customers can gamble responsibly.
33. Given the Commission’s views, the Commission has determined that BaggyBet has breached clause 3.2 of the 2019 Code through it not engaging in an appropriate customer interaction with the Complainant from at least 30 October 2022 (following the Complainant’s fourth wagering session).
34. Given these findings, the Commission is of the view that even whether it is in the remit of the Commission or not, it is unnecessary to explore whether a BaggyBet representative engaged with the Complainant while intoxicated.

#### Marketing Material Received after Self-Exclusion

35. The Complainant has alleged that he received marketing material from BaggyBet after he was self-excluded from BaggyBet.
36. Clause 8.9(c) of the 2019 Code as set out below is relevant to the Complainant's allegation:

**Clause 8.9 Direct marketing**

...

- c. Where a person either unsubscribes from receiving direct marketing material, self-excludes or closes their account, the online gambling provider must not send marketing material to that person at any time after 24 hours from the receipt of that request.
37. The Complainant has provided the Commission with several screenshots of marketing material that he received from BaggyBet by way of text messages on 3 November 2022 at 9:00 a.m. and again at 3:40 p.m.
38. It is clearly evident that the Complainant received marketing materials from BaggyBet after he was self-excluded from using its wagering services.
39. However, due to the technical practicalities in managing subscriber lists and marketing campaigns, the Commission has allowed through the 2019 Code, a short 24-hour grace period within which marketing lists are able to be updated. While marketing materials should not be sent to a customer after they have been self-excluded from using a licensee's online wagering services, the inclusion of a short grace period acknowledges the practicalities of data processing and system updates that are involved in the managing of marketing lists.
40. Given this, the Commission has determined that BaggyBet has not breached clause 8.9 of the 2019 Code.

**DISCIPLINARY ACTION**

41. On the weight of evidence before it, the Commission is satisfied that pursuant to section 80(1)(d) of the Act, BaggyBet has failed to comply with a condition of its licence, specifically that it:
- i. contravened condition 15 of its licence by not complying with:
    - a. clause 8.6 of the 2019 Code through its contact with the Complainant firstly on 14 October 2022 and subsequently its contact on 27 October 2022, during which it urged the Complainant who was not a customer of BaggyBet to use BaggyBet's gambling services;
    - b. clause 5.5(a) of the 2019 Code through its offering of a deposit match to the Complainant firstly on 14 October 2022 and then subsequently on 27 October 2022, if he were to open a betting account with BaggyBet; and
  - ii. contravened condition 15 of its licence by not complying with:
    - a. clause 3.2 of the 2019 Code through it not engaging in an appropriate customer interaction with the Complainant from at least 30 October 2022 (following the Complainant's fourth wagering session).

42. 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.
43. In determining appropriate penalties, the Commission notes that while not directly a submission against penalty, BaggyBet's legal representative has submitted to the Commission that:
- i. *"[the Complainant] has acknowledged that he has sought and obtained commercial settlements from bookmakers previously, under threat of making complaints under responsible gambling regulation"; and*
  - ii. *BaggyBet is "...not disputing [the Complainant's] right to make a complaint of a responsible gambling nature, but [it] question[s] the motivation of [the Complainant] in doing so, in that there is a pattern of [the Complainant] weaponizing (sic) responsible gambling laws against one bookmaker, seeking a commercial settlement, all the while betting with other bookmakers".*
44. In the Commission's view, each and every complaint received by the Commission should be examined impartially and be considered on its own merit, based on the specific circumstances surrounding the alleged misconduct by the licensee. Past behaviour of the complainant, while relevant in some contexts, should not universally prevent customers of online wagering services from lodging complaints in the future. Licensees are responsible for their own actions and adherence to the regulatory environment in which they are licensed, irrespective of the backgrounds of those lodging complaints against them.
45. With appropriate fairness and accountability in mind, 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:
- i. for its contravention of condition 15 of its licence by way of its breach against clause 8.6 of the 2019 Code, a fine of 170 penalty units being 100% of the maximum penalty available, equating to \$27,540 (for the 2022/23 financial year a penalty unit's value was \$162);
  - ii. for its contravention of condition 15 of its licence by way of its breach against clause 5.5(a) of the 2019 Code, a fine of 170 penalty units being 100% of the maximum penalty available, equating to \$27,540.;
  - iii. for its contravention of condition 15 of its licence by way of its breach against clause 3.2 of the 2019 Code, a fine of 170 penalty units being 100% of the maximum penalty available, equating to \$27,540.

### **LAWFULNESS OF BETS**

46. Given the above findings, the Commission has turned its mind as to whether the betting transactions that occurred through the Complainant's BaggyBet betting account were lawful.
47. 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 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.

48. Given that BaggyBet ultimately decided to put a self-exclusion in place for the Complainant upon its review of the Complainant's complaint to it; and the Commission's findings that BaggyBet should have at a minimum undertaken some effective form of customer interaction with the Complainant from a responsible gambling perspective from at the very least after the Complainant's fourth wagering session with it on 30 October 2022, the Commission has determined that BaggyBet's breach of clause 3.2 of the 2019 Code was of a nature so serious so as to undermine the integrity of the betting transactions that occurred between BaggyBet and the Complainant from that point in time.
49. Therefore, the Commission has determined that all bets struck from the start of the Complainant's 'wagering session 5' on 1 November 2022 up until the account being designated as a self-excluded account are not lawful.
50. As a result of this determination, the Commission has formed the view that all deposits made by the Complainant into his BaggyBet betting account from the start of 'wagering session 5' on 1 November 2022 up until the account being designated as a self-excluded account – minus any withdrawals – should be returned to the Complainant. On the data before the Commission, this equates to \$41,500, (being deposits of \$44,500 minus withdrawals of \$3,000).

### **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  
Chair  
Northern Territory Racing Commission

On behalf of Commissioners Shields, Bravos and Corcoran