

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Licensee:	DraftKings Australia Pty Ltd
Proceedings:	Consideration of Disciplinary Action Pursuant to section 80(1)(d) of the <i>Racing and Betting Act</i>
Heard Before: (on papers)	Mr Alastair Shields (Presiding Member) Ms Cindy Bravos Ms Amy Corcoran Mr James Pratt Mr Kristopher Evans Ms Susan Kirkman
Date of Decision:	7 December 2022

Background

1. On 21 November 2017, the Northern Territory Racing Commission (**the Commission**) granted a license to DraftKings Australia Pty Ltd (**DraftKings**) to conduct the business of a Sports Bookmaker, pursuant to section 90 of the *Racing and Betting Act 1983 (the Act)*.
2. Licensing NT provides each new licensee with an electronic file containing the names and relevant details of each person who has requested to be self excluded from all current and future licensed Sports Bookmakers in the NT and, from time to time, provides updates as additional persons self exclude, for the purpose of that Sports Bookmaker putting in place measures to comply with the NT Code of Practice for Responsible Service of Online Gambling 2019 (**the 2019 Code**). These measures include preventing self excluded persons from opening a betting account, and putting in place measures to ensure that such persons do not receive correspondence or promotional material.
3. On 18 October 2022, the Commission received a complaint from a self excluded person, Mr G, who stated that he had been able to open and operate a betting account, in spite of having self excluded in January 2020. Commission records indicate that DraftKings acknowledged receipt of Mr G's self exclusion request on 20 January 2020.

DraftKings Response to enquiries

4. In response to the complaints received by Licensing NT, DraftKings submitted that:
 - a. Because DraftKings had a manual system for handling self exclusion requests, Mr G's status as a self excluded customer was not recorded due to human error;
 - b. Mr G opened an account with DraftKings on 31 July 2021, and was able to operate it;

- c. A review by DraftKings discovered that three additional Australian customers were not marked as self excluded and were able to open accounts; and
- d. DraftKings takes self exclusion extremely seriously and has since blocked all affected accounts and will refund all net deposits less withdrawals) for customers impacted.

Consideration of the Issues

5. In order to minimise the harm that may be caused by online gambling, the Commission introduced the 2019 Code which came into effect on 26 May 2019, having replaced the Northern Territory Code of Practice for Responsible Gambling 2016.
6. Clause 4.2(e) of the 2019 Code provides 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”.
7. It is a requirement of DraftKing’s licence (condition 15) that DraftKings complies with the code.

Decision

8. The Commission is satisfied that DraftKings was in breach of clause 4.2(e) of the Code when it allowed Mr G and the other 3 self excluded customers to open and use a betting account.
9. The Commission acknowledges that DraftKings’ breach of the Code was brought about by error, rather than intentionally, and that DraftKings has acknowledged its breach of the Code and accepts that the breach is serious.
10. The Commission also acknowledges that DraftKings voluntarily self reported the additional 3 self excluded customers who were able to open and operate betting accounts.
11. Nevertheless, the Commission considers this to be a serious breach, noting the potential for harm to persons who have admitted that they have a gambling problem and have taken positive steps to prevent themselves from opening and operating a betting account.
12. The Commission has therefore determined that DraftKings did not comply with clause 4.2(e) of the 2019 Code on 18 October 2022 and as a result, pursuant to section 80(1)(d) of the Act, has failed to comply with condition 15 of its licence.
13. The Commission views this breach of the Code as being considerably more serious than some previous breaches by other licensees that involved the sending of marketing material to self excluded customers.
14. However, the Commission acknowledges that “knowingly” in this case does not imply that the licensee deliberately or carelessly allowed self excluded customers to open betting accounts and operate them, but rather the licensee had received the

information that the individuals had self excluded, and did not adequately prevent those individuals from opening and operating an account.

15. Disciplinary actions available to the Commission for non-compliance with a condition of licence range from the issuing of a reprimand, imposing a fine not exceeding 170 penalty units, or suspending or cancelling the sports bookmakers licence.
16. In all of the circumstances, the Commission has determined to impose the maximum fine, that is 170 penalty units, which equates to \$27,540.
17. The Commission has also determined that given the serious nature of this breach, this decision will be published on the Commission's website so as to place all Northern Territory bookmakers on notice that the Commission treats such breaches very seriously.



Alastair Shields
Chairperson
Northern Territory Racing Commission

7 December 2022