

# NORTHERN TERRITORY RACING COMMISSION

## Reasons for Decision

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<b>Complainant:</b>	Mr A
<b>Licensee:</b>	Pointsbet Australia Pty Ltd
<b>Proceedings:</b>	Gambling Dispute for determination by 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) Mr James Pratt Ms Amy Corcoran
<b>Date of Decision:</b>	26 March 2021

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### Background

1. On 30 April 2019, 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, Pointsbet Australia Pty Ltd who operates the betting platform 'pointsbet.com.au' (the Bookmaker).
2. The Complainant submitted that the Bookmaker should have detected red flags in his betting behavior due to increased deposit frequency and value of his bets.
3. The Complainant opened his account with the Bookmaker on 21 February 2019. Between 21 February 2019 and 4 March 2019, the Complainant made deposits totalling \$19,891.54, and withdrawals totalling \$3,955.44. Over the 11 day life of the account, the Complainant lost \$15,936.10 and is seeking that full amount be refunded to him by the Bookmaker.
4. Information was gathered from both parties by a Licensing NT officer appointed as a betting inspector by the Commission and subsequently provided to the Commission that determined there was sufficient information before it to consider the gambling dispute on the papers.
5. The Complainant's submits:
  - a. the Bookmaker has systems in place to ensure individuals do not become problem gamblers, however he was not offered any assistance and they failed to recognise the obvious signs his gambling behaviour was becoming serious;
  - b. he did not disclose to the Bookmaker he had a gambling problem, but states "*...it was clearly visible. The bets went from little sensible bets to ridiculous amounts*";
  - c. his gambling activity increased from "*tiny bets*" of \$25.00 - \$100.00, to bets of "*thousands*";

- d. the deposit frequency increased along with the value of his bets;
  - e. he emailed and spoke to the Bookmaker in live chats on a number of occasions where he indicated that he was “...in fact spending more and coping it in return”; and
  - f. the Bookmaker failed to recognise the increase in gambling deposits and activity.
6. The tables below have been compiled using data obtained from the Complainant’s betting account transaction statement which summaries the daily average of deposits and bets over the lifetime of the account:

#### Daily deposits

Date	No of Deposits	Min - Max Deposit	Average Deposit Value	Total Deposits
21/02/19	3	\$50 - \$100	\$67	\$200
22/02/19	11	\$50 - \$696	\$304	\$3,345
23/02/19	0	0	0	0
25/02/19	0	0	0	0
26/02/19	0	0	0	0
27/02/19	1	\$50	\$50	\$50
28/02/19	5	\$45 - \$50	\$49	\$245
1/03/19	2	\$60 - \$80	\$70	\$140
2/03/19	15	\$250 - \$1,000	\$560	\$8,411
3/03/19	0	0	0	0
4/03/19	2	\$3,500 - \$4,000	\$3,750	\$7,500

#### Daily bets

Date	No of bets	Min - Max Bets	Average Bet Value	Total Value of Bets
21/02/19	3	\$50 - \$50	\$50	\$150
22/02/19	49	\$20 - \$400	\$91	\$4,475
23/02/19	44	\$20 - \$200	\$61	\$2,700
25/02/19	53	\$17 - \$390	\$100	\$5,300
26/02/19	3	\$27 - \$30	\$29	\$87
27/02/19	3	\$20 - \$30	\$25	\$80
28/02/19	33	\$15 - \$100	\$33	\$1,100
1/03/19	12	\$22 - \$80	\$36	\$430
2/03/19	49	\$25 - \$600	\$190	\$9,300
3/03/19	34	\$27 - \$255	\$85	\$2,880
4/03/19	53	\$60 - \$1,500	\$385	\$20,500

7. The Bookmaker submits:
  - a. the Complainant's betting stake ranged in size from \$25.00 - \$400.00 on the first few days of the account, with these stakes remaining consistent over the next week;
  - b. on 4 March 2019, the stakes increased to four wagers of \$1,000.00 and one wager of \$1,500.00. It is on this same day the Complainant notified the Bookmaker that his account had been hacked;
  - c. the Complainant's deposits remained consistent until 2 March 2019 when he increased his individual deposits to \$1,000.00;
  - d. the Complainant never mentioned to the Bookmaker that he had a gambling problem;
  - e. all new account holders are offered the option to set up a deposit limit, however, the Complainant did not do so; and
  - f. the account was closed due to a false fraud claim and remains closed.

## Consideration of the Issues

8. The Northern Territory community expects gambling services to be provided in a responsible manner and in harmony with community expectations. All Northern Territory licensed sports bookmakers' licence conditions and the Act currently require licensees to comply with the *Northern Territory Code of Practice for Responsible Service of Online Gambling 2019* (the 2019 Code).
9. The 2019 Code came into effect on 26 May 2019, having replaced the *Northern Territory Code of Practice for Responsible Gambling 2016* (the 2016 Code), with both Codes providing guidance to online gambling providers on responsible gambling practices so as to minimise the harm that may be caused by online gambling.
10. It is well established that the Courts have set a very high threshold of responsibility for the gambler as to their own actions and that the duty to cease gambling remains with the individual gambler and not the gambling operator. 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.
11. During the Complainant's betting activity, the 2016 Code was in force. The 2016 Code, amongst other things, requires that licensed sports bookmakers must provide responsible gambling training including regular refresher training, to all employees engaged in customer interaction and that this training should include tools to identify gambling Red Flag behaviours. This Red Flag behaviour training is mandated so that licensed sports bookmakers can identify and assist customers with gambling related problems.

12. Red Flag behaviours include but are not limited to gambling for extended periods; changing gambling patterns; increase in deposit frequency; escalating sums of money deposited and accusing the gambling operator of remarks that may indicate serious overspending.
13. On review of the Complainant's transaction statement and the tables above summarising daily deposits and bets, his deposit value did increase on 2 March 2019 and the value of his bets were slightly higher. However, no deposits were made on 3 March 2019 and the value of his bets were not unusually high compared to previous bets. On his last day of betting activity being, on 4 March 2019, there becomes a clearer change in his betting activity through significantly larger deposits and value of bets.
14. However, on 4 March 2019, the Complainant sent the following emails to the Bookmaker:

*"Hi, my phone has been HACKED, my bank has had large amounts of money be (sic) transferred within 6 hours of me being at work. My phone is not working I cannot make calls and I cannot log in to my PointsBet account anymore it is thousands of dollars, very irregular and I don't understand how my password has been jeopardized, my bank is currently investigating also. PLEASE URGENTLY WRITE BACK."*

*"PLEASE SUSPEND MY ACCOUNT TILL FURTHER NOTICE PLEASE."*
15. In response, the Bookmaker advised the Complainant the account has been suspended and requested he contact their Customer Security team the next day.
16. The Complainant, following the suspension of his account, contacted the Bookmaker requesting that the Bookmaker refund him the monies that were wagered on 4 March 2019 as it was due to their app being hacked or "glitched". After numerous email correspondence, the Bookmaker advised: *"Your account has been fully reviewed and we have decided to keep your betting account permanently closed due to bookmakers discretion so unfortunately we cannot offer you any services in the future."*
17. The Complainant continued to demand his money back, citing the glitch caused by the Bookmaker's systems. The Bookmaker advised *"You have no funds for withdrawal as your balance sits at \$0.00. As for any glitch you might be referring to we have reviewed your account and can confirm all deposits and bets will stand as there are no issues on our end."*
18. There is no evidence before the Commission that indicates there were any issues with the Bookmaker's app. Despite the Complainant advising his bank was also investigating it, no information in regards to such investigation was furnished to the Commission. The Bookmaker submits that after the Complainant claimed his account was hacked, its Security Team did a review and determined that the deposits were made from the Complainant and this was confirmed with the Complainant's bank.

19. The Complainant has also suggested he was targeted with bonus bets to entice him to keep gambling and the Bookmaker should have detected red flags when he made numerous comments through live chats that he was spending more than he could afford.

*“Before my deposits & bets increased more than usual, (I had still been depositing very often) I would never ever receive any bonuses or free bets or offers. This was very different once I started to deposit more and bet more than I normally did. Once I increased my gambles (sic), I was targeted with many more bonuses, free bets and offers. Unfortunately I am unable to view these increases in rewards and methods to keep me coming back as my account is now closed (not for exclusion reasons, it was closed due to a security concern problem we had a while back). It is not in the attached ledger document either unfortunately.”*

20. Below is a table of bonus bets offered to the Complainant during the course of his account provided by the Bookmaker:

Date Issued	Amount	Used
21/02/2019 00:00:00	151	151
23/02/2019 00:00:00	50	50
23/02/2019 00:00:00	50	50
23/02/2019 00:00:00	50	50
23/02/2019 00:00:00	50	50
23/02/2019 00:00:00	25	25
23/02/2019 00:00:00	100	(2 x \$50)
26/02/2019 00:00:00	25	25
27/02/2019 00:00:00	5	5
28/02/2019 00:00:00	5	5
01/03/2019 00:00:00	50	50
02/03/2019 00:00:00	50	50
02/03/2019 00:00:00	50	50
03/03/2019 00:00:00	50	50

21. On review of the bonus bets provided to the Complainant, it does not appear to the Commission that there was an increase in the number of bonus bets provided to him based on an increase in deposits or value of bets. The most bonus bets issued was on 23 February 2019 being his third day betting on this account.
22. It is also noted, the Commission has no evidence before it of any live chats, phone calls or emails whereby the Complainant commented about over spending or otherwise that have reasonably raised red flag behaviour surrounding his betting activity leading up to the 4 March 2019.
23. It is apparent to the Commission that the Complainant’s betting behavior on 4 March 2019 had increased substantially through increased deposits and value of bets. The account activity on 4 March 2019 occurred over a period of under 5 hours with the last 2 deposits totalling \$7,500 and subsequent loss of this amount only occurred within the last hour of his activity for that day and immediately prior the Complainant’s email to the Bookmaker requesting his account be suspended because it was hacked.

24. It is the view of the Commission that the most recent activity on the Complainant's betting account should have raised red flags to which the Bookmaker should reasonably follow up. However, given the timeframe that monies were deposited and lost, and the Complainant's email regarding the hacking and the immediate suspension of his account, there was little opportunity for the Bookmaker to do so. Appropriately, the unsubstantiated allegations by the Complainant that his betting account was hacked or subject to an "app glitch" was treated as a red flag by the Bookmaker and the suspended account was permanently closed.

## Decision

25. The Commission determines that there is no evidence that the Bookmaker did not comply with its obligations under the 2016 Code in respect to the detection of red flag behaviours.
26. As a result, the Commission has determined that all of the Complainant's bets that were struck during the lifetime of the account were lawful bets pursuant to section 85(1A) of the Act and therefore no monies are payable to the Complainant.

## Review of Decision

27. 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

26 March 2021