

# Northern Territory Racing Commission

## Reasons for Decision

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<b>Applicant:</b>	Tom Waterhouse Pty Ltd
<b>Complainant:</b>	Mr R
<b>Proceedings:</b>	Dispute Relating to Betting – Section 85 of the <i>Racing and Betting Act</i> – Review of Decision of Delegate (On Papers)
<b>Commission Members:</b>	Mr Richard O’Sullivan (Chairman) Mr Philip Timney Mr Andrew Maloney

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### Background

- 1) On 3 May 2013 Mr R, an account holder with Tom Waterhouse Pty Ltd (“Waterhouse”) sent an email to Licensing Inspector Mark Wood complaining that he was owed money by Waterhouse from payments due from wagering on international thoroughbred races on 16 and 17 June 2012. The complaint alleged that he had been underpaid for winning bets and subsequently had his account with Waterhouse closed.
- 2) Following investigation of Mr R’s complaint, the delegate of the Racing Commission, Mr Richardson, on 28 May 2013 advised Mr R of his Decision, a copy of which is contained at Attachment A.
- 3) In essence the delegate determined that Waterhouse was within its rights under its Rules, which restrict payment for exotic wagers to the total sum of money wagered on the particular race and particular bet type held by superTAB, generally referred to as “*pool size*”. Accordingly a number of the successful wagers placed by Mr R on 16 and 17 June 2012 were restricted by the pool size, of the limited TAB pool on the respective races. Waterhouse on 19 June 2013 advised Mr R that his account was closed and subsequently paid out his account, including an error adjustment of \$698.00 in his favour.
- 4) Following receipt of the Decision, Mr R through an email to Mr Richardson on 24 September 2013 disputed the Decision. In subsequent contact with Mr Richardson, Mr R evidently maintained his dissatisfaction with the Decision and sought a review by the Commission. There are a number of assertions and statements made in Mr R’s email of 24 September 2013, enumerated in six paragraph points and summarised below:
  - The efficacy of bookmakers not offering original product but product “*leeches*” from a TAB.
  - Exact pool sizes on UK events on SuperTAB average \$260.00. The limit of \$10,000.00 on such betting with a cap to the limit of the pool size demonstrates unconscionable conduct.
  - Mr R’s wagers were made on the certainty that there was a \$10,000.00 limit on payments but as the pool sizes are far smaller, capping winning

payments under the Pool Rule could constitute misleading or deceptive conduct.

- *“Competition and Consumer Act 2010 speaks of ‘Third Line Forcing’”, ie “where the supply of goods or services is on the condition that the purchaser who buys goods or services from a particular third party” – alleging that the third party in this instance is the TAB and its pool size.*
  - The Waterhouse transaction records in relation to Mr R are complex and it is alleged were done to obfuscate matters.
  - Reference to application of the Pool Rule in an attached email (not supplied to the Racing Commission)
- 5) At its meeting of 11 December 2013, the Commission under item 8 made the following decision:

*“Commission then determined to review the R dispute.”*

and further at item 15:

*“As per Item 8 this matter would proceed to review on the papers with the Chairman to prepare an initial draft Decision and formalise Delegation of Chairman, Members Timney and Maloney to determine the matter.”*

- 6) Section 85 of the Act provides for the Commission to determine disputes.

Section 85(2) of the Act prescribes:

*“Where a dispute relating to lawful betting occurs between a bookmaker and a person, the dispute shall be referred by the bookmaker, and may be referred by the other party to the dispute, to the Commission.”*

so that the Commission is able to have disputes referred to it.

## **Consideration of the Issues**

- 7) The Commission understands that Mr R opened an account with Waterhouse on 25 May 2011. The Commission is also aware that Mr R activated the use of this account on 16 June 2012 through credit card deposits totalling \$2,000.00. Thereafter Mr R commenced wagering on thoroughbred races at Turffontein SA, Bath UK, Sandown Park UK and York UK races. All winning wagers were on exotics, more specifically on quinellas and exactas.
- 8) The product offered by Waterhouse links the payment of winnings on such international exotics to that of the dividends declared by the superTAB with a maximum payout limited to the superTAB pool size for that type of wager on that event. Consequently Mr R did not receive for his winning wagers the winnings which he would have had in the event that the payment matched the dividend declared by the superTAB. Waterhouse, in applying the pool size Rule, capped the payment on Mr R’s successful exotic wagers to that of the pool size operating by superTAB on a particular race and wager type.
- 9) The Rules provided by Waterhouse contains the following in respect to payment on exotic wagers.

### ***Racing exotics***

a) *For all racing exotics (Quinella/Exacta/Trifecta/first Four/Quadrella). TW pays the dividend declared by Super TAB to a maximum of the official SuperTAB pool size (but not exceeding:*

- i. *\$50,000.00 for metropolitan thoroughbred races.*
- ii. *\$25,000.00 for non-metropolitan thoroughbred, and all harness and greyhound races.*
- iii. *\$10,000 .00 for international thoroughbred races.)*

*for each bet type per client per event.*

*Any payment that TW makes other than set out above is discretionary and a one off payment not be treated as precedent.*

- 10) Mr R has claimed that he was unaware that such a Rule applied and also claims that the Rule and its application by Waterhouse constitute unconscionable conduct.
- 11) The Commission's role with respect of this dispute is to review the decision of the delegate, principally to determine if the delegate has erred in reaching that decision.
- 12) It is clear that Waterhouse has a Rule which limits racing exotic payments to the dividend declared by superTAB to that of the superTAB pool size.
- 13) Given the chronology of events relating to the payment of funds into the account and the commencement of betting on 16 June 2012 which followed immediately thereafter, there is no long term history of Mr R punting with Waterhouse. He commenced betting on 16 June 2012 on a series of international horse races through placement of wagers on exactas and quinellas. Some of the wagers were disproportionate to the size of the linked superTAB pool size for the particular wager type.
- 14) Mr R states that had he known of the "*pool size Rule*", he would have modified his wagers accordingly. The Commission's delegate has ruled that, notwithstanding Mr R's lack of knowledge of the pool size Rule, Waterhouse is within its entitlement to apply its account Rules which, in this instance, resulted in Mr R receiving \$7,559.00 less than what he thought he was entitled to. The Commission can find no error with the delegate's Decision or determination in this regard.
- 15) Previously the Commission, in a Decision handed down on 13 February 2013 relating to a dispute between Mr L and IASbet.com (Sportsbet)<sup>1</sup> made a Decision in favour of that account holder where a Northern Territory licensed Sports Bookmaker sought payment relief by applying its "*Cap Rule*" on payment for an exotic bet, in that case a Quadrella wager. In that instance the Sports Bookmaker had a Rule which restricted payouts to \$20,000.00 on Quadrella wagers for harness racing. However, while IASbet.com in the Terms and Conditions attached to Mr L's account provided a Rule restricting Quadrellas on harness racing to a capped amount of \$20,000.00, the Corporate Bookmaker had over an extended period, paid winnings exceeding \$20,000.00 to the account holder for successful Quadrellas for harness and other horse racing.

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<sup>1</sup> Obtainable on the Commission website <http://racing.nt.gov.au/> under Racing Decisions.

Therefore the account holder had built up a reasonable and legitimate expectation that he would be paid the full dividend amount despite the Cap Rule.

- 16) Due to the history and the lack of prior notification that the Bookmaker would apply the Cap Rule to Mr L in that instance, the Commission determined that IASbet.com pay the full amount of the TAB linked dividend. Mr R has no such wagering history Waterhouse and had built up no such expectation from his betting activities that Waterhouse would not apply the Rules and Terms and Conditions under which he opened his account.
- 17) The Commission is aware that wagering, particularly on exotic bet types, where linked to pari-mutuel pool sizes, and where caps apply, provides an inherent risk, where significant sums of money on wagers are placed by the punter, due to the uncertainty of TAB dividends and pool sizes. While the Terms and Conditions and Rules applied by Bookmakers can be complex and lengthy, it is incumbent on account holders to be aware of the conditions applying to the particular type of wager they are investing their money on.
- 18) The closure of Mr R's account on 19 June 2013 is a commercial decision of Waterhouse and the right to undertake this course of action is established within the bookmaker Rules. Under "*Tom Waterhouse's Rights*" clause (c) states:  
  
*"TW reserves the right to close a Client Betting Account and refund the credit balance ...."*

### **Consideration of Statements made in Mr R's Complaint Email of 24 September 2013**

- 19) Mr R emailed Mr Richardson, the Commission Delegate, on 24 September 2013 and complained of the Decision and in doing so sought the provision of a detailed explanation of "*each and every point*" covered in the email. This has not been undertaken by the Department and the Commission in its Review has determined to consider and as far as possible to make comment on these points.
  - 1) *"In previous correspondence you spoke of the need the need (sic) for your department to provide commercial efficacy for bookmakers. Should they want to offer a product that is leeches from the TAB and pay the TAB dividend then they can undertake their own risk management and therefore provide for their own commercial efficacy by betting back into the TAB pool. It is not your duty. If a punter wants to bet with the TAB then they can. If a punter bets with TW on a TAB related dividend then he/she should expect and be paid that said dividend not a manufactured one."*

Waterhouse has tailored a product around odds offered by a TAB and capped winnings to the TAB pool size. It is not uncommon for Sports Bookmakers to provide for wagering payments to be linked to TAB dividends. The wagering activity of Mr R on exotics on overseas races does not generate the interest or pool size of major Australian metropolitan thoroughbred races. The "*thinness*" of pool size, through limited wagering on these international races and particularly for exotic betting such as exactas and quinellas, need and ought to be considered prior to engaging in wagering on such events where linked to TAB dividends and pool sizes.

- 2) *“The bets at the heart of this matter are ‘Exacta’. I undertook a detailed examination of all ‘Exacta’ pool sizes on UK races that SuperTab had available for betting. The smallest pool was \$35, the largest \$1350 and the average \$260. As you can see a far cry from the \$10,000 limit proposed by TW. To propose a \$10,000 limit with the full knowledge of the lowest, highest and average being what they are demonstrates unconscionable conduct. Then to impose a further limit demonstrates further culpability.”*

Mr R has alleged that advising of a \$10,000 limit on payouts, when pool sizes are far lower than this amount, demonstrates unconscionable conduct. The ACCC website under “*Unconscionable Conduct*” refers to “*Australian courts have found transactions or dealings to be ‘unconscionable’ where they are deliberate, involve serious misconduct or involve conduct which is clearly unfair and unreasonable*”. In this instance a bookmaker has established a rule which clearly states; “*For all racing exotics (Quinella/Exacta/Trifecta/First Four/Quadrella), Tom Waterhouse pays the dividend declared by Super TAB to a maximum of the official Super TAB pool size (but not exceeding .... (iii) \$10,000 for international thoroughbred races) for each bet type per client per event*”. Reference to the pool size limit is prominent and precedes the reference to any payment being limited to a maximum of \$10,000 for international thoroughbred races. A client is deemed to have accepted these Rules in opening an account. The Rules applied by Waterhouse had been approved by the Commission in granting the Sports Bookmaker Licence. Mr R opened his account without any pressure, coercion or duress being applied.

- 3) *“When i went to place my bets with TW the one certainty i knew was that there was a \$10,000 limit on payments. My bets were tailored so that in all probability the payout would not exceed that amount. Section 52a Trade practices Act speaks Companies should not engage in conduct that is misleading or deceptive. To propose a \$10,000 limit on UK ‘Exacta’ bets when the pool sizes as indicated are significantly smaller is most definitely misleading and or deceptive. To then couple this with the ‘pool rule’ exacerbates this deception. As i’ve indicated earlier the one certainty prior to placing the bet was the \$10,000 limit. The placings in the race, the dividend and the pool size were indeterminate.”*

The allegation of misleading and deceptive conduct under the *Trade Practices Act* is not agreed to in the Commission’s consideration in reviewing this betting dispute as the client has accepted the bookmaker’s terms and conditions and rules in opening an account.

- 4) *The Competition and Consumer Act 2010 speaks of ‘Third Line Forcing’. This in short is where the supply of goods or services is on the condition that the purchaser buys goods or services from a particular third party, or a refusal to supply because a purchaser will not agree to that condition. In this case the ‘service’ being supplied by the third party (TAB) is its pool size. I am being forced to accept a ‘service’ ....the restrictive pool size from a third party (TAB). When my bet is placed the expectation is that i will receive the TAB dividend.”*

Reference to Third Line Forcing is also a matter that relates to the *Trade Practices Act*. The Commission notes that in a press release issued on

14 August 1997 (and contained on the ACCC website) by the then Chairman of the Australian Competition and Consumer Commission, Professor Allan Fells, referred to Third Line Forcing as being “*the tying of the sale of one product to the sale of another*”. The actions of Waterhouse in linking product to the odds and pool sizes provided by a TAB is, in the Commission’s view, not tying the sale of one product to the sale of another. It is common for bookmakers to link wagering payments to declared dividends of a “home TAB”, “top tote”, “middle tote” and similar.

- 5) *“Further to investigation placed by myself as to pool sizes, i requested from TW an explanation as to how the payments made to me were done. If one had tried to obfuscate the matter than they couldn’t have done any better than what was given to me and now forwarded to you. If a thorough investigation had of been undertaken by your department then at the least you would have uncovered this.”*

Reference to obfuscation is in some way understandable as the Commission has had difficulties in following the log of bets, related TAB dividends, pool sizes and ultimate payouts in each winning wager to Mr R. While not easily comprehended the account statements do provide veracity as to the application of the Rules applied by Waterhouse.

- 6) *“In a separate email i have forwarded the explanation given by Luke Brammall acting for TW as to the application of ‘Pool Rule’”.*

The Commission has not been provided with a copy of this correspondence and therefore does not wish to comment.

- 20) The Commission acknowledges the frustrations experienced by a client who has received in payment of winning wagers far less than he expected. However, this frustration is based on the lack of knowledge of the Rules applying to the type of wagering activities, ie exotic linked to small pari mutuel. Nonetheless, clearly contained in the Rules of Waterhouse is the information that payouts for exotic wagers are capped in accordance with pool sizes. The Commission understands that such Cap Rules are in place to particularly apply to events and products on which there is a small wagering market. In such circumstances there is a need for clients to be fully aware of the Rules which apply.

## Decision

- 21) The Commission, having reviewed on the papers, the delegate’s Decision, statements from Mr R and statements and presentation of Mr R’s account history from Tom Waterhouse Pty Ltd, upholds the Decision of the delegate as provided by email on 28 May 2013 and contained at Attachment A.

Richard O’Sullivan  
Chairman

Philip Timney  
Member

Andrew Maloney  
Member

17 February 2014