

# NORTHERN TERRITORY RACING COMMISSION

## Reasons for Decision

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<b>Complainant:</b>	Mr J
<b>Licensee:</b>	PointsBet
<b>Proceedings:</b>	Pursuant to section 85(2) of the <i>Racing and Betting Act</i> – Referral of dispute to Racing Commission for determination
<b>Heard Before: (on papers)</b>	Mr Alastair Shields (Presiding Member) Ms Cindy Bravos Mr Allan McGill
<b>Date of Decision:</b>	9 April 2019

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### Background

1. On 2 October 2018, pursuant to section 85(2) of the *Racing and Betting Act* (the Act), the complainant lodged a gambling dispute with the Northern Territory Racing Commission (the Commission) against the licensed sports bookmaker, PointsBet.
2. The complainant is seeking a refund of \$3,275 from PointsBet as the complainant considers that PointsBet did not manage his betting account in a manner that incorporated an effective responsible service of online gambling approach.
3. Specifically, the complainant alleges that at no time did PointsBet make any inquiries with him to assess whether he had “...*any potential gambling issues*”. The complainant states that following a period of self-exclusion from the sports bookmaker prior to which he had set a pre-commitment limit on his betting account and which continued after the self-exclusion period, PointsBet did not make any contact with him to inquire about his previous wagering behaviour nor did they make any contact with him when he cancelled multiple withdrawal requests from his betting account in a short period of time.
4. The complainant further alleges that the PointsBet pre-commitment limit is misleading in that whilst it allowed him to limit the amount of funds he could deposit into his account on a daily basis, it did not prevent him from betting with funds over that pre-commitment limit which were already held in his betting account.
5. The complainant is also aggrieved that PointsBet allowed him to cancel a number of withdrawal requests from his betting account which enabled him to be able to use these funds to strike a number of bets which resulted in him losing the balance of his betting account. The complainant considers that as he was able to cancel withdrawal requests, this “...*effectively re-credited funds to my account and enabled me to continue wagering.*” The \$3,275 that the complainant is seeking from PointsBet is the amount of the largest withdrawal request that he was able to cancel.
6. In response to the dispute, PointsBet advised the Commission that the intent of the pre-commitment limit that is available to its customers is to control the amount of funds able to be deposited into the customer’s betting account. PointsBet referred the Commission to one of its terms and conditions, namely:

PointsBet Rights and Other Matters: 12. As a responsible bookmaker PointsBet offers its Member's the ability to control the amount they deposit by setting a limit on the amount they can deposit to their Account per day, week or month (referred to as a deposit limit).

7. PointsBet further advised the Commission that there is no reference on their website that states that it will also limit the amount of funds available to their customers with which to gamble.
8. With respect to the complainant's ability to cancel his withdrawal requests, PointsBet has advised the Commission that a PointsBet customer is able to cancel any withdrawal request up until 3pm (Australian Eastern Standard Time) Monday through to Friday. After this time, all pending withdrawal requests are moved to the sports bookmaker's 'assessing stage' for processing. PointsBet has also advised the Commission that in their view, as cancelled withdrawal requests are not deposits to the account, they will not affect any deposit limit set on the account.
9. PointsBet has also advised the Commission that had the complainant not been able to cancel the withdrawal requests, the balance of the complainant's betting account would not have reached \$3,375 as the complainant would not have been able to make sufficient deposits that would have allowed him to strike some of the bets made due to the deposit limit set up on the complainant's account.
10. In addition, PointsBet has advised the Commission that in their view, the cancellation of a withdrawal request is not considered by them to be a sign of problem gambling unless the request/s is coupled with other red flag behaviours. PointsBet assert that the complainant's betting activity did not raise any other red flag behaviours.
11. Information was gathered from both parties by Licensing NT betting inspectors appointed by the Commission and provided to the Commission to consider the dispute on the papers.

## **Chronology**

12. The complainant opened his betting account with PointsBet on 24 October 2017. On 18 November 2017, the complainant set a deposit limit on his account in the amount of \$500 per 24 hours.
13. In the same month, the complainant self-excluded himself from his PointsBet betting account for a period of 30 days. The self-exclusion period expired on 26 December 2017. At the time of self-excluding from his betting account, the complainant has advised the Commission that he did not provide a reason to PointsBet as to why he wished to self-exclude.
14. Following the expiry of the self-exclusion period, the deposit limit of no more than \$500 being able to be deposited every 24 hours remained in place.
15. Up until the time of the closure of the complainant's betting account with PointsBet, the complainant made a number of winning and losing bets.
16. The complainant's PointsBet betting account records show that during the life of his betting account with PointsBet, the complainant made five withdrawal requests, all of which he later cancelled, as per below:

Date	Time	Transaction Type	Amount
29 Dec 2017	14:53	Withdrawal Request	380
	15:00	Withdrawal Cancelled	380
	16:19	Withdrawal Request	400
	16:52	Withdrawal Cancelled	400
	16:53	Withdrawal Request	927.18
31 Dec 2017	14:44	Withdrawal Cancelled	927.18
	18:19	Withdrawal Request	3275.18
	20:03	Withdrawal Cancelled	3275.18
	20:04	Withdrawal Request	3000
1 Jan 2018	11:49	Withdrawal Cancelled	3000

17. Expanding on the above, on the morning of 29 December 2017, the complainant deposited \$100 into his PointsBet betting account which before that time had a zero balance. Prior to the complainant's first withdrawal request, the complainant had placed 11 bets, of which 10 had resulted. Nine of these bets were winning bets whilst the tenth bet was a losing bet. This tenth bet resulted as a losing bet several minutes prior to the complainant making his first withdrawal request. At the time of the first withdrawal request, the complainant had an account balance of \$440.43 and had the withdrawal request proceeded, \$60.43 would have remained in his betting account.
18. Prior to the complainant cancelling his first withdrawal request, the last of the 11 bets that he had placed as detailed above also resulted as a losing bet. The complainant then placed a bet in the amount of \$60 which again resulted as a losing bet. This left the complainant with an account balance of 43 cents and as a result, no funds in his betting account from which to wager with.
19. The complainant then cancelled his withdrawal request of \$380 as it had not yet been processed by PointsBet which resulted in the complainant again having funds in his betting account with which to wager.
20. Between this time and the complainant's next withdrawal request at 4.19pm, the complainant continued to place bets. Whilst several of these bets were winning bets, the overall outcome of this betting activity resulted in the complainant having an account balance of \$2.18. The complainant then made four individual deposits of \$100 and after each deposit, he placed a \$100 bet. The first three of these bets were losing bets whilst the fourth bet resulted in a payout of \$650. The complainant made a further bet of \$100 and prior to it resulting, he made a withdrawal request for \$400, the exact same amount that he had earlier deposited into his account.

21. The complainant continued to wager with the majority of these bets being successful and as a result following the placement of his last bet for the day (which was a winning bet), the complainant had a balance of \$527.18 in his betting account.
22. Less than ten minutes later, the complainant cancelled his withdrawal request of \$400 and immediately requested a new withdrawal with an increased amount of \$927.18 being the full balance of his account once the withdrawal request cancellation was processed.
23. The complainant's account was inactive until 31 December 2017 and as the withdrawal request for \$927.18 was placed after the PointsBet withdrawal processing time for the day and the following day was a Saturday, the withdrawal request had not yet been processed by PointsBet.
24. The complainant started his betting activity on that day by depositing \$100 into his PointsBet betting account. The complainant made a number of winning and losing wagers which ultimately resulted in the complainant having an account balance of 25 cents and therefore no funds in his betting account with which to wager.
25. The complainant then cancelled his withdrawal request that he had made on 29 December 2017 and as a result, he again had funds with which to wager.
26. Similar to the complainant's betting activity on 29 December 2017, the complainant continued to wager until he again had no funds in his account. He then made a deposit of \$250 so that he could continue to wager and after several winning bets, the complainant made a withdrawal request for \$3,275.18 which once processed would leave him with an account balance of \$100.
27. The complainant continued to wager and at the end of the evening cancelled his earlier withdrawal request of \$3,275.18 and replaced it a minute later with a withdrawal request of \$3,000 leaving him an account balance of \$175.18
28. The complainant commenced betting again the next morning being 1 January 2018 at 9.28 am and similarly to the earlier days described above, once he had depleted his funds within his betting account he cancelled the withdrawal request which he had made the evening before and used those funds to continue wagering with. Coupled with a number of small deposits into his betting account, the complainant was left with a zero balance in his account by the afternoon of that day with his last bet resulting as a losing bet at 2.25 pm.
29. Just over 20 minutes later, the complainant emailed PointsBet and stated that he was able to "...continually cancel withdrawals and make additional deposits without any suspicion or enquiry from PointsBet." The complainant advised PointsBet that due to problem gambling, he had lost the \$3,375 that he had requested to withdraw on 31 December 2017. The complainant advised PointsBet that he would raise his dispute with the relevant regulatory body should he and PointsBet not be able to reach a mutual agreement.
30. A short time later, PointsBet responded and advised the complainant that they had closed his account permanently due to the complainant indicating that he a problem with gambling. PointsBet advised the complainant that all bets and deposits that had been made on the complainant's betting account would stand and that PointsBet would not refund any losses.

31. During the life of the complainant's betting account with PointsBet, the complainant had deposited a total of \$1067.42 into his account. Whilst the complainant had made a number of withdrawal requests, each of these had been cancelled by the complainant prior to the request being processed by Pointsbet.

## Consideration of the Issues

### Pre-commitment Limits

32. The Commission supports a responsible gambling environment and through the *Northern Territory Code of Practice for Responsible Online Gambling* (the Code), all sports bookmakers licensed in the Northern Territory must implement early intervention strategies for those of their customers who may be at risk of problem gambling. Sports bookmakers licensed in the Northern Territory are also required to provide their customers with a number of harm minimisation measures which they may avail themselves of.
33. Relevant to this dispute is the harm minimisation measure required by section 5.1 of the Code is that:

Online gambling operators must offer pre-commitment facilities that allow a client to set a maximum spend and/or deposit and/or time limit. Clients should be able to decrease these limits immediately, however, any increase to a limit, must not take effect for at least 24 hours.

34. At the time of this dispute, PointsBet had a responsible gambling policy in place that provided amongst other things, advice to their customers on the harm minimisation measures that PointsBet had made available to them. Applicable to this dispute is the following extract from PointsBet's policy document:

If you are concerned about your gambling practices there are a number of guidelines you may find useful:

Try and establish limits for the amounts you want to wager or deposit. PointsBet offer "Pre commitment Limits". If you would like to set limits on your deposits you can do so by going to the ' Account Details' section of our website clicking on "Limit Settings". More information on Pre-commitment Limits can be found under the heading "Pre-commitment Limits" below...

#### PRE-COMMITMENT LIMITS

At PointsBet you can control the amount you deposit by setting deposit limits. To help you decide on what the best options are for you, here's the important information:

- A limit can be set on deposits
- Limit periods can be anywhere from 1 to 7 days or for 30 days

- Limits commence immediately and work on a rolling period. For example, if you've deposited your full weekly limit on Tuesday at 9pm, you won't be able to deposit again until 9.01pm the following Tuesday.
  - If a deposit limit has been set you must wait until your selected period is over before you can increase or remove your limits.
  - Limits can be reduced at any time with immediate effect.
35. It is also a requirement of each Northern Territory sports bookmaker's licence that the sports bookmaker promulgates a detailed set of terms and conditions for wagering which both parties are bound by when an account is opened and each time a bet is struck. By opening an account with PointsBet, the complainant has accepted PointsBet's terms and conditions as particularised on their website.
36. Within those terms and conditions and in the section titled 'Pointsbet's Rights and Other Matters' is condition 12 which states:
- As a responsible bookmaker PointsBet offers its Member's the ability to control the amount they deposit by setting a limit on the amount they can deposit to their Account per day, week or month (referred to as a deposit limit).
37. As mentioned at paragraph 4 above, the complainant is of the view that PointsBet's pre-commitment limit is misleading in that whilst it allowed him to limit the amount of funds he could deposit into his account on a daily basis, it did not prevent him from betting with funds over that pre-commitment limit which were already held in his betting account.
38. Having reviewed PointsBet's responsible gambling policy and its terms and conditions, the Commission has not reached the same view as the complainant. The Commission considers that PointsBet's pre-commitment harm minimisation strategy clearly articulates that it is the amount of deposits into the betting account of the sports bookmaker's customer that is able to be limited. The pre-commitment strategy made available by PointsBet is not designed to limit the amount of funds held within the customer of the sports bookmaker's betting account available for wagering nor is it designed to overcome withdrawal request cancellations made by its customers.

#### Withdrawal Cancellations

39. As detailed above, the complainant is seeking a refund of \$3,275 from PointsBet as the complainant considers that PointsBet did not manage his betting account in a manner that incorporated an effective responsible service of online gambling approach as they did not, amongst other things, make any contact with him when he cancelled multiple withdrawal requests from his betting account in a short period of time.
40. The complainant's withdrawal request cancellation history as detailed at paragraphs 16 - 28 can be summarised below:

29 December 2018

- \$380 - account depleted - allowed complainant to continue wagering;
- \$400 - replaced with a new amount of \$927.18 at end of betting day;

31 December 2018

- \$927.18 - account depleted - allowed complainant to continue wagering;
- \$3275.18 - replaced with new amount of \$3,000 at end of betting day;

1 January 2018

- \$3,000 - account depleted - allowed complainant to continue wagering.

41. As can be seen, two of the five withdrawal request cancellations occurred as a result of the complainant amending the amount he wished to withdraw at the end of each of his successful betting days.
42. Two of the three remaining withdrawal requests were as a result of the complainant wishing to continue to wager and as a result of these cancellations, he was able to wager successfully. The fifth withdrawal request cancellation was again as a result of the complainant wishing to continue to wager but unlike earlier, the complainant's betting activities on this occasion were not met with the same success.
43. It has been well documented in previous decisions of the Commission that the Courts have set a very high threshold of responsibility for the gambler as to their own actions. The duty to cease gambling remains with the individual gambler and not the gambling provider. It is only in the most extreme cases of deliberate and gross misconduct by the sports bookmaker who has knowledge of the vulnerability of the problem gambler, that there would be any duty owed to prevent loss.
44. That being the case, the Commission has turned its mind to whether PointsBet should have had knowledge of the vulnerability of the complainant who through his own admissions has now advised PointsBet that he is affected by gambling related problems. In this respect, the Commission has examined the complainant's betting activity and considered whether the five withdrawal request cancellations could be considered to be red flag behaviours that warranted the intervention of the sports bookmaker as required by the Code (the Code amongst other things, requires that all sports bookmaker employees engaged in customer interaction must undergo training to identify gambling red flag behaviours so that sports bookmakers can identify and assist any of their customers who may have gambling related problems).
45. The Commission notes that between 29 December 2017 and 1 January 2018, the complainant deposited a total of \$988.51 into his betting account. After three individual days of betting, the complainant's betting account had a zero balance. The complainant is seeking a refund of \$3,275 from PointsBet, being the fourth and largest of his five withdrawal requests and subsequent cancellations made during this period of betting activity.
46. It would seem therefore to the Commission, that the complainant himself by seeking a refund on the fourth and largest of his withdrawal request cancellations, does not consider that PointsBet should have been concerned with his betting activity prior to this time. The Commission notes that had PointsBet considered it appropriate to

intervene at any stage earlier than this, the complainant's betting account would never have reached an amount where he could make a withdrawal request of \$3,275 nor lodge a dispute with the Commission seeking to be reimbursed this amount.

47. The Commission has formed the view that two of the five withdrawal request cancellations occurred as a result of the complainant amending the amount he wished to withdraw at the end of each of his successful betting days and did not warrant PointsBet identifying these cancellations as red flag behaviours.
48. As detailed at paragraph 42 above, two of the three remaining withdrawal requests were as a result of the complainant wishing to continue to wager (with his winnings) and as a result of these cancellations, he was able to wager successfully. It is the view of the Commission that had the fifth withdrawal request cancellation also resulted in successful betting outcomes for the complainant, then it would be very unlikely that the complainant would have lodged a dispute with the Commission.

### Harm Minimisation Tools

49. The complainant has raised concerns within his dispute that PointsBet made no contact with him following a period of self-exclusion from the sports bookmaker prior to which he had set a pre-commitment limit on his betting account and which continued after the self-exclusion period.
50. The Commission is of the view that harm minimisation tools required by the Code such as self-exclusion for a period of time or the setting of pre-commitment limits, are tools required to be made available to the customers of sports bookmakers so that they may control their betting activities with a sports bookmaker. The use of each of these tools by themselves is not necessarily indicative of red flag behaviours or of problem gambling related issues.
51. The Code's requirement to make these type of tools available to sports bookmakers' customers is so that provision of online gambling by Northern Territory licensees is done so in a responsible manner and in a way that minimises harm.

### **Decision**

52. The Commission's role in dealing with disputes is not to simply rectify self-inflicted economic losses from gambling following the lodgement of a dispute with the Commission. The Commission's role is to make a finding as to whether the sports bookmaker acted in compliance with the Act, its licence conditions and the Code.
53. The Commission has determined that PointsBet's pre-commitment harm minimisation strategy clearly articulates that it is the amount of deposits into the betting account of the PointsBet's customer that is able to be limited and that this pre-commitment strategy is not designed to limit the amount of funds held within the customer betting account available for wagering.
54. On the weight of the evidence before it and as detailed above, the Commission is satisfied that PointsBet has acted in compliance with the Act, its licence conditions and the requirements of the Code and as such, all bets struck during the life of the complainant's PointsBet betting account were lawful.

## Review of Decision

55. 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.



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Alastair Shields  
Chairperson  
Northern Territory Racing Commission

9 April 2019