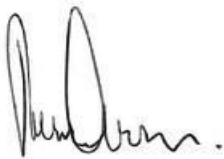


Decision and reasons for decision

Disciplinary action against the bookmaker registration holders Rodney Allen Cleary, Louise Ellen Cleary, Timothy Allen Cleary and Kate Louise Cleary, trading as bookmaking partnership VicBet, under subsection 4.5A.14(4) of the *Gambling Regulation Act 2003*.

Delegate	Jason Cremona Director, Regulatory Services Division Victorian Gambling and Casino Control Commission
Date of decision	13 January 2025
Date of reasons	13 January 2025
Decision	<p>I, Jason Cremona, Director, Regulatory Services Division of the Victorian Gambling and Casino Control Commission (Commission), make this decision on behalf of the Commission in accordance with section 4.5A.14(4) of the <i>Gambling Regulation Act 2003</i>.</p> <p>For the reasons attached to this decision, I have found there exist grounds for disciplinary action and have decided to take disciplinary action against the bookmaker registration holders Rodney Allen Cleary, Louise Ellen Cleary, Timothy Allen Cleary and Kate Louise Cleary, trading as bookmaking partnership VicBet by imposing a fine of \$130,000 to be paid within 28 days or another period as agreed by the Commission.</p>
Signed	
	Jason Cremona
	Director, Regulatory Services Division
	VGCCC

Introduction

1. This disciplinary action against the bookmaker registration holders Rodney Allen Cleary, Louise Ellen Cleary, Timothy Allen Cleary and Kate Louise Cleary, trading as bookmaker partnership VicBet, concerns repeated breaches by VicBet of their Responsible Gambling Code of Conduct, as well as a breach of a harm minimisation direction.

Background

2. Rodney Allen Cleary, Louise Ellen Cleary, Timothy Allen Cleary and Kate Louise Cleary were approved by the Commission as parties to the registered bookmaking partnership, VicBet, on 11 June 2013.
3. On 5 November 2022, the Commission received a complaint alleging that VicBet credited an \$1,800 bonus bet to the complainant's betting account *after* the complainant had requested closure of their account (**first complaint**).
4. On 6 November 2023, the Commission received a separate complaint alleging that VicBet continued to send a second complainant gambling correspondence or promotional material *after* they had permanently self-excluded with VicBet (**second complaint**).
5. In relation to the first complaint, on 5 July 2024, the Commission issued a notice to VicBet pursuant to section 4.5A.14(2) of the *Gambling Regulation Act 2003* (**the Act**), to show cause why disciplinary action should not be taken on the grounds specified in the notice.
6. In relation to the second complaint, on 5 July 2024, the Commission issued a separate notice to VicBet pursuant to section 4.5A.14(2) of the Act, to show cause why disciplinary action should not be taken on the grounds specified in the notice.
7. On 12 August and 3 September 2024, VicBet through their legal representatives provided various responses to the Commission's notices of 5 July 2024. Other relevant material was provided by VicBet
8. The Commission has considered in detail the responses provided in response to the complaints received in determining whether there are grounds for disciplinary action.

Decision

9. The Commission is satisfied that there exist grounds to take disciplinary action against the bookmaker registration holders Rodney Allen Cleary, Louise Ellen Cleary, Timothy Allen Cleary and Kate Louise Cleary, trading as bookmaking partnership VicBet. The Commission has decided to impose two separate fines of \$50,000 and \$80,000, payable within 28 days of the date of this decision, or another period as agreed by the Commission.

Basis for disciplinary action – first complaint

10. Section 7.2 of Ministerial Direction S349 of Wednesday 6 July 2022 relevantly states: *'[a] wagering service provider or a person acting on behalf of a wagering service provider must not encourage or offer any credit, voucher or reward or other benefit to induce an account holder to keep a betting account open after an account holder has made a request to close his or her betting account'*.
11. Pursuant to section 4.8A.6 of the Act, a wagering service provider must comply with a harm minimisation direction that applies to the wagering service provider, failure of which constitutes an offence. A harm direction includes Ministerial Direction S349. VicBet is a wagering service provider under section 1.3 of the Act.¹
12. The first complaint arose after the complainant was dissatisfied with the outcome of a wager that was placed on a race on 25 September 2022 ("the dispute"). The complainant placed two losing bets on the race, one for \$1800 and another for \$1700. The complainant then contacted a representative of VicBet to express their dissatisfaction with the service, contending that the loss was because of an error with their wager being accepted.
13. The Commission has considered the evidence provided in the form of screenshots of mobile phone and WhatsApp messages which reveal the exchange of communications between the complainant and a representative of VicBet. This evidence demonstrates that:
 - a. the complainant requested closure of their account at 8.37pm on 25 September 2022;
 - b. VicBet confirmed the account was closed at 8.43pm on the same date being 25 September 2022;
 - c. VicBet stated at 8.43pm on the same date, being 25 September 2022: *'If U want it reversed let me know'*;
 - d. the complainant stated at 8.53pm on same date, being 25 September 2022: *'I won't reverse just refund my \$1800 and we leave on a good note otherwise your leaving on bad terms believe me when I say that'*;
 - e. VicBet stated at 8.53pm on same date, being 25 September 2022: *'Pick one out of a free 41,800 bet'*; VicBet clarified this to be a \$1800 bet at 8.54pm on same date being 25 September 2022, noting that the earlier stated '41,800' was a typographical error.
14. After the offer of a \$1800 bonus bet, the Commission notes that:
 - a. The complainant reopened his account on 27 September 2022.
 - b. Two betting statements provided by VicBet indicate that \$1800 was deposited into the complainant's account on 27 September 2022 as a bonus bet.
 - c. The bonus bet was gambled by the complainant, and a further \$245,300 was deposited and gambled by the complainant in subsequent weeks after re-opening the betting account to utilise the \$1800 bonus bet offered by Vicbet.
 - d. The complainant ultimately self-excluded from VicBet.

¹ The bookmaker registration holders Rodney Allen Cleary, Louise Ellen Cleary, Timothy Allen Cleary and Kate Louise Cleary trading as bookmaking partnership VicBet are a 'wagering service provider' because they are persons who, in Victoria or elsewhere, carries on the business of or acts as a bookmaker.

15. The Commission finds that the complainant was encouraged or offered a free \$1800 bonus bet to induce the complainant to keep his betting account open after the complainant had made a request to close his account on 25 September 2022.
16. In their August response, VicBet submitted that the \$1800 offer was an *offer of settlement* and not an inducement to keep the account open. The Complainant had requested a refund of \$1800 to settle the dispute. VicBet did not agree to provide the requested refund of \$1800. Instead, a bonus bet of \$1800 was provided to the complainant.
17. Even if the rationale for offering the bonus bet was to settle the dispute, it remained an inducement that was offered to encourage the complainant to keep betting and reopen his account. That is because the bonus bet offer of \$1800 was of no benefit to the complainant *unless* they reopened their account and continued to gamble.
18. The Commission also notes that VicBet continued to accept bets from the complainant after the bonus bet was utilized.
19. The Commission finds that the conduct of VicBet on this occasion constituted a breach of section 7.2 of Ministerial Direction S349 of Wednesday 6 July 2022 (“The Direction”). Failure to comply with the Ministerial Direction amounts to a breach of section 4.8A.6 of the Act, which is grounds for disciplinary action pursuant to section 4.5A.14(c) of the Act.
20. On this basis, the Commission has decided to take disciplinary action against VicBet pursuant to section 4.5A.14(4) of the Act.

Appropriateness of a fine – first complaint

21. Section 4.5A.14(1) provides that the disciplinary action that the Commission may take is any of the following:
 - a. *The cancellation or suspension of the bookmaker’s registration;*
 - b. *The variation of the conditions of the bookmaker’s registration;*
 - c. *The issuing of a letter of censure; and*
 - d. *The imposition of a fine not exceeding an amount that is 50,000 the value of a penalty unit fixed by the Treasurer under section 5(3) of the Monetary Units Act 2004 (Vic).*
22. Section 4.5A.14(5) allows the Commission to take disciplinary action against VicBet as it sees fit.
23. The Commission considers that a letter of censure would not be a sufficient and proportionate action in the circumstances and would not achieve the objectives of general and specific deterrence.
24. Ultimately, the Commission has concluded that disciplinary action in the form of a fine is warranted for the contravention of the Act for the following reasons:
 - a. Firstly, general deterrence would not be achieved by anything less than a fine. The penalty should be set at an amount that serves as a measurable and effective deterrent, rather than being perceived as merely a “*cost of doing business*”². There is a need for the penalty to have sufficient

² *TPC v CSR Limited* [1990]FCA 762; [1990] FCA 521; (1991) 13 ATPR 41-076

- deterrence to ensure that operators take steps to minimise gambling harm and respect customers' requests. Offering a bonus bet to a customer that had explicitly requested the closure of their account disregards the objectives of minimising gambling harm.
- b. Secondly, specific deterrence would not be achieved by anything less than a fine. VicBet must be deterred from again engaging in such conduct breaching the Act.
25. The Commission considers a fine of \$50,000 is an appropriate penalty in all the circumstances of this first complaint forming the basis of this matter.
 26. The maximum fine available when taking disciplinary action against a registered bookmaker is 50,000 times the value of a penalty unit. Taking the penalty unit at the time of the contravening conduct of \$184.92, the maximum penalty that may be imposed in this case is \$9,246,000. The maximum penalty forms the parameters for the worst category of contravention.
 27. The Commission considers that the conduct here is such that it falls within the lower end of the scale of the maximum penalty. However, a fine at the lower range should not be misunderstood to suggest that the contravention giving rise to this disciplinary action was not serious.
 28. The matters of significance which are particularly important to the Commission's assessment of the gravity of the contravening conduct are as follows:
 - a. The size of VicBet as a small partnership bookmaker and the need for general deterrence.
 - b. The objective seriousness of the matter: After receiving the \$1800 bonus bet, the complainant went on to make deposits of \$245,300 and continued placing bets until 12 October 2022, at which point the complainant permanently self-excluded. Records provided by VicBet indicate that a profit from the complainant reopening their account was in the sum of amount of \$25,916 to VicBet. A request to close an account can be an indicator of distress or difficulty in managing gambling. Inducing further gambling could potentially intensify harm by prolonging or escalating problematic behaviors. Encouraging further gambling after such a request disregards the customer's efforts to exercise self-control and autonomy in managing their gambling behaviour.
 - c. VicBet have responded to all requests for information and have advised that they have remediated the conduct by adopting a policy whereby it does not offer bonus bets after someone has requested to close their account. This is a mitigating factor. However, specific deterrence remains important to ensure that the uplifted policies and procedures achieve their goals.
 29. The Commission considers a fine of \$50,000 in this case balances the various competing considerations that are relevant to setting a fine.

Basis for disciplinary action – second complaint

30. In accordance with section 4.5A.10A of the Act, it is a condition of registration as a bookmaker that the bookmaker implements, and therefore complies with, a Responsible Gambling Code of Conduct.
31. Pursuant to section 4.5A.14(1)(ea) of the Act, repeated breaches by the registered bookmaker of the bookmaker's Responsible Gambling Code of Conduct establishes grounds for disciplinary action.

32. VicBet has adopted the Victorian Bookmakers' Association (**VBA**) Responsible Gambling Code of Conduct (**VBA Code**) pursuant to section 4.5A.10A of the Act. All VBA members adopting the VBA Code are required as a condition of their membership to VBA to strictly implement and adhere to it.

33. The sections of the VBA Code that are relevant to the grounds for disciplinary action are:

a. Glossary, definition of Problem Gambling:

***Problem Gambling** occurs when a customer has difficulties in managing their gambling activities, particularly the scope and frequency of gambling and the amount of time spent gambling, with negative impacts potentially including:*

- i. *extreme financial losses relative to their sources of income;*
- ii. *adverse personal effect on the customer, his or her family and friends; and/or*
- iii. *adverse effect on employers and work performance;*

b. Section 8 of the Code, Pre-Commitment Limits and Self-Exclusion:

Each VBA Member will make available to their customers the option to make a Pre-Commitment Decision and also Self-Exclude, in accordance with applicable State and Territory legislation, and will ensure that:

(e) completed Self-Exclusion forms or requests are maintained in hardcopy or electronically and all employees (if any) of the VBA Member are aware of all such customers. These forms or requests (as applicable) must record the name and other relevant information of the customer, together with the stated wish of the customer to be reminded of their desire to be excluded. In the case of Permanent Self-Exclusion, the VBA Member will ensure that there is no opening or re-opening by that customer of an Account;

(f) ...

(g) they provide support and encouragement to any customer who seeks Self-Exclusion and/or expresses a concern that they have a Problem Gambling issue to also seek Self-Exclusion from other gambling providers; and

(h) they do not send correspondence or promotional material to customers who have Self-Excluded from the VBA Member's services or who request that this information not be sent to them.

34. The complainant, at their request, was permanently self-excluded from VicBet on 29 March 2020.

35. The evidence provided demonstrates that between 11 May 2021 and 6 November 2023, VicBet sent gambling correspondence or promotional material to the complainant on 27 separate occasions *after* the complainant had self-excluded.³

³ 27 emails sent to complainant initiating on 11 May 2021 and ending on 6 November 2023.

36. Although VicBet have challenged the number of correspondence or promotional material the complainant received, it does not challenge that that such material was sent and received by the complainant.⁴
37. Section 8(h) of the VBA Code states that VicBet must ensure that it does not *send correspondence or promotional material to customers who have Self-Excluded*. On each of the 27 occasions where such materials were sent to the complainant, the Commission finds that VicBet contravened the VBA Code and therefore VicBet has repeatedly breached its Responsible Gambling Code of Conduct pursuant to section 4.5A.14(1)(ea) of the Act. This constitutes grounds for disciplinary action.
38. On this basis, the Commission has decided to take disciplinary action against VicBet pursuant to section 4.5A.14(4) of the Act.

Appropriateness of a fine – second complaint

39. The Commission does not consider that a letter of censure would be a sufficient and proportionate sanction in this case. Rather, it considers that a fine would be the appropriate sanction.
40. The Commission concludes that a fine of \$80,000 is an appropriate penalty in all the circumstances of this matter.
41. The Commission has set out its approach to setting a fine when taking disciplinary action in other determinations and it does not set out that approach here. Rather, the Commission provides its reasons for concluding that a fine of \$80,000 is appropriate in this case.
42. A fine of \$80,000 is about 0.87% of the maximum fine available. While the setting of a fine is not a mathematical exercise, and the Commission recognises this, a fine at this level is within a lawful range.
43. In arriving at the fine, the matters of significance which are particularly important to the Commission's assessment of the gravity of the contravening conduct are as follows:
 - a) There are multiple repeated contraventions of the VBA Code.
 - b) The contraventions occurred over an extended period from 2021 to 2023. The repeated and extended period of non-compliance raises serious concerns about the adequacy of VicBet's internal controls to comply with key VBA Code obligations. That the breaches occurred on several occasions is an aggravating feature.
 - c) Self-exclusion is a critical tool in harm minimisation, enabling individuals to protect themselves from gambling-related harm. Sending promotional materials to a self-excluded individual directly contradicts the intent of self-exclusion and exposes the individual to significant potential risk of harm. VicBet's conduct would not be adequately denounced, and general and specific deterrence would not be adequately achieved, by a letter of censure.
 - d) Whilst the contravening conduct relates to one customer, this does not serve to reduce the gravity of what has occurred. The purpose of the contravened obligation of section 8(h) of the VBA Code

⁴ In its response to the notice received in July 2024, it is stated that there is only evidence to support that the complainant received 10 of the 27 emails.

is to ensure that vulnerable persons are protected from harm. A failure to comply that exposes such an individual to risk is serious when measured against this purpose.

- e) VicBet has submitted that the evidence indicates that the customer had only received the promotional material on 10 occasions. This does not diminish the gravity of what occurred here. Operators are obliged to respect self-exclusion and to prevent any promotional contact with self-excluded persons. Sending promotional materials to a self-excluded person, regardless of whether they were received, constitutes a clear breach of a legal obligation.
 - f) In assessing what is needed to achieve general deterrence, the Commission has considered the size of VicBet as a small partnership bookmaker. The Commission's decision does not depend upon a precise understanding of how much profit VicBet makes.
 - g) Within their August response, VicBet has conceded the breach. VicBet further advised that a *more sophisticated system* has been implemented which allows them to receive a daily report of permanently self-excluded customers and that it immediately unsubscribes those customers from receiving any correspondence from VicBet. That is a mitigating factor. However, specific deterrence remains important to ensure that the uplifted systems and processes achieve their goals.
44. The Commission concludes that a fine of \$80,000 in this case balances the various competing considerations that are relevant to setting a fine.

Review of a Decision

45. Under section 4.5A.15(h) of the Act, a person whose interests are affected by a decision to take disciplinary action against a registered bookmaker may apply to the Victorian Civil and Administrative Tribunal (**Tribunal**) for review.
46. An application for review to the Tribunal must be made within 28 days after the day the decision was made.