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Australian Communications and Media Authority

Final Investigation Report – PointsBet Australia Pty Ltd

Summary	
Entity	PointsBet Australia Pty Ltd (PointsBet)
Australian Company Number	606 814 920
Relevant legislation	*Interactive Gambling Act 2001*
Type of activity	Part 7B – National Self-Exclusion Register
Findings	No contraventions of subsection 61KA(3) [Provision of licensed interactive wagering services to registered individuals] 508 contraventions of subsection 61LA(4) [Sending regulated electronic messages to an electronic address of registered individual – recklessness of provider] 736 contraventions of subsubsection 61MB(5) in relation to 228 licensed interactive wagering services accounts [Not closing a wagering account held by a registered individual – no outstanding bets] 19 contraventions of subsection 61MC(5) in relation to 7 licensed interactive wagering services accounts [Not closing a wagering account held by a registered individual – outstanding bets] 22,360 contraventions of subsection 61JP(5) [Failure to promote the NSER as required by subsection 25(3) of the *Interactive Gambling (National Self-exclusion Register) Register Rules 2022*].

Background

1. On 21 August 2023, BetStop – the National Self-exclusion Register™ (NSER) commenced operation. The NSER allows Australians to self-exclude from all licensed interactive wagering service providers (IWPs) in a single process. Given the serious consumer harm that could result from non-compliance with the NSER, the ACMA had informed IWPs that it expected their systems would be in place to enable full compliance from the commencement of its operations.

2. On 22 February 2024, the ACMA opened an investigation into PointsBet's compliance with the *Interactive Gambling Act 2001* (IGA) following consumer complaints.

3. On 23 February 2024, under paragraph 173(b) of the *Broadcasting Services Act* 1992, the ACMA gave PointsBet a Notice requiring it to provide information pursuant to the investigation (the Notice).

4. PointsBet made 3 submissions to respond to the Notice:

   > 29 March 2024 (Submission 1)

   > 8 May 2024 (Submission 2)

   > 20 June 2024 (Submission 3).

5. PointsBet also made a submission on 22 November 2024 in response to the ACMA's preliminary findings (Submission 4).

6. The investigation focused on conduct that occurred in connection with two issues PointsBet identified with its systems and processes that impacted its ability to comply with its obligations under Part 7B of the IGA during the relevant period of the investigation.

7. In total, PointsBet submitted that it identified 657 customers that were potentially impacted by these two issues.

Issue 1 – a failure to identify and remediate data errors

8. The Register operator engaged to provide and operate the NSER provides a service to IWPs that allows them to request advice about whether a current or prospective customer is self-excluded with the NSER (a registered individual), under section 61NC of the IGA. Such requests can involve a single customer or multiple customers (a batch request).

9. Subsection 22(1) of the *Interactive Gambling (National Self-exclusion Register) Register Rules 2022* (the Register Rules) sets out what information an IWP must include in a valid request to the Register operator.

10. To facilitate these requests, the Register operator provides interactive wagering providers (IWPs) with technical specifications to connect to the NSER and make valid requests, including the data schema for requests. IWPs are advised if their requests do not meet the data schema through an error message from the Register operator. In these cases, an IWP must review the error, remediate the data such that it complies with the technical specifications and resubmit the request in the correct format to submit a valid request.

11. In Submission 1, PointsBet stated that its systems had been designed to comply with these requirements such that it would detect error messages and resubmit these requests in the correct format. However, PointsBet submitted that:

    > Its system was updated on 6 September 2023 which introduced a defect that affected this checking process such that it stopped detecting error messages and resubmitting requests.

    > The defect persisted for 12 days until the system was updated again on 18 September 2023. As a result of this error and its failure to identify and action error messages, PointsBet advised that its internal investigation determined

that it was unable to determine whether some customers were registered individuals. During the defect period, affected individuals were incorrectly deemed eligible to receive marketing by PointsBet and their accounts remained open despite being registered individuals.

- The update on 18 September 2023 resolved the defect without PointsBet's knowledge. Consequently, PointsBet submitted that it was unaware of the problem until the ACMA contacted it on 20 September 2023 about a consumer complaint. PointsBet's subsequent investigations into the complaint identified the defect.

12. In Submission 2, PointsBet stated that 613 customers were potentially impacted by this issue. PointsBet's interactions with these 613 customers have formed part of this investigation.

13. In Submission 4, PointsBet noted that, despite Issue 1, any attempt by affected customers to log into their account would have been prevented from doing so.

Issue 2 – interactions with PointsBet's internal exclusion program

14. The NSER operates separately to other exclusion programs, including those offered by individual IWPs, such as PointsBet. For this reason, individuals may register with the NSER after they have registered with other programs. On 20 September 2023, the ACMA informed PointsBet of a complaint from a consumer who had received marketing after they became a registered individual.

15. Following notification from the ACMA of this consumer complaint, PointsBet submitted that it identified an issue in its system which meant that, where a person had an existing exclusion directly with PointsBet when they registered with the NSER, PointsBet's system would override the NSER exclusion if the customer's temporary exclusion with PointsBet ended. The ACMA understands that this issue was present in PointsBet's system from the commencement of the NSER on 21 August 2023 until a technology fix was implemented on 3 October 2023.

16. PointsBet subsequently submitted that 44 customers were impacted by this issue. PointsBet's interactions with these 44 customers have formed part of this investigation.

Other Matters

17. On 5 December 2023, PointsBet self-reported to the ACMA that it had sent marketing material to 172 individuals once they had ceased to be registered with the NSER. In total, 206 regulated electronic messages were sent over the period 24 to 25 November 2023. This occurred as PointsBet continued to check the NSER after it first identified customers as self-excluded. Once they were identified as no longer self-excluded, they were re-enrolled to receive marketing. The ACMA has separately investigated PointsBet's conduct under the *Spam Act 2003*.

18. The ACMA's findings are based on:

- Submissions 1, 2, 3 and 4 from PointsBet

- records extracted from the NSER by the ACMA which record when affected customers were registered individuals

19. The ACMA's findings are also based on internal testing by the ACMA, and publicly available technical information about the operation of push notifications, including information provided by Apple, Google and the marketing platform used by PointsBet.

20. The reasons for the ACMA's findings, including the key elements which establish the contraventions, are set out below.

Relevant legislative provisions

21. Obligations related to the NSER are set out in Part 7B of the IGA. The provisions relevant to this investigation are provided at **Attachment A** including, where necessary, references to the Register Rules and the *Telecommunications Act 1997*. Unless otherwise specified all references to provisions within legislation in the report are a reference to provisions within the IGA.

Reasons for Findings

Finding 1 – No Breach: Prohibition on the provision of licensed interactive wagering services to registered individuals (subsection 61KA(3))

Regulatory obligation

22. An IWP must not provide a licensed interactive wagering service to a registered individual. A licensed interactive wagering service is defined by section 61GB as a regulated interactive gambling service (defined by section 8E) that:

    - is a wagering service (as defined in section 4); and
    - has an Australian-customer link (as defined in section 8); and
    - is not provided in contravention of subsection 15AA(3).

Is PointsBet an IWP for the purposes of the IGA?

23. PointsBet is licensed by the Northern Territory Racing and Wagering Commission (NTRWC) to provide licensed interactive wagering services in Australia.[1] For this reason, PointsBet is also included on the ACMA's Register of IWPs maintained under section 68.[2]

24. As such, PointsBet is an IWP for the purposes of the IGA and the obligations under Part 7B apply.

Did PointsBet provide licensed interactive wagering services to registered individuals?

25. The ACMA investigated whether PointsBet provided wagering services to the 657 registered individuals impacted by the two issues that are the subject of this investigation.

26. The ACMA has found no evidence that registered individuals were provided wagering services (i.e. were able to place a bet) during the investigation period.

[1] A list of licensed providers is contained on the NTRWC's website at https://industry.nt.gov.au/boards-and-committees/racing-commission/sports-bookmakers-and-betting-exchange-operators.
[2] This register is available on the ACMA's website at Check if a gambling operator is legal | ACMA.

Finding 2 – Breach: Regulated electronic message must not be sent to an electronic address of a registered individual (subsection 61LA(4))

Regulatory obligation

27. An IWP must not send, or cause to be sent, a regulated electronic message to an electronic address of a registered individual if it is reckless as to the fact that the electronic address is an electronic address of the registered individual under subsection 61LA(4).[3]

28. A regulated electronic message is defined (section 61GF) as an electronic message where, having regard to:

> the content of the message; and

> the way in which the message is presented; and

> the content that can be located using the links, telephone numbers or contact information (if any) set out in the message;

it would be concluded that the purpose, or one of the purposes, of the message is:

> to offer to provide licensed interactive wagering services; or

> to advertise or promote licensed interactive wagering services; or

> to advertise or promote a provider, or prospective provider, of licensed interactive wagering services.

Did PointsBet send, or cause to be sent, electronic messages?

29. In Submission 2, PointsBet provided the ACMA with evidence, in the form of detailed spreadsheets, that it sent 2,429 messages to the customers within the scope of this investigation (the Customers). PointsBet provided details of each message it sent, including the date, time and content, confirming that the messages were sent during the investigation period.

30. The breakdown of these messages include:

> 285 SMS messages

> 376 emails

> 1,768 push notifications.

31. Section 61GE defines an electronic message as a message sent:

> using:

- an internet carriage service; or
- any other listed carriage services, and

> to an electronic address in connection with:

- an email account; or
- an instant messaging account; or
- a telephone account; or
- a similar account.

[3] The test for recklessness is set out in subsection 61LA(5) and discussed below.

[The legislation also includes a 'Note' that 'Email addresses and telephone numbers are examples of electronic addresses'].

SMS and email messages

32. SMS messages are messages sent using a listed carriage service or an internet carriage service to a telephone number in connection with a telephone account. The ACMA found that the 285 SMS messages that were sent to the Customers are electronic messages under subparagraphs 61GE(1)(a)(i), (a)(ii) and (b)(iii).

33. Email messages are messages sent using an internet carriage service to an email address in connection with an email account. The ACMA found that the 376 email messages that were sent to the Customers are electronic messages under subparagraphs 61GE(1)(a)(i) and (b)(i).

Push notifications

34. Push notifications are a type of message sent to a software application (app) that has been downloaded on a device. In the context of this investigation, the ACMA looked at whether the 1,768 push notifications PointsBet sent to users of the PointsBet mobile app were electronic messages within the meaning of section 61GE.

35. In Submission 1, PointsBet stated that it 'does not believe that push notifications are an electronic message for the purpose of the Act'. However, despite this view, it also stated in Submission 1 that it 'does not send push notifications to customers with closed or suspended PointsBet betting accounts, including where the closure is a result of BetStop registration'. In support of this position, Submission 1 provided evidence of PointsBet's system design in which a customer is unenrolled or unsubscribed from receiving push notifications when that customer is identified as a registered individual.

36. PointsBet's position that it does not send push notifications to registered individuals is consistent with the intent of the IGA, as described in the Explanatory Memorandum to the *Interactive Gambling Amendment (National Self-exclusion Register) Bill 2019*. Specifically, the Explanatory Memorandum states:

> *These penalty provisions ensure that individuals experiencing harm from online wagering are not targeted with marketing material that may encourage them to gamble or deregister. This is a key policy objective as receiving marketing material about gambling services may trigger individuals to resume accessing interactive wagering services.*[4]

37. PointsBet's mobile app is available for download on both Apple and Android (Google) devices.[5] PointsBet describes the app as giving 'you access to local and international racing and hundreds of thousands of sports betting markets worldwide'.[6]

38. This investigation has considered how push notifications are sent to Apple and Android devices. Push notification services for apps operate within the proprietary app distribution systems established:

    - by Apple (for apps downloaded from the App Store for iOS devices) using Apple push notification services (APNs); or
    - Google (for apps downloaded from the Play Store for Android devices) using its Firebase Cloud Messaging services (FCMs).

[4] Interactive Gambling Amendments (National Self-Exclusion Register) Bill 2019 Explanatory Memorandum, p.15
[5] Downloading the PointsBet App – PointsBet Australia (Pointsbet.com) accessed 16 September 2024
[6] Downloading the PointsBet App – PointsBet Australia (Pointsbet.com) accessed 16 September 2024

39. The customer engagement platform used by PointsBet, describes push notifications as an intrusive message type sent directly to a customer's phone or browser. As such, Apple and Google have specific requirements for the management and sending of push notifications to which all application developers must adhere.

40. Apple states that, when users allow a currently installed application to receive notifications, a unique token is generated and registered to that developer and device.[7] Apple's developer guidance notes that its APNs:

> *must know the address of a user's device before it can send notifications to that device. This address takes the form of a device token unique to both the device and your app.*[8]

41. This device token is referred to as a push token in this report. Apple states that this unique push token is 'the address of your app on the current device' and that the app server must have this token to send any notifications to a device.[9]

42. Underscoring the unique address that a push token represents, Apple's guidance states that:

> *you can't use the same device token for more than one app, even when the apps are on the same device. Every app must request their own unique device token and forward it to your provider server.*[10]

43. A flowchart outlining the push notification process for Apple is at **Attachment B**.

44. Google's Android push notification service works in a similar manner to Apple's push notification service. Google's developer guidance states that the FCM generates a 'registration token' for the client app instance before push notifications can be sent.[11] This registration token will be described as a push token for the purposes of this report. Like Apple, Google states that this push token must be stored by the app developer and used in notification requests to the FCMs to be able to send push notifications.

45. Apple provides app developers advice on how to use this device token, including that the token should be forwarded to the developer's server along with any other information the app developer needs to identify the specific user to the app developer's service.[12] Apple provides the example of user's login name or something that connects them to the service.

46. Submission 2 provided evidence that the marketing platform captures its push notification activity against the 'external user ID' of customers such that it is able to communicate with those individuals and keep records of messages sent to each individual.

47. The ACMA understands that as a device token relates to a specific instance of a particular app on a specific device, an app developer may have multiple device tokens for a user, representing a unique token for each instance of the app of a customer.[13] For example, PointsBet would have 2 push tokens for a user with the PointsBet app on both a mobile phone and a tablet. In choosing to send a push notification to that customer, PointsBet could choose to send 2 notifications using the 2 unique push tokens it has stored for that customer.

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[7] Privacy - Device Requests - Apple accessed on 29 September 2024
[8] Registering your app with APNs | Apple Developer Documentation accessed 27 September 2024
[9] Registering your app with APNs | Apple Developer Documentation accessed 27 September 2024
[10] Registering your app with APNs | Apple Developer Documentation accessed 27 September 2024
[11] Best practices for FCM registration token management | Firebase Cloud Messaging (google.com) accessed on 27 September 2024
[12] Registering your app with APNs | Apple Developer Documentation accessed 27 September 2024
[13] Registering your app with APNs | Apple Developer Documentation accessed 27 September 2024

Were the push notifications sent using an internet carriage service or any other listed carriage services?

48. Section 4 defines an 'internet carriage service' as a 'listed carriage service that enables end-users to access the internet'. These terms are defined under the *Telecommunications Act 1997* (see extract of relevant provisions in **Attachment A**).

49. PointsBet advised in Submission 2 that its push notifications are managed exclusively through its cloud-based marketing platform. Accordingly, the ACMA understands that push notifications sent by PointsBet within the scope of this investigation were sent using this platform.

50. Based on information in PointsBet's submissions outlining how it sends push notifications and the extensive publicly available technical guidance on the workings of push notifications, the ACMA considers that marketing platform's cloud-based service communicates with the push notification services for either Google's FCMs or Apple's APNs to send push notifications to users of the PointsBet app using an internet carriage service.

51. The ACMA understands that such messages are sent from the marketing platform used by PointsBet to Google's FCMs or Apple's APNs using an internet carriage service. An internet carriage service is also used by Google's FCMs or Apple's APNs (depending on the device type of a user) to 'push' the notification to the user's device.

52. As such, the ACMA found that the 1,768 push notifications were sent by PointsBet using its marketing platform and FCMs or APNs using an internet carriage service.

Were the push notifications sent to an electronic address?

53. The Notice to PointsBet required it to provide the ACMA with details of the electronic address to which it sent each push notification. In Submissions 1 and 2, PointsBet:

    > provided details of each message it sent, including the customer that was sent the message through a unique customer number (called an 'external user ID' in PointsBet's submissions), the date and time the message was sent, and the content of the message

    > submitted that push notifications are managed through its marketing platform and PointsBet itself does not store any form of identifier (including electronic address) for the customer

    > submitted that push notifications are not sent to any electronic address. For this reason, PointsBet submitted that it could not provide the electronic address to which each push notification was sent.

54. To establish whether the messages were sent to an electronic address, the ACMA considered *how* push notifications function for Apple and Google devices. As noted in paragraphs 39 to 45, Apple and Google have specific requirements for the management and sending of push notifications.

55. The app developer, in this case PointsBet, must comply with these requirements in incorporating push notifications into its app and to register its app for push notifications using FCMs and APNs.

56. When an app is published, users can download the app through the Apple App Store or Google Play store. Research and testing by the ACMA has determined that a user must have an Apple account to use the Apple App Store, or a Google account to use the Google Play Store.

57. Upon launching the app, a user is asked whether they consent to receive push notifications. This preference can generally be changed by the user at any time. If a

user consents to receive push notifications, a push token is generated by, and registered with, FCMs and APNs (depending on which operating system the device uses) in conjunction with the app, consistent with the evidence presented in paragraph 40 for Apple devices and paragraph 44 for Google devices.

58. As noted in paragraph 40, Apple states that this unique device token is 'the address of your app on the current device'.[14] The device token is not visible to, or used by, the end user. This is unlike other electronic addresses such as an email address or telephone number (listed as examples of electronic addresses in the Note to subsection 61GE(1)).

59. As an example, device tokens for Apple are unique 64-character hexadecimal strings. Instead of a format such as <name@domain> or <tel:###########>, it is a format of <unique-ID-64-chars> to target a specific user's device. For example, Apple's developer guidance provides the following example of a push token:

    00fc13adff785122b4ad28809a3420982341241421348097878e577c991de8f0.[15]

60. In Submission 4, PointsBet submitted that the defining characteristic of an address (including an electronic address) is that individuals are generally contactable by the public at that address – ie an address is a 'public identifier'. PointsBet also referenced a number of other features as being characteristics of an address, such as the ability of individuals to identify or disclose their address, and the persistent or static nature of addresses. The ACMA was not persuaded by these submissions and did not accept PointsBet's submission that push notifications are not sent to an electronic address.

61. It is correct that push tokens are not publicly available. However, the ACMA does not agree this means that they cannot be considered to be an address as not all addresses are always publicly available. As a comparison, the ACMA notes that while electronic addresses like phone numbers and email addresses are commonly available, a user of an electronic address can choose to not reveal an electronic address. For example, an account holder may choose to have a silent telephone number. A person may also seek to supress their postal address.

62. In relation to the characteristics of an address identified by PointsBet (including the ability to disclose it), it is relevant that users are able to exercise control over receiving communications through this channel (ie using push tokens), regardless of whether they are aware of how the technology operates or of the push token itself (ie the thing that allows PointsBet's app to send communications to that user). The user is required to opt in to receiving communications (thereby generating the push token) and can then opt-out of receiving communications. Hence users can control the use of this particular 'address' (ie the push token) through the consents they provide (or withdraw). This is similar to the way in which consumers can opt-in and opt-out of receiving other electronic communications through SMS and email from commercial entities.

63. In relation to the submission that an address must be 'persistent or static', the ACMA notes that the push token relates to a specific instance of an app on a device. For this reason, the push token is subject to change if the user uninstalls

[14] Registering your app with APNs | Apple Developer Documentation accessed 27 September 2024
[15] Sending notification requests to APNs | Apple Developer Documentation accessed on 27 September 2024

the app and reinstalls it, or if they get a new device. This is the case even though the user remains the same.

64. The fact that this address is not 'permanent' is not a defining characteristic of an address. For example, a user may obtain a new phone number or move house, meaning that the individual is contactable at a new address in the same manner that the new push token would need to be used to contact a user that has downloaded the PointsBet app on a new device. A further example is that of IP addresses – which may be either dynamic or static. However, the fact an IP address is dynamic does not mean it is not an address.

65. The technical documentation from both Apple and Google cited in this report provide compelling evidence that these push notification tokens are an essential part of the message systems used by Apple and Google for sending push notifications.

66. Further, Apple's technical guidance provides developers information on how to generate a push notification request.[16] This guidance labels the header titled 'path' as a 'required' header for this message and references that the 'path' is the device token used to identify the user's device. An example of a push notification request from Apple is as follows:[17]

```
HEADERS
  - END_STREAM
  + END_HEADERS
  :method = POST
  :scheme = https
  :path = /3/device/00fc13adff785122b4ad28809a3420982341241421348097878e577c991de8f0
  host = api.sandbox.push.apple.com
  authorization = bearer eyAia2lkIjogIjhZTDNHM1JSWDciIH0.eyAiaXNzIjogIkM4Nk5WOUpYM0QiLCAiaWF0I
          jogIjE0NTkxNDM1ODA2NTAiIH0.MEYCIQDzqyahmH1rz1s-LFNkylXEa2lZ_aOCX4daxxTZkVEGzwIhALvkClnx5m5eAT
          Lxw7LZtEQcH6JENhJTMArwLf3sXwi
  apns-id = eabeae54-14a8-11e5-b60b-1697f925ec7b
  apns-push-type = alert
  apns-expiration = 0
  apns-priority = 10
  apns-topic = com.example.MyApp
DATA
  + END_STREAM
  { "aps" : { "alert" : "Hello" } }
```

67. Evidence from Submissions 1 and 2 support a position that PointsBet is able to target and send push notifications to different users of its app and stores records for each unique message sent to each user – for example, a message to a user to alert them that they have had a winning bet. Further, PointsBet's submissions provide evidence that records of push notifications it has sent are stored against an 'external user ID' or customer number.

[16] Sending notification requests to APNs | Apple Developer Documentation accessed on 30 September 2024
[17] Sending notification requests to APNs | Apple Developer Documentation accessed on 30 September 2024. Red box added to present when the push token is required to be included in the request

68. Accordingly, the ACMA found that these push tokens constitute an electronic address for the purposes of section 61GE and these allow push notifications to be sent to a particular user of a device.

69. The ACMA found that the push token is both:

    - electronic, in that it is a string of digital characters maintained in an electronic database for the purpose of sending digital notifications to an electronic device.
    - an address, in that enables the app developer to identify the location of an electronic device with its app installed for the purpose of sending a notification. As cited in paragraph 41, Apple describes this token as an 'address' and that this address identifies the user device to receive the notification.[18]

70. The ACMA found that the push token is a kind of electronic address that enables an app developer such as PointsBet to send a specific message to a specific user of an app on a device in a manner similar to how a telephone number is used to send an SMS message or an email address is used to send an email.[19]

71. As noted earlier, PointsBet submits that these notifications were not sent to electronic addresses. However, this submission conflicts with the public, technical information cited in this report from Apple and Google, which state that it is not possible to send push notifications using their services without supplying a push token (which identifies where the messages need to be sent). Based on this information, the ACMA is of the view that it is open to infer that PointsBet (or the marketing platform used by PointsBet) must have held the electronic addresses (in the form of push tokens) of each relevant customer and that it must have sent 1,768 push notifications to these electronic addresses.

72. The ACMA considers it open to infer that PointsBet could not have used the services of its marketing platform, Apple's APNs or Google's FCMs to send or cause the 1,768 push notifications to be sent without using the relevant push token for each notification it sent. This is because:

    - PointsBet would not have complied with the strict technical requirements Apple's APNs and Google's FCMs for sending push notifications; and
    - its marketing platform, Apple's APNs and Google's FCMs could not have identified the location of the PointsBet app on the user's device to send each of the 1,768 push notifications.

73. Accordingly, the ACMA found that PointsBet sent or caused the 1,768 push notifications to be sent to electronic addresses in the form of the push tokens.

Are the push tokens an address in connection with an email, telephone or similar account?

74. Paragraph 61GE(1)(b) goes on to state that the electronic address is to be in connection with:

    i. an email account; or
    ii. an instant messaging account; or
    iii. a telephone account; or
    iv. a similar account.

[18] Sending notification requests to APNs | Apple Developer Documentation accessed on 27 September 2024
[19] The Note to subsection 61GE(1) provides that 'Email addresses and telephone numbers are examples of electronic addresses' but does not list these as exhaustive examples of electronic addresses

75. It is not clear that a push token is in connection with an email, instant message or telephone account. Accordingly, the ACMA considered whether these tokens are in connection with a 'similar account'. While this 'similar account' may function as an account that facilitates electronic communications, it need not use the same underlying technology deployed by email, telephone or instant messaging accounts; nor does it need to function in a manner identical to those accounts.

76. The PointsBet app can only be downloaded onto a device via the Apple App Store or the Google Play Store.[20] A user must have an Apple Account or a Google account to use the relevant stores and download apps. This has been confirmed through testing by the ACMA. Accordingly, the ACMA understands that a user must have a Google or Apple account to download the PointsBet app and consent to receive push notifications, even if the full details about that account are not disclosed by Apple or Google to PointsBet.

77. Apple describes its Apple Account (previously called an Apple ID) as an account you use across Apple's ecosystem including the App Store and iMessage.[21] This Apple Account is also associated with an Apple device. Testing by the ACMA shows that the Apple ID of the user is shown under 'settings' on an Apple device, establishing a connection between that user's account and the device that is used to receive push notifications. Similarly, a Google account provides access to services across Google's ecosystem, including email (Gmail) and Google Play, including being associated with a user's device or devices.[22]

78. Before creating an Apple Account or Google account, the end user needs to accept the relevant terms of use which creates a contract between the user and Apple and Google as relevant, in a manner not dissimilar to entering into a contract for a mobile phone service in which a phone number is provided, or a contract for an internet or email service in which an email address is provided. In practice, creation of Apple and Google accounts provides account holders with push notification functionality for their devices and apps, and involve services to facilitate these electronic communications.

79. Testing by the ACMA shows that the Google account of the user is shown under 'settings' on an Android device, establishing a connection between that user's account and the device that is used to receive push notifications.

80. The ACMA understands that every instance of a PointsBet app on a device has been downloaded in connection with an Apple or Google account (as relevant). Once downloaded, the PointsBet app resides on the device in relation to the Apple or Google account that was used to download the app.

81. Testing by the ACMA has also shown that the PointsBet app is visible when viewing downloaded apps through the relevant Apple or Google store applications. For example, the 'Manage apps & device' section of the Google Play Store will display that the PointsBet app is associated with a Google account if it has been downloaded previously. This provides a connection between the PointsBet app that is used to send the push notification and the Google or Apple account, as relevant, of a user.

82. As described in paragraph 40, upon consenting for push notifications, the Apple APNs and FCMs generate a push token with the user's device (which is associated with an Apple or Google account as described in paragraph 77). This push token must be sent to the app developer's server to allow them to communicate directly to that user, as described in paragraphs 41 and 44. The FCMs and APNs can only generate a token

[20] Racing & Sports Betting Apps - Download Now - iOS and Android | PointsBet Australia accessed 27 September 2024
[21] Legal - Apple Media Services - Apple and Manage and use your Apple Account – Apple Support (AU) accessed 27 September 2024
[22] Create a Gmail account - Gmail Help (google.com) accessed on 27 September 2024

because the app is installed and associated with an Apple or Google account used on a specific device. Otherwise, the ACMA is of the understanding that there is no way for FCMs or APNs to identify the location of the app on a specific device in order to be able to send a message.

83. On the basis of the matters described in this report, the ACMA considers that these Apple and Google accounts are similar to an email, instant messaging or telephone account as, amongst other features, they allow an account holder to be targeted and communicated to. The fact that the Apple and Google accounts provide access to a variety of services within the Apple and Google ecosystems do not make them dissimilar to a phone number or email address. In forming this position, the ACMA notes that a person's email address may be used by them as an account identifier for other services in addition to being an address for the purpose of sending and receiving electronic messages.

84. While the app developer may not be aware of the relevant Google or Apple account of the user, the ACMA considers that a push token is nonetheless associated with the relevant account as it allows communications to be sent directly to that individual through their device. Apple's Law Enforcement Support Program provides a framework for law enforcement agencies to seek customer information from Apple.[23] This program and Apple's reporting reveals that it can release identifying information to law enforcement agencies through a 'push token' request and states that:

> *Push Token requests generally seek identifying details of the Apple Account associated with the device's push token, such as name, physical address and email address.*[24]

85. This information from Apple suggests Apple maintains a connection between push tokens and a specific Apple account. Google provides a similar policy for law enforcement requests of account information.[25] Based on this evidence, the ACMA found that the push tokens are connected with a Google or Apple account as they are generated by Google and Apple's services and stored in connection with the relevant account.

86. The ACMA found that the 1,768 push notifications that were sent to the Customers are electronic messages under subparagraphs 61GE(1)(a)(i) and (b)(iv).

Were the messages regulated electronic messages?

87. Section 61 defines a regulated electronic message as an electronic message, where, having regard to:

    (a) the content of the message; and

    (b) the way in which the message is presented; and

    (c) the content that can be located using the links, telephone numbers or contact information (if any) set out in the message;

    it would be concluded that the purpose, or one of the purposes, of the message is:

    (d) to offer to provide licensed interactive wagering services; or

    (e) to advertise or promote licensed interactive wagering services; or

    (f) to advertise or promote a provider, or prospective provider, of licensed interactive wagering services.

[23] https://www.apple.com/au/privacy/government-information-requests/ accessed on 27 September 2024
[24] Apple Privacy information page accessed on 27 September 2024
[25] How Google handles government requests for user information – Privacy & Terms – Google accessed on 27 September 2024

88. Submission 2 from PointsBet provided:

    > a designated purpose of each message sent – for example, 'marketing'; and

    > copies of each of the messages sent within the scope of this investigation, including SMS messages, emails and push notifications.

89. A sample of messages within the scope of the investigation is included at **Attachment C**.

SMS messages

90. In Submission 2, PointsBet designated the purpose of 280 of the 285 SMS messages as 'marketing'. The ACMA has reviewed the content of these messages and considers that each message designated 'marketing' was a regulated electronic message.

91. Submission 2 designated the purpose of the remaining 5 SMS messages as an 'RSG'[26] message. These messages were sent to customers encouraging them to set a deposit limit before *'you play with PointsBet this spring'* (see example 4 in Attachment C).

92. It is noted that the definition of a regulated electronic message recognises that a message may have more than one purpose. Subsection 61GF(1) also provides that when considering whether a message is a 'regulated electronic message', one of the issues to have regard to is the content that can be located using the links, telephone numbers or contact information (if any) set out in the message. Accordingly, in considering the purpose of the 5 SMS, the ACMA also considered the content available through links contained in the messages, which do include direct links to PointsBet's website which provides wagering services, as well as a link to the NSER website.

93. In Submission 4, PointsBet submitted that these messages were 'non-promotional' and that the sole purpose of these messages was to 'meet various responsible service of gambling obligations'. While the ACMA acknowledges a purpose of the messages was to encourage the 'responsible' use of gambling products, the content of the message and the links to the PointsBet website mean that the messages also offer, advertise or promote the use of PointsBet's wagering services, albeit in a manner PointsBet describes as responsible. Because of this purpose, the ACMA found that the messages are regulated electronic messages.

94. Accordingly, the ACMA has assessed that all 285 SMS messages met the definition of a regulated electronic message as the purpose, or one of the purposes, of the messages were to offer to provide licensed interactive wagering services or to advertise or promote licensed interactive wagering services.

Email messages

95. Submission 2, PointsBet designated the purpose of 374 of the 376 email messages as 'marketing'. The ACMA has reviewed the content of these messages and considers, except as described in paragraph 98, that each message designated 'marketing' was a regulated electronic message.

96. The ACMA notes that 3 emails were sent to 3 customers outlining steps customers could take to engage in 'responsible gambling' – similar to the SMS messages referenced in paragraph 91. A copy of this email is at **Attachment D**. This message was described by PointsBet in Submission 2 as either a 'marketing' message for 1 instance of the email or an 'RSG' message in 2 instances of the email. In considering the purpose of these messages, the ACMA has also assessed the content available

[26] While not defined in PointsBet's submission, noting the content of these messages, the ACMA has taken this to mean 'responsible service of gambling' message.

through links contained in the messages, which include direct links to PointsBet's website, including a user's account page, which provides wagering services.

97. The ACMA acknowledges that a purpose of the 'RSG' messages was to encourage the 'responsible' use of gambling products, like the aforementioned SMS messages. However, the messages also offer, advertise or promote the use of PointsBet's wagering services, albeit in a manner PointsBet describes as responsible, in a similar manner to the 5 SMS messages described in paragraph 91. Because of this purpose, the ACMA found that the messages are regulated electronic messages.

98. The one email that the ACMA has assessed as not meeting the definition of a regulated electronic message was an email sent to a customer to inform them of a delay to their withdrawal. While Submission 2 described the purpose of this message as 'marketing', the ACMA assessed this as a factual message to inform a customer of a delayed payment that did not seek to provide, promote or advertise PointsBet's wagering services.

99. Accordingly, the ACMA has assessed that 375 of the 376 emails met the definition of a regulated electronic message as the purpose, or one of the purposes, of the messages were to offer to provide licensed interactive wagering services or to advertise or promote licensed interactive wagering services.

Push notifications

100. In Submission 2, PointsBet designated the purpose of 676 of the 1,768 push notifications as 'marketing'. The ACMA has reviewed the content of these messages and considers that each message designated 'marketing' was a regulated electronic message.

101. The ACMA notes that PointsBet designated the purpose of the remaining 1,092 push notifications as being 'transactional'. The copies of the messages provided by PointsBet in Submission 2 shows that these messages were to inform the customer of a winning bet (winning bet message). These messages were identical and contained the same content. A copy of this push notification is at **Attachment E**. In Submission 4, PointsBet stated that the sole purpose of these messages is to inform customers of a winning bet.

102. The ACMA's investigation of such messages demonstrated that clicking on the notification takes the user to the PointsBet app to view the outcome of the bet. From here, the user is readily able to access other parts of the PointsBet app, including accessing licensed interactive wagering services. Having considered the content of the message (being the advertisement or promotion of the outcome of a licensed interactive wagering service) and the content that can be located using the link in the push notification (noting subsection 61GF(1)), the ACMA found that these messages met the definition of a regulated electronic message as the purpose, or one of the purposes, of the messages was to offer to provide licensed interactive wagering services or to advertise or promote the licensed interactive wagering services offered by PointsBet.

103. Accordingly, the ACMA found that all 1,768 push notifications met the definition of a regulated electronic message as the purpose, or one of the purposes, of the messages were to offer to provide licensed interactive wagering services or to advertise or promote licensed interactive wagering services.

<u>Were the regulated electronic messages sent to electronic addresses of registered individuals?</u>

104. Submission 2 provided information about each customer PointsBet sent messages to within the scope of the investigation, including a unique PointsBet customer number that is used to identify customers in its systems. The ACMA cross referenced this

customer information with the NSER to identify each PointsBet customer's entry in the NSER.

105. The ACMA then investigated the date and time each customer became a registered individual to determine whether messages were sent to individual after they became a registered individual.

106. Through this information, the ACMA considers that 516 messages sent by PointsBet were sent to electronic addresses that belonged to, related to, or were associated with registered individuals at the time the messages were sent. The 516 messages include:

> 74 SMS messages to 47 unique phone numbers belonging to registered individuals;

> 117 emails to 70 unique emails addresses belonging to registered individuals; and

> 325 push notifications to electronic addresses belonging to 126 registered individuals who had the PointsBet app on their devices. 70 of these push notifications were winning bet messages sent to 51 customers after they became registered individuals.

107. The ACMA's finding is that the electronic addresses were electronic addresses of registered individuals, because they were either:

> In the case of phone numbers and email addresses:

- listed in an individual's NSER record; and/or
- identified through the information provided in Submission 1 about each relevant customer it sent electronic messages to.

> In the case of electronic addresses (being push tokens) for push notifications:

- an app user must consent to receive push notifications;
- after a user downloads the app and consents to receive push notifications, a push token must be generated by Apple or Google for the sole purpose of enabling an app developer to be able to communicate directly with the user of that device through the use of push notifications;
- the app developer must store this information in order to communicate with APNs and FCMs to send push notifications. PointsBet provided evidence that it recorded information about each of the push notification it sent to each of the customers, who were identified using the term 'external user ID' suggesting a connection and association between the message and the recipient; and
- information from Apple and Google's as described in paragraphs 84 and 85 suggest that they maintain a connection between the push notification and the relevant Apple or Google account holder who downloads an app (respectively).

<u>Was PointsBet reckless to the fact that the electronic addresses belonged to a registered individual?</u>

108. Subsection61LA(4) is a civil penalty provision, which prohibits IWPs from sending, or causing to be sent, regulated electronic messages where the IWP is reckless to the fact that the electronic address is an electronic address of the registered individual.

109. Subsection 61LA(5) sets out the relevant test for recklessness:

> For the purposes of subsection (4), a person is ***reckless*** as to the fact mentioned in paragraph (b) of that subsection if:
>
> (a) the person is aware of a substantial risk that the fact exists; and
>
> (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

110. The NSER was established to provide a one-stop process for consumers to exclude themselves from all IWPs. Consumers registered with the service have a reasonable expectation that by registering, IWPs will comply with their legal obligations to not open wagering accounts, provide wagering services, or market to them.

111. PointsBet is an established IWP operating in a regulated environment that requires it to put in place robust consumer protection measures under relevant Commonwealth, State and Territory law to protect its users, including the IGA.

112. PointsBet was aware of the substantial risk that an electronic address could belong to a registered individual from when the NSER launched on 21 August 2023 as PointsBet's customers were open to become registered individuals from this time.

113. PointsBet could only confirm whether a customer was a registered individual by making a valid request to the Register operator. In the absence of making such a request, PointsBet would have known that it would be unable to know whether electronic addresses it used for marketing purposes belonged to registered individuals.

114. For this reason, and from its submissions, PointsBet understood that it needed to implement systems and processes to make requests to the Register operator. PointsBet submitted that it had designed a solution that would be able to check whether a person is a registered individual in order for it to comply with the IGA, including section 61LA. Submission 1 outlined that 'a dedicated group of technologists was responsible for the design, development and implementation of the Solution and ensuring that PointsBet interacts with BetStop in a way that is fully compliant with the Act' and that this team was responsible for 'quality assurance' prior to release.

115. From this, it is understood that PointsBet was aware of the risk that any of its customers could be registered. Further, PointsBet also understood that a customer could become a registered individual at any time, and so it needed to have a system that would make requests periodically to ensure that it had up to date information about the current exclusion status of a customer, rather than rely on aged information.

116. Issue 1 and Issue 2 meant that at the relevant times, PointsBet failed to address the substantial risk that electronic addresses it was sending regulated electronic messages to belonged to registered individuals.

117. Issue 1 (see paragraph 8) meant that between 6 and 18 September 2023, PointsBet did not and was not able to establish whether individuals were registered individuals.

118. As noted previously, this is because the requests made by PointsBet to the Register operator during that period did not comply with the technical specifications to connect to the NSER and make valid queries. During that period, requests returned an error message to PointsBet, but PointsBet's system stopped detecting the error messages and resubmitting the request. As a result, PointsBet did not confirm whether customers impacted by this error were registered individuals, and therefore did not know whether relevant electronic addresses it sent regulated electronic messages to belonged to registered individuals.

119. This defect in PointsBet's system remained undetected by PointsBet and based on the evidence provided, it did not have adequate systems, reporting or supervision in place to identify the defect. PointsBet continued to send regulated electronic messages to electronic addresses of customers where it had not confirmed whether they belonged to registered individuals. This is despite the substantial risk that it could be sending regulated electronic to electronic address of registered individuals.

120. Issue 2 (see paragraph 14) meant that PointsBet continued to send regulated electronic messages to electronic addresses where it had previously been informed by the Register operator that the relevant owner of the electronic address was a registered individual. Due to the configuration of PointsBet's system, these individuals were subsequently incorrectly marked as eligible to receive marketing once their separate temporary exclusion with PointsBet ended.

121. The ACMA understands that this process existed in PointsBet's system when the NSER launched on 21 August 2023 and was not detected by PointsBet until it investigated consumer complaints raised by the ACMA.

122. Issue 2 also demonstrates that PointsBet did not have systems and processes in place at the relevant time that addressed the risk of an electronic address belonging to a registered individual. It is understood that this risk could have been addressed through appropriate testing of its software and a review of how various functions interacted.

123. As a result of this issue, PointsBet sent regulated electronic messages to customers despite the substantial risk that it could be sending regulated electronic messages to electronic addresses of registered individuals.

124. If PointsBet had submitted queries to the Register Operator, in a format consistent with that specified by the Register Operator, prior to sending each of these 516 messages, the Register Operator would have been able to inform PointsBet that the relevant customers were registered individuals.

125. In Submission 4, PointsBet argues that it was operating in the belief that its systems were working as intended and, for this reason, it argues that it was not reckless. However, the ACMA found that these issues were undetected and that testing was not in place to ensure that its system was functioning as intended.

126. Based on these circumstances, including:

- PointsBet's awareness of the risks that given electronic addresses may belong to registered individuals;
- its understanding of the need to have an effective technological system and processes in place to comply with its marketing obligations; and
- the failures of PointsBet's systems and processes

the ACMA found that it was unjustifiable for PointsBet to take the risk of sending regulated electronic messages to individuals where it:

- in the case of Issue 1, did not have a system that correctly submitted requests under section 61NC and confirmed whether customers were registered individuals before marketing to them; and
- in the case of Issue 2, did not have an adequate system in place to record the self-exclusion status of customers it had been informed were registered individuals that was not subject to interference from other processes (for example, the person completing their exclusion with PointsBet) before sending marketing.

127. Based on these circumstances, the ACMA found that PointsBet sent 516 regulated electronic messages to electronic addresses in circumstances where PointsBet was reckless to the fact that the electronic addresses belonged to registered individuals.

128. The investigation has found that these 516 messages were sent between 6 minutes and 31 days after these individuals registered for self-exclusion.

129. The ACMA acknowledges that, in the ordinary course of events, a wagering provider must take several steps to stop marketing to someone registered with the NSER. Once a person becomes a registered individual, a wagering provider needs to proactively query the register (for example, before it sends marketing) and then unsubscribe that person from marketing. As such, it is not always possible to prevent a person from receiving marketing immediately once they register with the NSER.

130. Notwithstanding that PointsBet's submission that its system was defective during this period, the ACMA has not made findings for the regulated electronic messages sent within 1 hour of a person registering with the NSER.

131. Consumers are advised when registering with the NSER, that self-exclusion may take 1 hour to become effective. As such, there is an understanding that a person may receive marketing material shortly after excluded. The ACMA also acknowledges that marketing campaigns involve processes to prepare and distribute messages. For this reason, it may not be possible for an IWP to confirm whether the recipient of a message is a registered individual immediately prior to that message being sent.

132. 8 push notifications were sent to users impacted by Issue 1 within 1 hour of the recipients registering for self-exclusion. These messages have been excluded from the findings.

133. The ACMA's finding is that PointsBet sent 508 regulated electronic messages to electronic addresses where it was reckless to that fact that the electronic addresses belonged to registered individuals in contravention of subsection 61LA(4).

Finding 3 - Breach: Failure to close a licensed interactive wagering service account of a registered individual – no outstanding bets (subsection 61MB(5))

Regulatory obligation

134. IWPs must, as soon as practicable after a person registers with the NSER, close the account of the consumer and pay any credit balance to that person, should that individual have no outstanding or pending bets.

135. Where an account has been closed, the IWP must not reopen, reactivate or reinstate the account. Where an account has been closed, the IWP must not then provide the relevant individual wagering services through that account after they cease to be a registered individual. These requirements do not prevent an IWP from opening a new account for an individual after they cease to be a registered individual.

136. Subsection 64B(1) provides that each civil penalty provision of the IGA is enforceable under Part 4 of the *Regulatory Powers (Standards Provisions) Act 2014* (RPA), including the civil penalty provisions in sections 61MB and 61MC.

137. Subsection 93(1) in Part 4 of the RPA provides that if an act or thing is required under a civil penalty provision to be done within a particular period or before a particular time, then the obligation to do that act or thing continues until the act or thing is done (even if the period has expired or the time has passed). Subsection 93(2) of the RPA provides that a person who contravenes a civil penalty provision that requires an act or thing to be done within a particular period or before a particular time commits a separate contravention of that provision in respect of each day during which the contravention occurs.

138. Accordingly, an IWP that contravenes subsection 61MB(5) by failing to close a wagering account of a registered individual that has no outstanding bets and pay any credit balance as soon as practicable after the individual becomes a registered individual will be committing a separate contravention of that provision for each day that it fails to close the account after the expiration of the 'as soon as practicable' period.

139. The applicable timeframe for an IWP to close a wagering account 'as soon as practicable' may vary on a case-by-case basis.

Did individuals hold licensed interactive wagering services accounts before becoming registered individuals?

140. Submission 2 detailed that the 657 customers that were subject to this investigation had accounts with PointsBet prior to being identified as registered individuals.

Did individuals have any outstanding or pending bets attributable to the provision of a licensed interactive wagering service by the provider?

141. Submission 2 provided evidence that PointsBet closed the accounts of the 44 customers potentially impacted by Issue 2 once they were identified as registered individuals. While PointsBet mistakenly marked them as eligible to receive marketing when their temporary exclusion with PointsBet expired, the ACMA found no evidence that these accounts had been reopened in contravention of section 61MB or section MC for these customers.

142. Accordingly, the investigation into potential contraventions of subsection 61MB(5) or 61MC(5) focussed on the 613 customers impacted by Issue 1.

143. PointsBet did not make a submission that any of the accounts investigated had pending or outstanding bets when the relevant individuals self-excluded that would have prevented or delayed it from closing the relevant accounts.

144. The ACMA found evidence in Submission 2 that 51 of the 613 customers impacted by Issue 1 received winning bet notifications after they became a registered individual. As these customers received a winning bet notification after they became a registered individual, and Finding 1 found that no customer was provided with licensed interactive wagering services after they became registered individuals, the ACMA understands that these customers must have had pending bets at the time they became registered individuals. As such, the ACMA did not consider these 51 customers as part of Finding 3. They are instead considered in Finding 4 (regarding section 61MC).

145. As such, this Finding is focused on the remaining 562 accounts. Of these customers, PointsBet provided evidence that:

- 258 customers had not logged in to their PointsBet account in the 2023 calendar year; and
- of these, 54 customers had never logged in to their PointsBet account.

146. Submission 1 stated that the date and time that each account was closed is labelled as 'RegisteredWithBetStopAt' in its detailed customer spreadsheets provided as part of its submissions. Submission 2 provided evidence that these 562 accounts were closed between 12:24am on 18 September 2023 and 11:45pm on 19 September 2023, noting the underlying system defect associated with Issue 1 was addressed on 18 September 2023.

147. A sample of customer records reviewed by the ACMA demonstrated that the Register operator responded to PointsBet that relevant customers were excluded at the same time PointsBet stated that the relevant accounts were closed, as referenced in the 'RegisteredWithBetStopAt' field in its spreadsheets. As PointsBet has provided

evidence that customer accounts were closed almost immediately after each customer was identified as a registered individual, the ACMA found that there were no pending or outstanding bets at the time that each of the 562 accounts were closed.

Did PointsBet close the accounts and pay any credit balance as soon as practicable after the individuals became registered individuals?

148. In considering whether PointsBet has complied with its obligations, the ACMA has considered PointsBet's submissions and its description of how its system queries the NSER and subsequently closes customer accounts.

149. Submission 1 detailed that where a customer is found to be a registered individual, three processes are automatically triggered in PointsBet's systems:

- within its marketing systems, the customer is unsubscribed from all marketing;
- within its account system, the customer's account is closed and locked; and
- within its push notification platform, a forced logout of the PointsBet app is initiated on the user's device.

150. The ACMA's assessment of affected accounts demonstrated that the 562 accounts were closed by PointsBet between 2 minutes and more than 12 days after customers became registered individuals.

151. The ACMA understands that PointsBet's process for closing accounts is not only automatic as described in paragraph 149, but also immediate given the closure time for each customer advised by PointsBet correlates with when the Register Operator first told PointsBet the relevant customers were registered individuals as described in paragraph 147. As PointsBet was not aware that the defect associated with Issue 1 was resolved on 18 September 2023, the ACMA is of the view that the process and associated timeframes for closing these accounts across 18 and 19 September 2023, when it first identified that each customer was a registered individual, reflects PointsBet's usual process, and not a unique step that PointsBet took to address the impact of Issue 1. Further, in Submission 4, PointsBet noted that, if not for the system errors, the alleged breaches would not have occurred.

152. To further consider this, the ACMA investigated how soon after customers affected by Issue 2 had their accounts closed by PointsBet after they became registered individuals. The ACMA notes that the closure of these accounts was not impacted by the issues that formed part of this investigation. As such, the ACMA expects that this represented PointsBet's usual processes from which the ACMA can establish a period it would be reasonably practicable for PointsBet to close an account after a customer became a registered individual. Of the 44 customers, 41 accounts were closed within 1 day of the customer becoming a registered individual and all accounts were closed within 7 days.

153. As such, the ACMA considers the evidence from PointsBet demonstrates that it is reasonably practicable for PointsBet to close customer accounts immediately after it identifies a person as self-excluded as this is how it designed its system to operate and it provided evidence that its system is capable of operating in this manner.

154. The ACMA's analysis of the evidence provided by PointsBet in Submission 2 against the records held by the NSER showing the date and time each of the 562

customers became registered individuals shows that accounts were closed in the following timeframes:

Time to close accounts after becoming a registered individual	Number of accounts closed
Within 1 hour	20 accounts
Between 1 hour and 1 day	121 accounts
Between 1 and 7 days	193 accounts
More than 7 days	228 accounts

155. The evidence from PointsBet in Submission 2 showed that it closed an account in as little as 2 minutes and 9 seconds after one customer became a registered individual. A review of PointsBet's history of querying the NSER for this customer demonstrates that PointsBet's system was configured to query the NSER every 12 hours for customers not previously identified as excluded. If not for the defect associated with Issue 1, the ACMA understands that PointsBet would have identified each of the 562 customers as registered individuals, in most cases, no more than 12 hours after they each customer became a registered individual.

156. The ACMA found that, based on the systems and processes that PointsBet had in place in September 2023, it would have been reasonably practicable for PointsBet to close many of the 562 accounts earlier if not for Issue 1.

157. As noted in paragraph 139, the applicable timeframe for the 'as soon as practicable' requirement of subsection 61MB(5) may vary on a case-by-case basis. The ACMA considers that this requirement does not impose a standard of perfection on an IWP, but is to be assessed on the facts of a case by considering practicalities and all relevant circumstances to set a timeframe that is generally equivalent to as soon as is feasible.

158. The ACMA acknowledges that there may be a range of factors that contribute to how soon after a customer becomes a registered individual that it is practicable for an IWP to identify them as a registered individual, close their wagering account and pay any credit balance. The ACMA considers that these factors may include:

- the process required for an IWP to check its entire customer base, including inactive customers and those that have not interacted with their wagering accounts for an extended period of time; and
- any follow up actions required, such as the paying of a credit balance or lawful recovery of any debts.

159. Noting these factors, the ACMA has determined that, for the purpose of this investigation, it would have been reasonably practicable in the circumstances, due to the way in which PointsBet's systems and processes had been designed to function and notwithstanding the system error it experienced, for PointsBet to close each of the accounts within 7 days of the relevant customers becoming registered individuals.

160. In Submission 4, PointsBet argued that it:

> *Closed all accounts which were identified as registered on the NSER as soon as it was 'practicable' for PointsBet to do so (after it was notified of the registration of the relevant individuals).*

161. The ACMA notes that the relevant obligation is to close accounts as soon as practicable after the relevant individual becomes a registered individual, not after the provider becomes aware that the individual is a registered individual. PointsBet's

practice of closing accounts and the way it had configured its systems demonstrated it was practicable for PointsBet to close these accounts sooner. PointsBet would have been able to close these accounts earlier if not for the system issue that had occurred that was not detected by PointsBet.

162. The investigation found that 228 accounts were closed between 7 days and 12 days after the customers self-excluded. Having considered PointsBet's evidence including the systems and processes it had in place for closing an account after the relevant customer became a registered individual, and the circumstances in which the relevant accounts were closed, the ACMA found that PointsBet did not close 228 licensed interactive wagering services accounts, that did not have pending or outstanding bets, and return any applicable credit balance, as soon as reasonably practicable after those individuals registered for self-exclusion.

163. As noted in paragraph 138, a separate contravention occurs each day where an IWP fails to close a customer's wagering account beyond when it was reasonably practicable to close the account. The ACMA has made the finding of 736 separate contraventions of subsection 61MB(5) where PointsBet did not close 228 licensed interactive wagering services accounts, that did not have pending or outstanding bets, and return any applicable credit balance, as soon as reasonably practicable after those individuals became registered individuals.

Finding 4 – Breach: Failure to close a licensed interactive wagering service account of a registered individual – outstanding bets (subsection 61MC(5))

Regulatory obligation

164. The requirements under section 61MC are materially the same as section 61MB as described in paragraphs 134 to 139, except this provision applies where a customer has outstanding or pending bets. Under this provision, an IWP must close the account as soon as practicable after any outstanding or pending bets are finalised.

Did individuals hold licensed interactive wagering services accounts before becoming registered individuals?

165. Finding 3 established that the 657 customers that were subject to this investigation had accounts with PointsBet prior to being identified as self-excluded.

Did individuals have any outstanding or pending bets attributable to the provision of a licensed interactive wagering service by the provider?

166. Finding 3 established that there was evidence to suggest that 51 customers impacted by Issue 1 had outstanding or pending bets at the time they became a registered individual because these customers received winning bet notifications after they became registered individuals (see paragraph 144). As receiving these notifications suggest that the individuals had pending bets at the time they became registered individuals, the ACMA has considered these accounts in the context of whether PointsBet complied with section 61MC(5).

Did PointsBet fail to close the accounts of registered individuals with outstanding bets?

167. Finding 3 established that it would have been reasonably practicable, due to the way in which PointsBet's systems and processes had been designed to function, for PointsBet to close each of the accounts within 7 days of the relevant customers becoming registered individuals. It is the ACMA's view that this same test applies to actions for PointsBet to close an account after pending bets have been resolved – for example, after the customer last received a winning bet notification.

168. Submission 2 provided evidence that 44 of the 51 accounts were closed within 7 days of last receiving a winning bet notification. The ACMA found that 7 accounts

were closed between 7 and more than 11 days after last receiving a winning bet notification.

169. Accordingly, based on the evidence provided by PointsBet in Submission 2, the ACMA has found that PointsBet did not close 7 licensed interactive wagering services accounts, after pending or unresolved bets were resolved, and return any applicable credit balance as soon as reasonably practicable after those bets were resolved.

170. A separate contravention occurs each day where an IWP fails to close a customer's wagering account beyond when it was reasonably practicable to close the account. The ACMA has made the finding of 19 separate contraventions of subsection 61MC(5) where PointsBet did not close 7 licensed interactive wagering services accounts, that had pending or outstanding bets, and return any applicable credit balance as soon as reasonably practicable after bets were resolved.

Finding 5 – Breach: Licensed interactive wagering service providers must promote the NSER (subsection 61JP(5))

Regulatory obligation

171. Under section 61JP, an IWP is required to promote the NSER in accordance with rules specified by the ACMA.

172. On 4 July 2022, the ACMA made the Register Rules.

173. Subsection 25(3) of the Register Rules requires that an IWP promote the NSER in regulated electronic messages by including:

- a reference to 'BetStop';
- a statement to the effect that BetStop is the national self-exclusion register; and
- a hyperlink to the BetStop website.

Did PointsBet engage in conduct that contravenes the Register rules?

174. Submissions 1 and 2 detail that PointsBet sent 23,018 electronic messages during the period from 21 August 2023 to 1 October 2023. The ACMA has reviewed each of these messages to determine whether PointsBet complied with section 61JP.

Part 1 – were the messages regulated electronic messages?

175. PointsBet submitted that it sent 285 SMS messages within the scope of the investigation. Finding 2 established that all SMS messages inspected by the ACMA met the definition of a regulated electronic message as the purpose, or one of the purposes, of the messages was to offer to provide licensed interactive wagering services or to advertise or promote licensed interactive wagering services.

176. PointsBet submitted that it sent 376 emails within the scope of the investigation. Finding 2 established that 375 of the 376 emails inspected by the ACMA met the definition of a regulated electronic message as the purpose, or one of the purposes, of the messages was to offer to provide licensed interactive wagering services or to advertise or promote licensed interactive wagering services. The exception was 1 email that advised the customer of a delay to their withdrawal as described in paragraph 98. Accordingly, the ACMA considers that this one email was not a regulated electronic message and the requirements of section 25 of the Register Rules do not apply.

177. PointsBet submitted that it sent 22,357 push notifications to users of the PointsBet app.[27] Finding 2 established that push notifications sent by PointsBet are electronic

[27] Note, the total number of push notifications was calculated from PointsBet's submissions of 28 March 2024 and 8 May 2024, removing the duplicates from these submissions.

messages. Submissions 1 and 2 designated the purpose of 21,310 of the messages as 'marketing'. It designated the purpose of the remaining 1,047 messages as 'transactional'.

178. The messages designated as transactional by PointsBet were to inform the customer of a winning bet (winning bet notification as described in paragraphs 101 and 102). A copy of this push notification is at **Attachment E**. It is noted that a further 15,986 winning bet notifications were designated by PointsBet as 'marketing'. In total, these winning bet notifications comprised 17,033 of the 22,357 push notifications sent by PointsBet.

179. Finding 2 established that the winning bet notification met the definition of a regulated electronic message as the purpose, or one of the purposes, of the messages were to offer to provide licensed interactive wagering services or sought to advertise or promote licensed interactive wagering services. The remainder of the messages were designated as marketing messages by PointsBet. The ACMA has reviewed each message and agrees with this assessment.

180. Accordingly, the ACMA has assessed that all push notifications met the definition of a regulated electronic message under section 61GE, as the purpose, or one of the purposes, of the notifications were to offer to provide licensed interactive wagering services or sought to advertise or promote licensed interactive wagering services.

Part 2 – did the messages include a reference to the NSER as required by section 25 of the Register rules?

181. **SMS messages:** All SMS messages sent by PointsBet contained the required references to the NSER, as set out in the Register Rules, through the inclusion of the following text:

BetStop is the National Self Exclusion Register - www.betstop.gov.au.

182. **Email messages:** 372 of the 375 emails sent by PointsBet that met the definition of a regulated electronic message included the required references to the NSER as set out in the Register Rules.

183. The remaining 3 emails related to responsible gambling as previously detailed in paragraph 96. While these 3 emails contained detailed information on responsible gambling measures, the emails did not contain any reference to the NSER, including the information required by the Register rules. A copy of this email is at **Attachment D**.

184. Finding 2 established that these 'responsible gambling' emails were regulated electronic messages (see paragraphs 96 and 97). Accordingly, these 3 emails were sent in contravention of section 61JP as they did not include information about the NSER as required by the Register rules. It is noted that PointsBet sent similar responsible gambling SMS messages and that these messages did include appropriate references to the NSER.

185. **Push notifications:** None of the 22,357 push notifications included information about NSER as required by the Register rules. Consequently, the ACMA considers that these 22,357 push notifications were sent in contravention of section 61JP.

186. The investigation has led the ACMA to find that PointsBet sent 22,360 regulated electronic messages (comprising 22,357 push notifications and 3 emails) that failed to include relevant information about the NSER as specified in subsection 25(3) of the Register Rules, in contravention of subsection 61JP(5).

187. The ACMA notes that the investigation only focused on messages sent to 657 customers within the scope of this investigation. The ACMA has not sought to confirm PointsBet's broader compliance with section 61JP.

Conclusion

188. The ACMA finds that PointsBet:

- Has not contravened subsection 61KA in relation to the provision of licensed interactive wagering services to registered individuals.
- Has contravened subsection 61LA(4) by sending 508 regulated electronic messages sent to electronic addresses PointsBet was reckless to the fact that they belonged to a registered individual.
- Has contravened subsubsection 61MB(5) in relation to 736 separate contraventions of failing to close 228 licensed interactive wagering services accounts, that did not have pending or pending bets, as soon as practicable after the customers became registered individuals.
- Has contravened subsection 61MC(5) in relation to 19 separate contraventions of failing to close 7 licensed interactive wagering services accounts as soon as reasonably practicable after a customer's outstanding bets were resolved.
- Has contravened subsection 61JP(5) in relation to 22,360 regulated electronic messages sent where PointsBet failed to promote the NSER in accordance with subsection 25(3) of the Register Rules.

Attachments

Attachment A – Extract of relevant provisions

Attachment B – Push notification flow chart

Attachment C – Sample of regulated electronic messages

Attachment D – Responsible Gambling Email

Attachment E – 'Winning Bet' push notification example

Attachment A

Key provisions of the IGA

Interactive Gambling Act 2001 Section 61KA Prohibition of the provision of licensed interactive wagering services to registered individuals

Offence

(1) A person commits an offence if:

(a) the person is a licensed interactive wagering service provider; and

(b) the person provides a licensed interactive wagering service to an individual; and

(c) the individual is a registered individual.

Penalty: 500 penalty units.

(2) A person who contravenes subsection (1) commits a separate offence in respect of each day (including a day of conviction for the offence or any later day) during which the contravention continues.

Civil penalty provision

(3) A licensed interactive wagering service provider must not provide a licensed interactive wagering service to a registered individual.

Civil penalty: 750 penalty units.

(4) A person who contravenes subsection (3) commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant civil penalty order is made or any later day).

Exception

(5) Subsections (1) and (3) do not apply if the licensed interactive wagering service provider took reasonable precautions, and exercised due diligence, to avoid the contravention.

Note 1: The Register operator must, if requested to do so by a licensed interactive wagering service provider, inform the provider whether an individual is a registered individual (see section 61NC).

Note 2: In a prosecution for an offence against subsection (1), a defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code)*.

Note 3: In proceedings for a civil penalty order for a contravention of subsection (3), a defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

Offence—extended geographical jurisdiction

(6) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (1).

Interactive Gambling Act 2001 Section 61LA Regulated electronic message must not be sent to an electronic address of a registered individual

Offence—knowledge of provider

(1) A person commits an offence if:

(a) the person is a licensed interactive wagering service provider; and

(b) the person sends, or causes to be sent, a regulated electronic message to an electronic address; and

(c) the electronic address is known by the person to be an electronic address of a registered individual.

Penalty: 120 penalty units.

Civil penalty provision—knowledge of provider

(2) A licensed interactive wagering service provider must not send, or cause to be sent, a regulated electronic message to an electronic address that is known by the provider to be an electronic address of a registered individual.

Civil penalty: 180 penalty units.

Offence—recklessness of provider

(3) A person commits an offence if:

(a) the person is a licensed interactive wagering service provider; and

(b) the person sends, or causes to be sent, a regulated electronic message to an electronic address; and

(c) the electronic address is an electronic address of a registered individual; and

(d) the person is reckless as to the fact that the electronic address is an electronic address of the registered individual.

Penalty: 60 penalty units.

Civil penalty provision—recklessness of provider

(4) A licensed interactive wagering service provider must not send, or cause to be sent, a regulated electronic message to an electronic address if:

(a) the electronic address is an electronic address of a registered individual; and

(b) the person is reckless as to the fact that the electronic address is an electronic address of the registered individual.

Civil penalty: 90 penalty units.

(5) For the purposes of subsection (4), a person is ***reckless*** as to the fact mentioned in paragraph (b) of that subsection if:

(a) the person is aware of a substantial risk that the fact exists; and

(b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

Exception

(6) Subsections (1), (2), (3) and (4) do not apply if the licensed interactive wagering service provider took reasonable precautions, and exercised due diligence, to avoid the contravention.

Note 1: The Register operator must, if requested to do so by a licensed interactive wagering service provider, inform the provider whether an individual is a registered individual (see section 61NC).

Note 2: In a prosecution for an offence against subsection (1), a defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code)*.

Note 3: In proceedings for a civil penalty order for a contravention of subsection (2) or (4), a defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

Offences—extended geographical jurisdiction

(7) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (1) or (3).

Interactive Gambling Act 2001 Section 61MB Closure of a licensed interactive wagering service account held by a registered individual—no outstanding or pending bets

Offence

(1) If:

(a) an individual becomes a registered individual; and

(b) immediately before becoming a registered individual:

(i) the individual had a licensed interactive wagering service account with a licensed interactive wagering service provider; and

(ii) the individual did not have any outstanding or pending bets that are attributable to the provision of a licensed interactive wagering service by the provider;

then:

(c) if, immediately before becoming a registered individual, the individual did not owe any debts to the provider that could lawfully be recovered by way of deduction from the account—the provider must, as soon as practicable after the individual becomes a registered individual:

(i) close the account; and

(ii) if the account has a credit balance—pay the individual an amount equal to the credit balance; and

(d) if, immediately before becoming a registered individual, the individual owed one or more debts to the provider that could lawfully be recovered by way of deduction

from the account—the provider must, as soon as practicable after the individual becomes a registered individual:

(i) close the account; and

(ii) if the account would have a credit balance if the total amount of those debts were deducted from the account—pay the individual an amount equal to the difference between the balance of the account and the total amount of those debts; and

(e) if the individual ceases to be a registered individual before the closure of the account—the provider must ensure that the account is not used in relation to the provision, or prospective provision, of one or more licensed interactive wagering services to the individual after the cessation; and

(f) if the account has been closed—the provider must not reopen, reactivate, or reinstate the account.

(2) Paragraph (1)(e) does not prevent the licensed interactive wagering service provider from opening a new licensed interactive wagering service account for the individual if the individual ceases to be a registered individual.

(3) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1); and

(b) the person engages in conduct; and

(c) the person's conduct breaches the requirement.

Penalty: 120 penalty units.

(4) Subsection (3) does not apply if the person took reasonable precautions, and exercised due diligence, to avoid the contravention.

Note 1: The Register operator must, if requested to do so by a licensed interactive wagering service provider, inform the provider whether an individual is a registered individual (see section 61NC).

Note 2: In a prosecution for an offence against subsection (3), a defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code)*.

Civil penalty provision

(5) If:

(a) an individual becomes a registered individual; and

b) immediately before becoming a registered individual:

(i) the individual had a licensed interactive wagering service account with a licensed interactive wagering service provider; and

(ii) the individual did not have any outstanding or pending bets that are attributable to the provision of a licensed interactive wagering service by the provider;

then:

(c) if, immediately before becoming a registered individual, the individual did not owe any debts to the provider that could lawfully be recovered by way of deduction from the account—the provider must, as soon as practicable after the individual becomes a registered individual:

(i) close the account; and

(ii) if the account has a credit balance—pay the individual an amount equal to the credit balance; and

(d) if, immediately before becoming a registered individual, the individual owed one or more debts to the provider that could lawfully be recovered by way of deduction from the account—the provider must, as soon as practicable after the individual becomes a registered individual:

(i) close the account; and

(ii) if the account would have a credit balance if the total amount of those debts were deducted from the account—pay the individual an amount equal to the difference between the balance of the account and the total amount of those debts; and

(e) if the individual ceases to be a registered individual before the closure of the account—the provider must ensure that the account is not used in relation to the provision, or prospective provision, of one or more licensed interactive wagering services to the individual after the cessation; and

(f) if the account has been closed—the provider must not reopen, reactivate, or reinstate the account.

Civil penalty: 180 penalty units.

(6) Paragraph (5)(e) does not prevent the licensed interactive wagering service provider from opening a new licensed interactive wagering service account for the individual if the individual ceases to be a registered individual.

(7) Subsection (5) does not apply if the licensed interactive wagering service provider took reasonable precautions, and exercised due diligence, to avoid the contravention.

Note 1: The Register operator must, if requested to do so by a licensed interactive wagering service provider, inform the provider whether an individual is a registered individual (see section 61NC).

Note 2: In proceedings for a civil penalty order for a contravention of subsection (5), a defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

Offence—extended geographical jurisdiction

(8) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (3).

Debt recovery not affected

(9) To avoid doubt, the closure of a licensed interactive wagering service account under this section does not prevent the recovery of a debt owed by an individual to a licensed interactive wagering service provider.

Acquisition of property

(10) The provisions of this section have no effect to the extent (if any) to which their operation would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph).

Interactive Gambling Act 2001 Section 61MC Closure of a licensed interactive wagering service account held by a registered individual—outstanding or pending bets

Offence

(1) If:

(a) an individual becomes a registered individual; and

(b) immediately before becoming a registered individual:

(i) the individual had a licensed interactive wagering service account with a licensed interactive wagering service provider; and

(ii) the individual had one or more outstanding or pending bets that are attributable to the provision of one or more licensed interactive wagering services by the provider; and

(c) those bets are subsequently resolved (whether at the same time or at different times);

then:

(d) if, at the time, or the latest time, when those bets were resolved, the individual did not owe any debts to the provider that could lawfully be recovered by way of deduction from the account—the provider must, as soon as practicable after the time, or the latest time, when those bets were resolved:

(i) close the account; and

(ii) if the account has a credit balance—pay the individual an amount equal to the credit balance; and

(e) if, at the time, or the latest time, when those bets were resolved, the individual owed one or more debts to the provider that could lawfully be recovered by way of deduction from the account—the provider must, as soon as practicable after the time, or the latest time, when those bets were resolved:

(i) close the account; and

(ii) if the account would have a credit balance if the total amount of those debts were deducted from the account—pay the individual an amount equal to the difference between the balance of the account and the total amount of those debts; and

(f) if the individual ceases to be a registered individual before the closure of the account—the provider must ensure that the account is not used in relation to the provision, or prospective provision, of one or more licensed interactive wagering services to the individual after the cessation; and

(g) if the account has been closed—the provider must not reopen, reactivate, or reinstate the account.

(2) Paragraph (1)(f) does not prevent the licensed interactive wagering service provider from opening a new licensed interactive wagering service account for the individual if the individual ceases to be a registered individual.

(3) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1); and

(b) the person engages in conduct; and

(c) the person's conduct breaches the requirement.

Penalty: 120 penalty units.

(4) Subsection (3) does not apply if the person took reasonable precautions, and exercised due diligence, to avoid the contravention.

Note 1: The Register operator must, if requested to do so by a licensed interactive wagering service provider, inform the provider whether an individual is a registered individual (see section 61NC).

Note 2: In a prosecution for an offence against subsection (3), a defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code)*.

Civil penalty provision

(5) If:

(a) an individual becomes a registered individual; and

(b) immediately before becoming a registered individual:

(i) the individual had a licensed interactive wagering service account with a licensed interactive wagering service provider; and

(ii) the individual had one or more outstanding or pending bets that are attributable to the provision of one or more licensed interactive wagering services by the provider; and

(c) those bets are subsequently resolved (whether at the same time or at different times);

then:

(d) if, at the time, or the latest time, when those bets were resolved, the individual did not owe any debts to the provider that could lawfully be recovered by way of deduction from the account—the provider must, as soon as practicable after the time, or the latest time, when those bets were resolved:

(i) close the account; and

(ii) if the account has a credit balance—pay the individual an amount equal to the credit balance; and

(e) if, at the time, or the latest time, when those bets were resolved, the individual owed one or more debts to the provider that could lawfully be recovered by way of deduction from the account—the provider must, as soon as practicable after the time, or the latest time, when those bets were resolved:

(i) close the account; and

(ii) if the account would have a credit balance if the total amount of those debts were deducted from the account—pay the individual an amount equal to the difference between the balance of the account and the total amount of those debts; and

(f) if the individual ceases to be a registered individual before the closure of the account—the provider must ensure that the account is not used in relation to the provision, or prospective provision, of one or more licensed interactive wagering services to the individual after the cessation; and

(g) if the account has been closed—the provider must not reopen, reactivate, or reinstate the account.

Civil penalty: 180 penalty units.

(6) Paragraph (5)(f) does not prevent the licensed interactive wagering service provider from opening a new licensed interactive wagering service account for the individual if the individual ceases to be a registered individual.

(7) Subsection (5) does not apply if the licensed interactive wagering service provider took reasonable precautions, and exercised due diligence, to avoid the contravention.

Note 1: The Register operator must, if requested to do so by a licensed interactive wagering service provider, inform the provider whether an individual is a registered individual (see section 61NC).

Note 2: In proceedings for a civil penalty order for a contravention of subsection (5), a defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

Offence—extended geographical jurisdiction

(8) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (3).

Debt recovery not affected

(9) To avoid doubt, the closure of a licensed interactive wagering service account under this section does not prevent the recovery of a debt owed by an individual to a licensed interactive wagering service provider.

Acquisition of property

(10) The provisions of this section have no effect to the extent (if any) to which their operation would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph).

Interactive Gambling Act 2001 Section 61JP Licensed interactive wagering service providers must promote the National Self-exclusion Register etc.

(1) The Register rules may require licensed interactive wagering service providers to take specified action for the purposes of promoting the National Self-exclusion Register to their customers.

(2) The Register rules may require licensed interactive wagering service providers to take specified action directed towards ensuring that their customers are aware of, and can readily access, the following:

(a) the website of the National Self-exclusion Register;

(b) if there is an app for the National Self-exclusion Register—that app.

Offence

(3) A person commits an offence if:

(a) the person is a licensed interactive wagering service provider; and

(b) the person engages in conduct; and

(c) the person's conduct contravenes Register rules made for the purposes of subsection (1) or (2).

Penalty: 120 penalty units.

(4) A person who contravenes subsection (3) commits a separate offence in respect of each day (including a day of conviction for the offence or any later day) during which the contravention continues.

Civil penalty provision

(5) A licensed interactive wagering service provider must not contravene Register rules made for the purposes of subsection (1) or (2).

Civil penalty: 180 penalty units.

(6) A person who contravenes subsection (5) commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant civil penalty order is made or any later day).

Exception

(7) Subsections (3) and (5) do not apply if the contravention occurred in circumstances prescribed by the Register rules.

Note 1: In a prosecution for an offence against subsection (3), a defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Note 2: In proceedings for a civil penalty order for a contravention of subsection (5), a defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

Offence—extended geographical jurisdiction

(8) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (3).

Interactive Gambling (National Self-exclusion Register) Register Rules 2022 Section 25 Promoting the Register to customers

(1) Where a licensed interactive wagering service provider operates a website or an app in connection with its licensed interactive wagering services, it must, at a minimum, include:

(a) reference to BetStop;

(b) a statement to the effect that BetStop is the national self-exclusion register; and

(c) a hyperlink to the BetStop website,

on:

(d) the home page; and

(e) responsible gambling pages; and

(f) other pages promoting the provider's self-exclusion service, if any,

of that website or app.

(2) The information referred to in paragraphs (1)(a), (b) and (c) must be:

(a) prominently displayed;

(b) clear and legible;

(c) in a font size consistent with other text on the page; and

(d) positioned in close proximity to information about other responsible gambling or consumer protection measures.

(3) Where a licensed interactive wagering service provider sends a regulated electronic message, it must, at a minimum, include the information identified in paragraphs (1)(a), (b) and (c).

(4) Where a regulated electronic message referred to in subsection (3) is sent via SMS message, the message will comply with the requirements of that subsection if it contains a hyperlink to a separate webpage that includes the information referred to in paragraphs (1)(a), (b) and (c).

(5) Where a licensed interactive wagering service provider provides customers with activity statements, it must, at a minimum, include the information identified in paragraphs (1)(a), (b) and (c).

(6) Where a licensed interactive wagering service provider receives a voice call or electronic message from a customer to discuss:

(a) placing limits or controls on their gambling;

(b) responsible gambling options, including self-exclusion; or

(c) general assistance with problem gambling behaviour,

it must:

(d) inform the customer of the existence of BetStop; and

(e) provide them with the BetStop telephone number and the BetStop website address,

as soon as practicable after receiving the voice call or electronic message.

Note 1: The requirements in this section are made for the purpose of subsections 61JP(1) and (2) of the Act.

Note 2: It is an offence under subsection 61JP(3) of the Act to engage in conduct that contravenes Register rules made for the purpose of subsections 61JP(1) or (2) of the Act.

Key provisions of the Telecommunications Act 1997

Telecommunications Act 1997 Section 7 Definitions

internet carriage service means a carriage service that enables end-users to access the internet.

Telecommunications Act 1997 Section 16 Listed carriage services

(1) For the purposes of this Act, the following carriage services are ***listed carriage services***:

(a) a carriage service between a point in Australia and one or more other points in Australia;

(b) a carriage service between a point and one or more other points, where the first-mentioned point is in Australia and at least one of the other points is outside Australia;

(c) a carriage service between a point and one or more other points, where the first-mentioned point is outside Australia and at least one of the other points is in Australia.

(2) For the purposes of this section, a ***point*** includes a mobile or potentially mobile point, whether on land, underground, in the atmosphere, in outer space, underwater, at sea or anywhere else.

(3) For the purposes of this section, a point that is:

(a) in the atmosphere; and

(b) in or below the stratosphere; and

(c) above Australia;

is taken to be a point in Australia.

(4) For the purposes of this section, a point that is:

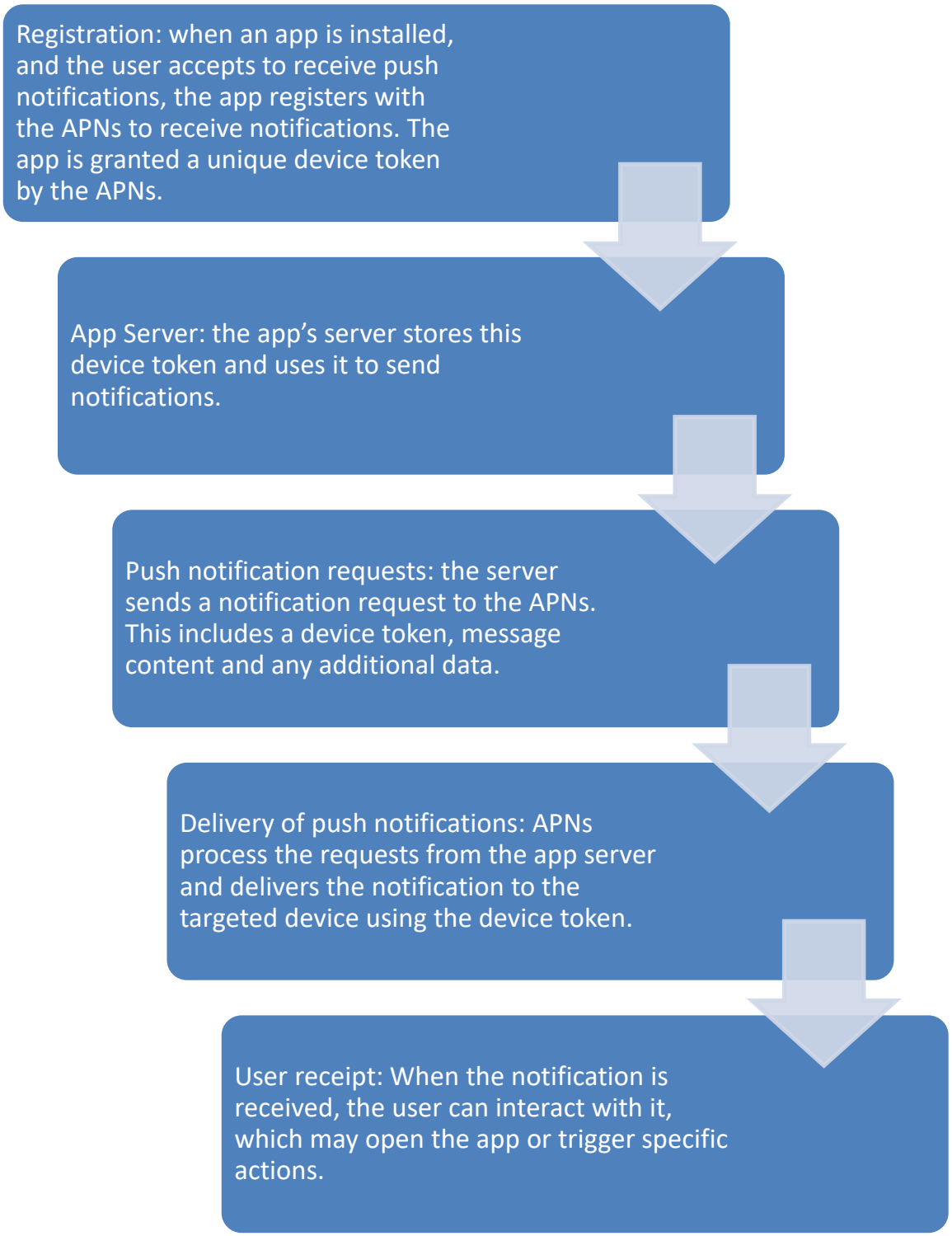
(a) on a satellite; and

(b) above the stratosphere;

is taken to be a point outside Australia.

Push notification process for Apple devices

In summary, the push notification process for Apple devices works as follows:



ATTACHMENT C

Example SMS

Example 1

DEPOSIT MATCH OFFER!

Hi [name], get a 50% Deposit Match up to $500 in Bonus Bets on your next deposit.

Use Code: 50J500

Deposit: https://nxt.to/A9cmg5N

Offer expires 24/09/2023 at 11PM. One use per code. T+Cs apply.

Username: [username]

Forgot Password? https://nxt.to/ZUbpUK8

THINK. IS THIS A BET YOU REALLY WANT TO PLACE? Set a deposit limit.

BetStop is the National Self Exclusion Register - www.betstop.gov.au

Opt Out? SMS STOP to 0438 184 657

Example 2

DEPOSIT MATCH OFFER!

Hi [name], get a 100% Deposit Match up to $250 in Bonus Bets on your next deposit.

Use Code: 100J250

Deposit: https://nxt.to/le3Js9j

Offer expires 24/09/2023 at 11PM. One use per code. T+Cs apply.

Username: [name]

Forgot Password? https://nxt.to/f7d1Nld

THINK. IS THIS A BET YOU REALLY WANT TO PLACE? Set a deposit limit.

BetStop is the National Self Exclusion Register - www.betstop.gov.au

Opt Out? SMS STOP to 0438 184 657

Example 3

Hi [first name], place a SGM on the Pies v Dees match tonight and if your bet LOSES, get refunded in Bonus Bets up to $25. T&Cs apply.

Bet now: https://nxt.to/ShlPDC3

Username: [user name]

CHANCES ARE YOU'RE ABOUT TO LOSE. Set a deposit limit.

BetStop is the National Self Exclusion Register - www.betstop.gov.au

Opt Out?STOP to 0438184657

Example 4

Hi [name], pause before you play with PointsBet this spring, consider if a deposit limit is right for you. https://nxt.to/88VAUMl

Username: [user name]

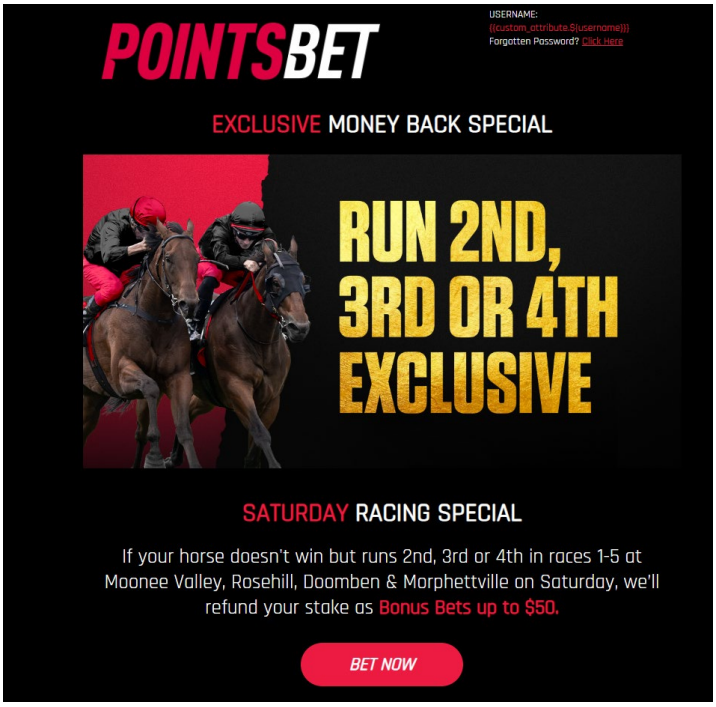
THINK. IS THIS A BET YOU REALLY WANT TO PLACE? Set a deposit limit.

BetStop is the National Self Exclusion Register - www.betstop.gov.au

Email emails

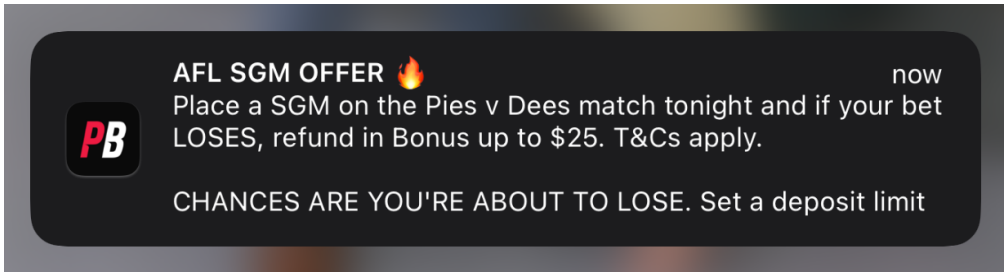
Example 1

Example 2

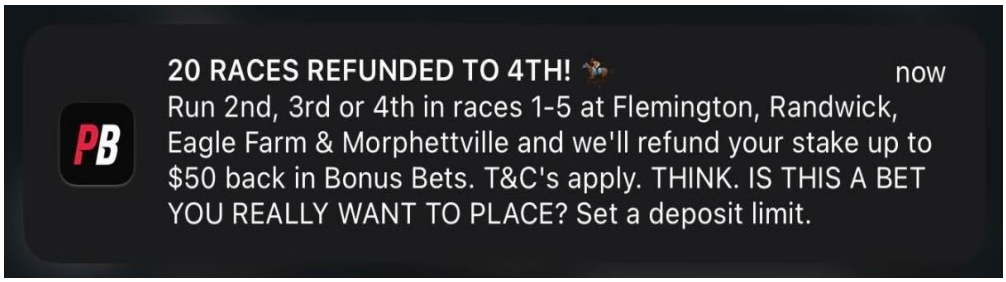


Example push notifications

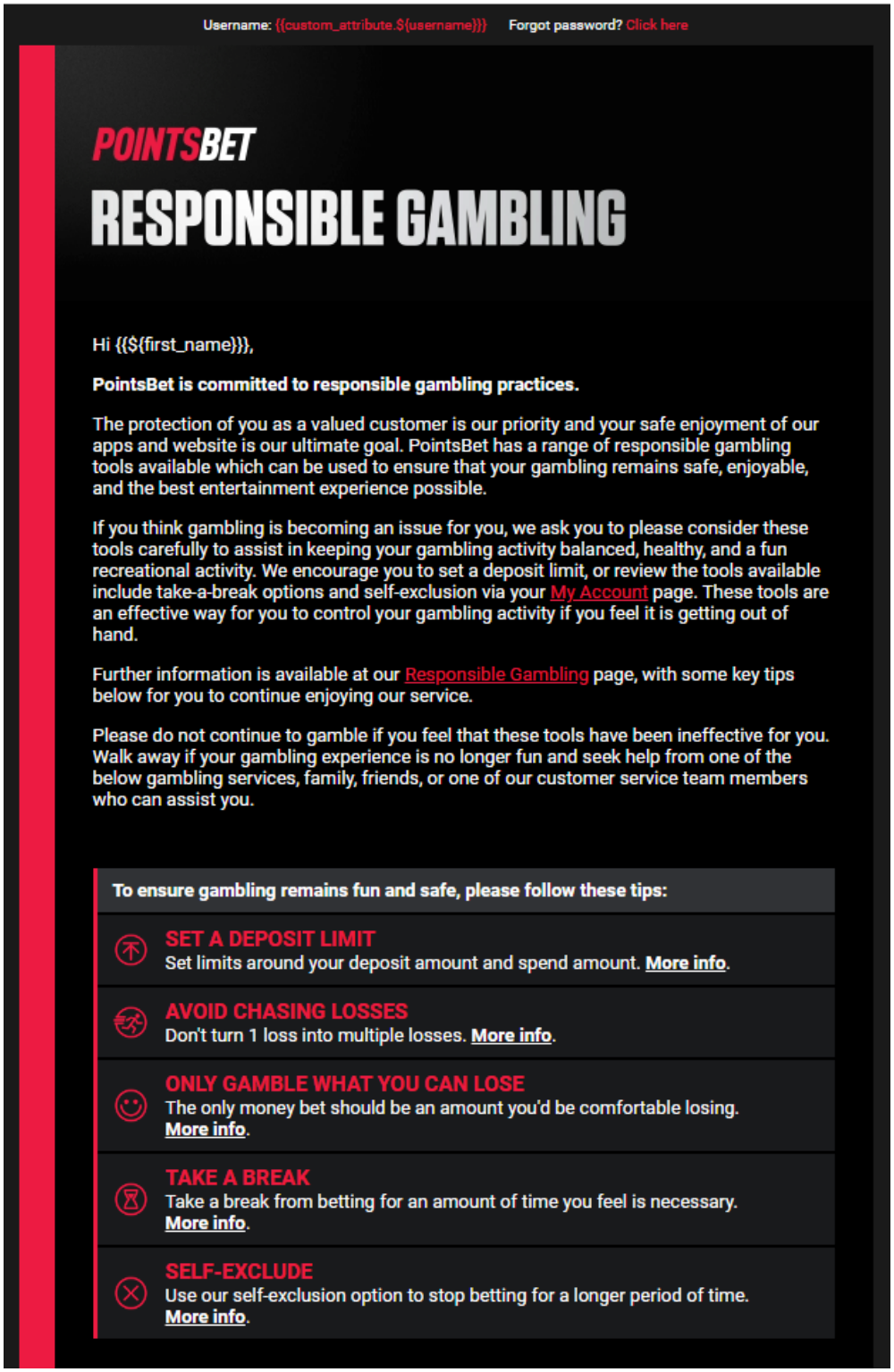
Example 1



Example 2



Attachment D – Responsible gambling email



Username: {{custom_attribute.${username}}} Forgot password? Click here

POINTSBET

RESPONSIBLE GAMBLING

Hi {{${first_name}}},

PointsBet is committed to responsible gambling practices.

The protection of you as a valued customer is our priority and your safe enjoyment of our apps and website is our ultimate goal. PointsBet has a range of responsible gambling tools available which can be used to ensure that your gambling remains safe, enjoyable, and the best entertainment experience possible.

If you think gambling is becoming an issue for you, we ask you to please consider these tools carefully to assist in keeping your gambling activity balanced, healthy, and a fun recreational activity. We encourage you to set a deposit limit, or review the tools available include take-a-break options and self-exclusion via your My Account page. These tools are an effective way for you to control your gambling activity if you feel it is getting out of hand.

Further information is available at our Responsible Gambling page, with some key tips below for you to continue enjoying our service.

Please do not continue to gamble if you feel that these tools have been ineffective for you. Walk away if your gambling experience is no longer fun and seek help from one of the below gambling services, family, friends, or one of our customer service team members who can assist you.

To ensure gambling remains fun and safe, please follow these tips:

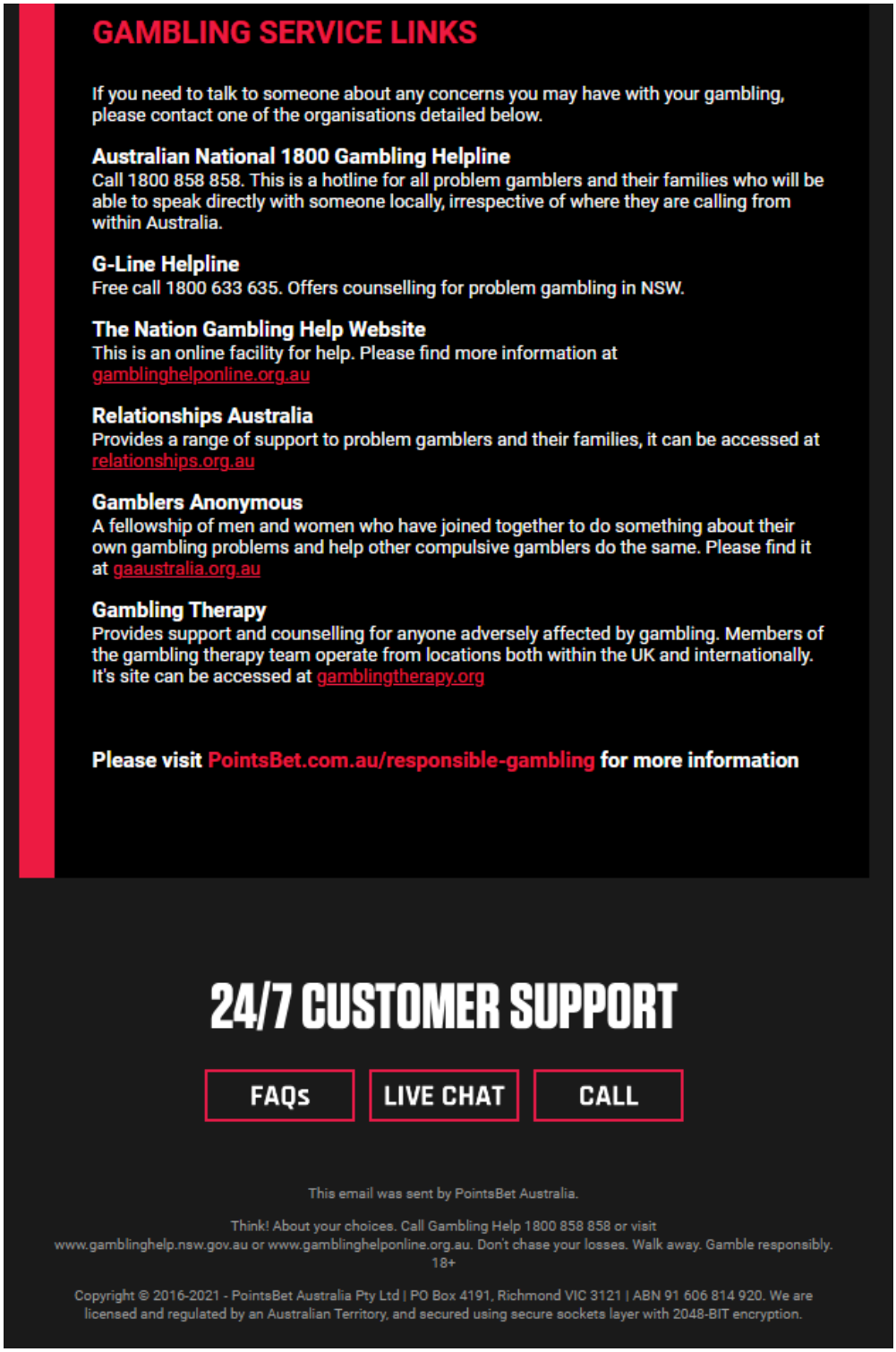
SET A DEPOSIT LIMIT
Set limits around your deposit amount and spend amount. **More info**.

AVOID CHASING LOSSES
Don't turn 1 loss into multiple losses. **More info**.

ONLY GAMBLE WHAT YOU CAN LOSE
The only money bet should be an amount you'd be comfortable losing.
More info.

TAKE A BREAK
Take a break from betting for an amount of time you feel is necessary.
More info.

SELF-EXCLUDE
Use our self-exclusion option to stop betting for a longer period of time.
More info.


GAMBLING SERVICE LINKS
If you need to talk to someone about any concerns you may have with your gambling, please contact one of the organisations detailed below.
Australian National 1800 Gambling Helpline
Call 1800 858 858. This is a hotline for all problem gamblers and their families who will be able to speak directly with someone locally, irrespective of where they are calling from within Australia.
G-Line Helpline
Free call 1800 633 635. Offers counselling for problem gambling in NSW.
The Nation Gambling Help Website
This is an online facility for help. Please find more information at gamblinghelponline.org.au
Relationships Australia
Provides a range of support to problem gamblers and their families, it can be accessed at relationships.org.au
Gamblers Anonymous
A fellowship of men and women who have joined together to do something about their own gambling problems and help other compulsive gamblers do the same. Please find it at gaaustralia.org.au
Gambling Therapy
Provides support and counselling for anyone adversely affected by gambling. Members of the gambling therapy team operate from locations both within the UK and internationally. It's site can be accessed at gamblingtherapy.org
Please visit PointsBet.com.au/responsible-gambling for more information
24/7 CUSTOMER SUPPORT
FAQs
LIVE CHAT
CALL
This email was sent by PointsBet Australia.
Think! About your choices. Call Gambling Help 1800 858 858 or visit www.gamblinghelp.nsw.gov.au or www.gamblinghelponline.org.au. Don't chase your losses. Walk away. Gamble responsibly. 18+
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Attachment E – ‘You’ve had a winner!’ push notifications