



Australian Capital Territory

Racing Amendment Act 2009

A2009-53

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Australian Capital Territory

Racing Amendment Act 2009

A2009-53

An Act to amend the *Racing Act 1999*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Racing Amendment Act 2009*.

2 Commencement

This Act commences on 1 March 2010.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Legislation amended

This Act amends the *Racing Act 1999*.

4 New part 5B

insert

Part 5B Use of race field information

Division 5B.1 Limits on use of race field information

61E Definitions—pt 5B

In this part:

assessable turnover, of a licensed wagering operator, for a financial year means—

- (a) the total amount of bets held on races conducted in the ACT; less
- (b) the amount of any bet back on any race conducted in the ACT in the year.

bet back means a bet by a bookmaker on 1 or more runners in a race if the bet is made to offset, completely or partly, the bookmaker's liability for bets made with the bookmaker on the race.

bets held on races conducted in the ACT, by a licensed wagering operator—

- (a) means—
- (i) all bets and wagers accepted by the operator for any race conducted in the ACT whether or not the actual amount owing has been paid; and
 - (ii) the aggregate of all bets or wagers placed by the operator's customers on a betting exchange for any race conducted in the ACT; but

Note Aggregate bets on a betting exchange, is the backer's side of wagers made by the licensed wagering operator's customers through the operation of the betting exchange, whether or not the betting exchange is a party to the wagering contract.

- (b) does not include—
- (i) free or complimentary bets taken for a race conducted in the ACT; or
 - (ii) multi-leg bets that include at least 1 race conducted outside the ACT.

bets paid, in relation to a licensed wagering operator—

- (a) means all bets and wagers paid or settled by the operator for any race conducted in the ACT; but
- (b) does not include—
- (i) payments made by the operator on any free or complimentary bets that were accepted; or
 - (ii) payments made by the operator on multi-leg bets that include at least 1 race conducted outside the ACT; or
 - (iii) unclaimed bets or dividends of the operator.

betting exchange—

- (a) means a facility that allows a person—
 - (i) to place or accept, through the operator of the facility, a wager with another person; or
 - (ii) to place with the operator of the facility a wager that is matched with an opposing wager placed with the operator of the facility; but
- (b) does not include a facility that allows a person to place a wager only with a person who conducts bookmaking or a totalisator.

licensed wagering operator means a wagering operator holding a licence or other authority to conduct a wagering business—

- (a) under a law of the Territory, a State or an external territory; or
- (b) issued by a controlling body, a corresponding body, or a racing authority of the Territory, a State or an external territory.

Note ***State*** includes the Northern Territory—see the Legislation Act, dict, pt 1.

race field information means information in relation to an authorised race meeting in the ACT that identifies, or is capable of identifying, any of the following:

- (a) the name, number or time of a race;
- (b) the name or number of a horse or greyhound nominated for, or otherwise taking part in, a race;
- (c) the name or number of a horse or greyhound scratched or otherwise withdrawn from a race;
- (d) the name or number of a rider of a horse nominated for, or otherwise taking part in, a race;
- (e) the name or number of a trainer of a horse or greyhound nominated for, or otherwise taking part in, a race;

(f) the outcome of a race.

***rac*ing authority**, of the Territory, a State or an external territory, means an entity that controls, supervises or regulates racing in the ACT, State or external territory.

relevant net revenue, of a licensed wagering operator, means bets held on races conducted in the ACT for which the relevant controlling body or ARO has responsibility, less the following:

- (a) any bet back by the operator on races conducted in the ACT for which the relevant controlling body or ARO has responsibility;
- (b) bets paid on races conducted in the ACT for which the relevant controlling body or ARO has responsibility.

wagering operator means—

- (a) a bookmaker; or
- (b) a person who conducts a betting exchange; or
- (c) a person who conducts a totalisator; or
- (d) a person who otherwise conducts a wagering business; or
- (e) a person who acts as an agent for a person mentioned in paragraph (a), (b), (c) or (d).

61F Offence—use of race field information without approval

A licensed wagering operator commits an offence if—

- (a) the operator uses race field information, in the ACT or elsewhere, for the conduct of the operator's wagering business; and
- (b) the operator does not have approval to use race field information.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

61G Offence—failing to pay race field information charge

A licensed wagering operator commits an offence if—

- (a) the operator has approval to use race field information in a financial year; and
- (b) the operator is liable to pay a race field information charge under section 61S; and
- (c) the operator has not paid the race field information charge as required under this Act.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

61H Offence—failing to comply with condition on approval

A licensed wagering operator commits an offence if—

- (a) the operator has approval to use race field information; and
- (b) the operator does not comply with a condition on the approval that was imposed by the commission.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

61I Criminal liability of corporation officers

(1) An officer of a corporation commits an offence if—

- (a) the corporation contravenes a provision of this Act; and
- (b) the contravention is an offence against this Act (the *relevant offence*); and
- (c) the officer was reckless about whether the contravention would happen; and
- (d) the officer was in a position to influence the conduct of the corporation in relation to the contravention; and

(e) the officer failed to take all reasonable steps to prevent the contravention.

Maximum penalty: The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

- (2) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.
- (3) However, this section does not apply if the corporation has a defence to a prosecution for the relevant offence.
- (4) In deciding whether the officer took, or failed to take, all reasonable steps to prevent the contravention, a court must have regard to the following:
 - (a) any action the officer took to ensure the following:
 - (i) that the corporation arranged regular professional assessments of the corporation's compliance with the contravened provision;
 - (ii) that the corporation implemented any appropriate recommendation arising from an assessment;
 - (iii) that the corporation's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the contravened provision;
 - (b) any action the officer took when the officer became aware that the contravention was, or might be, about to happen.
- (5) Subsection (4) does not limit the matters to which the court may have regard.

(6) In this section:

officer, of a corporation, means—

- (a) a director or secretary of the corporation; or
- (b) a person—
 - (i) who makes, or takes part in making, decisions that affect all, or a substantial part, of the business of the corporation; or
 - (ii) in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper exercise of functions attaching to the person's professional capacity or business relationship with the directors or the corporation); or
- (c) a receiver, or receiver and manager, of the corporation's property; or
- (d) an administrator of the corporation; or
- (e) an administrator of a deed of company arrangement executed by the corporation; or
- (f) a liquidator of the corporation; or
- (g) a trustee or other person administering a compromise or arrangement made between the corporation and someone else.

Division 5B.2 Approval and conditions

61J Application for approval to use race field information

A person may apply to the commission for approval to use race field information.

Note 1 If a form is approved under the *Gambling and Racing Control Act 1999*, s 53D for this provision, the form must be used.

Note 2 A fee may be determined under s 67 for this provision.

61K Issue of approval

- (1) If a person applies for approval under section 61J the commission must—
 - (a) issue the approval; or
 - (b) refuse to issue the approval.
- (2) The commission must not issue the approval unless satisfied that the applicant is—
 - (a) a licensed wagering operator; and
 - (b) a suitable person to hold an approval having regard to the matters mentioned in section 61L.

Note An approval is subject to certain conditions and may be subject to other conditions imposed by the commission (see s 61M and s 61N).

61L Suitable person

- (1) In deciding whether an applicant is a suitable person to hold an approval the commission must have regard to the following matters:
 - (a) the applicant's character or business reputation;
 - (b) the applicant's current financial position and financial background;

- (c) if the applicant has a business association with another entity—
 - (i) the other entity's character or business reputation; and
 - (ii) the other entity's current financial position and financial background;
 - (d) if the applicant is a corporation—
 - (i) the character or business reputation of the corporation's executive officers; and
 - (ii) the current financial position and financial background of the corporation's executive officers;
 - (e) whether a prosecution or disciplinary action is proceeding under racing, gaming or wagering legislation or rules of racing or betting (whether in the Territory or elsewhere) against—
 - (i) the applicant; or
 - (ii) an employee of the applicant; or
 - (iii) an entity with which the applicant has a business association.
- (2) In deciding whether an applicant is a suitable person to hold an approval the commission may have regard to any other relevant matter.
- (3) In this section:

executive officer, of a corporation, means anyone, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

61M Condition on approval—race field information charge

An approval issued under section 61K, or a renewal issued under section 61Q, is subject to a condition that the licensed wagering operator pay a race field information charge set under division 5B.3, if liable to do so under that division.

61N Other conditions of approval

An approval issued under section 61K, or a renewal issued under section 61Q—

- (a) is subject to the conditions prescribed by regulation; and
- (b) may be subject to any other condition imposed by the commission.

61O Form of approval

An approval to use race field information must include the following:

- (a) the name and business address of the licensed wagering operator;
- (b) the date of issue of the approval;
- (c) the end date of the approval;
- (d) any condition imposed on the approval under section 61N;
- (e) an identifying number for the approval.

61P Renewal of approval

- (1) A licensed wagering operator may apply to the commission to renew an approval to use race field information—
 - (a) before the approval term ends; or

- (b) if the commission extends the time for an application to renew—before the end of the extended time.

Note 1 If a form is approved under the *Gambling and Racing Control Act 1999*, s 53D for this provision, the form must be used.

Note 2 A fee may be determined under s 67 for this provision.

- (2) To remove any doubt, if the commission extends the time under subsection (1) (b), the approval continues until the end of the extended time.

61Q Issue of renewed approval

- (1) If a licensed wagering operator applies under section 61P to renew an approval, the commission must—
 - (a) renew the approval; or
 - (b) refuse to renew the approval.
- (2) The commission must not renew the approval unless satisfied that the applicant is—
 - (a) a licensed wagering operator; and
 - (b) a suitable person to hold an approval having regard to the matters mentioned in section 61L.

Note A renewal is subject to certain conditions and may be subject to other conditions imposed by the commission (see s 61M and s 61N).

61R Revocation of approval

The commission may revoke the approval of a licensed wagering operator if the operator—

- (a) fails to comply with a condition on the approval; or
- (b) stops being a suitable person to hold an approval having regard to the matters mentioned in section 61L; or
- (c) stops being a licensed wagering operator; or

- (d) contravenes a provision of this part.

Division 5B.3 Race field information charge

61S Liability to pay race field information charge

- (1) A licensed wagering operator is liable to pay a race field information charge for a financial year (the *charge year*) if—
- (a) at the time the operator applies for, or seeks renewal of, approval to use race field information—the assessable turnover of the operator for the most recent complete financial year is more than the amount determined for this section; or
 - (b) if the operator is not liable under paragraph (a)—the assessable turnover of the operator for the charge year is more than the amount determined for this section.
- (2) An amount paid by a licensed wagering operator as a race field information charge for a financial year must be refunded to the operator if—
- (a) the operator has paid the charge for the charge year; and
 - (b) the assessable turnover of the operator for the charge year is not more than the amount determined for this section.
- (3) A regulation may prescribe the way in which a race field information charge is paid, including the time when payments must be made and refunds given.
- (4) The Minister may determine an amount for this section.
- (5) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

61T Setting a race field information charge

- (1) A controlling body or ARO, before 31 March in a financial year—
 - (a) may set a race field information charge for the following financial year (the *charge year*) for the use of race field information in relation to races for which the controlling body or ARO has responsibility; and
 - (b) if a race field information charge is set under paragraph (a)—must give the commission written notice of the charge.
- (2) A race field information charge set under subsection (1) must—
 - (a) be a stated percentage of the relevant net revenue of a licensed wagering operator for the charge year; and
 - (b) be inclusive of GST.
- (3) A race field information charge is a debt due by a licensed wagering operator to the controlling body or ARO that set the charge.
- (4) If the commission receives a notice under subsection (1) (b), the commission must, before 30 June in the financial year, notify each licensed wagering operator with approval to use race field information of the race field information charge for the charge year.

61U Race field information fund

- (1) The commission must open and maintain a banking account (the *race field information fund*).
- (2) A payment into the race field information fund made by a licensed wagering operator discharges the liability under section 61S to the extent of the payment.
- (3) The following payments must be made out of the race field information fund:
 - (a) to the commission—an administration fee prescribed by regulation;

- (b) to a controlling body—the race field information charge paid into the fund for the controlling body less any prescribed administration fee;
 - (c) to an ARO—the race field information charge paid into the fund for the ARO less any prescribed administration fee;
 - (d) to a licensed wagering operator—a refund payable to the operator under section 61S (2) (Liability to pay race field information charge).
- (4) In this section:

banking account means an account with an authorised deposit-taking institution that is, or is substantially the same as, a bank account.

61V Reporting

- (1) A licensed wagering operator must report to the commission on the assessable turnover and relevant net revenue of the operator.
- (2) A regulation may prescribe requirements for reporting on the assessable turnover, relevant net revenue and any other matter.

61W Commission to undertake functions

The commission must undertake functions to facilitate the operation of division 5B.3, including the collection and distribution of the race field information charge.

61X Authorisations for Trade Practices Act and Competition Code

- (1) The following things are authorised for the *Trade Practices Act 1974* (Cwlth) and the Competition Code:
- (a) an agreement entered into between—
 - (i) 2 or more controlling bodies or AROs in relation to the appointment of an agent (an ***appointed agent***), or the collection by an agent of a charge payable under this part; or
 - (ii) 1 or more controlling bodies or AROs and any corresponding body of another State or external territory in relation to the appointment of an agent (an ***appointed agent***), or the collection by an agent of a charge payable under this part for the use of race field information;
 - (b) the conduct of a controlling body, an ARO or an appointed agent in negotiating and entering into the agreement;
 - (c) the conduct of a controlling body, an ARO or an appointed agent in performing the agreement.
- (2) Anything authorised under subsection (1) is authorised only to the extent to which it would otherwise contravene the *Trade Practices Act 1974* (Cwlth) or the Competition Code.
- (3) In this section:
- agreement*** includes a contract, arrangement or understanding.
- Competition Code***—see the *Competition Policy Reform Act 1996*, dictionary.

5 New section 67*insert***67 Determination of fees**

- (1) The Minister may determine fees for this Act.

Note The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

6 Schedule 3, new items 5 to 8*insert*

5	61K (1) (b)	refuse to issue approval	applicant for approval
6	61N (b)	issue approval on condition	applicant for approval
7	61N (b)	renew approval on condition	licensed wagering operator
8	61Q (1) (b)	refuse to renew approval	licensed wagering operator
9	61R	revoke approval	the person whose approval was revoked

7 Dictionary, note 2*insert*

- external territory
- GST
- State

8 Dictionary, new definitions

insert

assessable turnover, for part 5B (Use of race field information)—see section 61E.

bet back, for part 5B (Use of race field information)—see section 61E.

bets held on races conducted in the ACT, for part 5B (Use of race field information)—see section 61E.

bets paid, for part 5B (Use of race field information)—see section 61E.

betting exchange, for part 5B (Use of race field information)—see section 61E.

licensed wagering operator, for part 5B (Use of race field information)—see section 61E.

race field information, for part 5B (Use of race field information)—see section 61E.

race field information charge means a race field information charge set under section 61T.

racings authority, for part 5B (Use of race field information)—see section 61E.

relevant net revenue for part 5B (Use of race field information)—see section 61E.

wagering operator, for part 5B (Use of race field information)—see section 61E.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 19 November 2009.

2 Notification

Notified under the Legislation Act on 15 December 2009.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Racing Amendment Bill 2009, which was passed by the Legislative Assembly on 8 December 2009.

Clerk of the Legislative Assembly

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