

2009

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Gaming and Racing)

Racing Amendment Bill 2009

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 New part 5B	2
5 New section 67	17
6 Schedule 3, new items 5 to 8	17
7 Dictionary, note 2	17
8 Dictionary, new definitions	18

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(Minister for Gaming and Racing)

Racing Amendment Bill 2009

A Bill for

An Act to amend the *Racing Act 1999*

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

1 **1 Name of Act**

2 This Act is the *Racing Amendment Act 2009*.

3 **2 Commencement**

4 This Act commences on 1 March 2010.

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

7 **3 Legislation amended**

8 This Act amends the *Racing Act 1999*.

9 **4 New part 5B**

10 *insert*

11 **Part 5B Use of race field information**

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

13 **61E Definitions—pt 5B**

14 In this part:

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

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

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

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

3 (a) means—

4 (i) all bets and wagers accepted by the operator for any race
5 conducted in the ACT whether or not the actual amount
6 owing has been paid; and

7 (ii) the aggregate of all bets or wagers placed by the
8 operator's customers on a betting exchange for any race
9 conducted in the ACT; but

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

15 (b) does not include—

16 (i) free or complimentary bets taken for a race conducted in
17 the ACT; or

18 (ii) multi-leg bets that include at least 1 race conducted
19 outside the ACT.

20 ***bets paid***, in relation to a licensed wagering operator—

21 (a) means all bets and wagers paid or settled by the operator for
22 any race conducted in the ACT; but

23 (b) does not include—

24 (i) payments made by the operator on any free or
25 complimentary bets that were accepted; or

26 (ii) payments made by the operator on multi-leg bets that
27 include at least 1 race conducted outside the ACT; or

28 (iii) unclaimed bets or dividends of the operator.

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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;

- 1 (f) the outcome of a race.
- 2 ***rac***ing authority, of the Territory, a State or an external territory,
3 means an entity that controls, supervises or regulates racing in the
4 ACT, State or external territory.
- 5 ***relevant net revenue***, of a licensed wagering operator, means bets
6 held on races conducted in the ACT for which the relevant
7 controlling body or ARO has responsibility, less the following:
- 8 (a) any bet back by the operator on races conducted in the ACT for
9 which the relevant controlling body or ARO has responsibility;
- 10 (b) bets paid on races conducted in the ACT for which the relevant
11 controlling body or ARO has responsibility.
- 12 ***wagering operator*** means—
- 13 (a) a bookmaker; or
- 14 (b) a person who conducts a betting exchange; or
- 15 (c) a person who conducts a totalisator; or
- 16 (d) a person who otherwise conducts a wagering business; or
- 17 (e) a person who acts as an agent for a person mentioned in
18 paragraph (a), (b), (c) or (d).
- 19 **61F Offence—use of race field information without approval**
- 20 A licensed wagering operator commits an offence if—
- 21 (a) the operator uses race field information, in the ACT or
22 elsewhere, for the conduct of the operator’s wagering business;
23 and
- 24 (b) the operator does not have approval to use race field
25 information.
- 26 Maximum penalty: 50 penalty units, imprisonment for 6 months or
27 both.

- 1 **61G Offence—failing to pay race field information charge**
- 2 A licensed wagering operator commits an offence if—
- 3 (a) the operator has approval to use race field information in a
- 4 financial year; and
- 5 (b) the operator is liable to pay a race field information charge
- 6 under section 61S; and
- 7 (c) the operator has not paid the race field information charge as
- 8 required under this Act.
- 9 Maximum penalty: 50 penalty units, imprisonment for 6 months or
- 10 both.
- 11 **61H Offence—failing to comply with condition on approval**
- 12 A licensed wagering operator commits an offence if—
- 13 (a) the operator has approval to use race field information; and
- 14 (b) the operator does not comply with a condition on the approval.
- 15 Maximum penalty: 50 penalty units, imprisonment for 6 months or
- 16 both.
- 17 **61I Criminal liability of corporation officers**
- 18 (1) An officer of a corporation commits an offence if—
- 19 (a) the corporation contravenes a provision of this Act; and
- 20 (b) the contravention is an offence against this Act (the *relevant*
- 21 *offence*); and
- 22 (c) the officer was reckless about whether the contravention would
- 23 happen; and
- 24 (d) the officer was in a position to influence the conduct of the
- 25 corporation in relation to the contravention; and

- 1 (e) the officer failed to take all reasonable steps to prevent the
2 contravention.
- 3 Maximum penalty: The maximum penalty that may be imposed for
4 the commission of the relevant offence by an individual.
- 5 (2) This section applies whether or not the corporation is prosecuted for,
6 or convicted of, the relevant offence.
- 7 (3) However, this section does not apply if the corporation has a
8 defence to a prosecution for the relevant offence.
- 9 (4) In deciding whether the officer took, or failed to take, all reasonable
10 steps to prevent the contravention, a court must have regard to the
11 following:
- 12 (a) any action the officer took to ensure the following:
- 13 (i) that the corporation arranged regular professional
14 assessments of the corporation's compliance with the
15 contravened provision;
- 16 (ii) that the corporation implemented any appropriate
17 recommendation arising from an assessment;
- 18 (iii) that the corporation's employees, agents and contractors
19 had a reasonable knowledge and understanding of the
20 requirement to comply with the contravened provision;
- 21 (b) any action the officer took when the officer became aware that
22 the contravention was, or might be, about to happen.
- 23 (5) Subsection (4) does not limit the matters to which the court may
24 have regard.

- 1 (6) In this section:
- 2 ***officer***, of a corporation, means—
- 3 (a) a director or secretary of the corporation; or
- 4 (b) a person—
- 5 (i) who makes, or takes part in making, decisions that affect
- 6 all, or a substantial part, of the business of the
- 7 corporation; or
- 8 (ii) in accordance with whose instructions or wishes the
- 9 directors of the corporation are accustomed to act
- 10 (excluding advice given by the person in the proper
- 11 exercise of functions attaching to the person's
- 12 professional capacity or business relationship with the
- 13 directors or the corporation); or
- 14 (c) a receiver, or receiver and manager, of the corporation's
- 15 property; or
- 16 (d) an administrator of the corporation; or
- 17 (e) an administrator of a deed of company arrangement executed
- 18 by the corporation; or
- 19 (f) a liquidator of the corporation; or
- 20 (g) a trustee or other person administering a compromise or
- 21 arrangement made between the corporation and someone else.

1 **Division 5B.2 Approval and conditions**

2 **61J Application for approval to use race field information**

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

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

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

8 **61K Issue of approval**

9 (1) If a person applies for approval under section 61J the commission
10 must—

11 (a) issue the approval; or

12 (b) refuse to issue the approval.

13 (2) The commission must not issue the approval unless satisfied that the
14 applicant is—

15 (a) a licensed wagering operator; and

16 (b) a suitable person to hold an approval having regard to the
17 matters mentioned in section 61L.

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

20 **61L Suitable person**

21 (1) In deciding whether an applicant is a suitable person to hold an
22 approval the commission must have regard to the following matters:

23 (a) the applicant's character or business reputation;

24 (b) the applicant's current financial position and financial
25 background;

- 1 (c) if the applicant has a business association with another entity—
2 (i) the other entity's character or business reputation; and
3 (ii) the other entity's current financial position and financial
4 background;
- 5 (d) if the applicant is a corporation—
6 (i) the character or business reputation of the corporation's
7 executive officers; and
8 (ii) the current financial position and financial background of
9 the corporation's executive officers;
- 10 (e) whether a prosecution or disciplinary action is proceeding
11 under racing, gaming or wagering legislation or rules of racing
12 or betting (whether in the Territory or elsewhere) against—
13 (i) the applicant; or
14 (ii) an employee of the applicant; or
15 (iii) an entity with which the applicant has a business
16 association.
- 17 (2) In deciding whether an applicant is a suitable person to hold an
18 approval the commission may have regard to any other relevant
19 matter.
- 20 (3) In this section:
21 *executive officer*, of a corporation, means anyone, by whatever
22 name called and whether or not the person is a director of the
23 corporation, who is concerned with, or takes part in, the
24 corporation's management.

1 **61M Condition on approval—race field information charge**

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

6 **61N Other conditions of approval**

- 7 (1) An approval, including a renewed approval, may be issued subject
8 to conditions.
- 9 (2) A regulation may prescribe the conditions that the commission may
10 impose on the approval.

11 **61O Form of approval**

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

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

20 **61P Renewal of approval**

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

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

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

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

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

9 **61Q Issue of renewed approval**

10 (1) If a licensed wagering operator applies under section 61P to renew
11 an approval, the commission must—

12 (a) renew the approval; or

13 (b) refuse to renew the approval.

14 (2) The commission must not renew the approval unless satisfied that
15 the applicant is—

16 (a) a licensed wagering operator; and

17 (b) a suitable person to hold an approval having regard to the
18 matters mentioned in section 61L.

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

21 **61R Revocation of approval**

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

24 (a) fails to comply with a condition on the approval; or

25 (b) stops being a suitable person to hold an approval having regard
26 to the matters mentioned in section 61L; or

27 (c) stops being a licensed wagering operator; or

1 (d) contravenes a provision of this part.

2 **Division 5B.3 Race field information charge**

3 **61S Liability to pay race field information charge**

4 (1) A licensed wagering operator is liable to pay a race field
5 information charge for a financial year (the *charge year*) if—

6 (a) at the time the operator applies for, or seeks renewal of,
7 approval to use race field information—the assessable turnover
8 of the operator for the most recent complete financial year is
9 more than the amount determined for this section; or

10 (b) if the operator is not liable under paragraph (a)—the assessable
11 turnover of the operator for the charge year is more than the
12 amount determined for this section.

13 (2) An amount paid by a licensed wagering operator as a race field
14 information charge for a financial year must be refunded to the
15 operator if—

16 (a) the operator has paid the charge for the charge year; and

17 (b) the assessable turnover of the operator for the charge year is
18 not more than the amount determined for this section.

19 (3) A regulation may prescribe the way in which a race field
20 information charge is paid, including the time when payments must
21 be made and refunds given.

22 (4) The Minister may determine an amount for this section.

23 (5) A determination is a disallowable instrument.

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

1 **61T Setting a race field information charge**

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

19 **61U Race field information fund**

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

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

9 (4) In this section:

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

13 **61V Reporting**

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

18 **61W Commission to undertake functions**

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

- 1 **61X Authorisations for Trade Practices Act and Competition**
2 **Code**
- 3 (1) The following things are authorised for the *Trade Practices*
4 *Act 1974* (Cwlth) and the Competition Code:
- 5 (a) an agreement entered into between—
- 6 (i) 2 or more controlling bodies or AROs in relation to the
7 appointment of an agent (an ***appointed agent***), or the
8 collection by an agent of a charge payable under this part;
9 or
- 10 (ii) 1 or more controlling bodies or AROs and any
11 corresponding body of another State or external territory
12 in relation to the appointment of an agent (an ***appointed***
13 ***agent***), or the collection by an agent of a charge payable
14 under this part for the use of race field information;
- 15 (b) the conduct of a controlling body, an ARO or an appointed
16 agent in negotiating and entering into the agreement;
- 17 (c) the conduct of a controlling body, an ARO or an appointed
18 agent in performing the agreement.
- 19 (2) Anything authorised under subsection (1) is authorised only to the
20 extent to which it would otherwise contravene the *Trade Practices*
21 *Act 1974* (Cwlth) or the Competition Code.
- 22 (3) In this section:
- 23 ***agreement*** includes a contract, arrangement or understanding.
- 24 ***Competition Code***—see the *Competition Policy Reform Act 1996*,
25 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	issue approval on condition	applicant for approval
7	61N	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

1 **8 Dictionary, new definitions**

2 *insert*

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

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

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

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

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

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

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

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

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

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

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

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2009.

2 Notification

Notified under the Legislation Act on 2009.

3 Republications of amended laws

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