



2009

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

Racing Amendment BILL 2009

EXPLANATORY STATEMENT

**Presented by
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Overview

The main purpose of this Bill is to enable ACT racing controlling bodies to charge for the use of their race field information. In order to enforce this requirement the bill makes it an offence for licensed wagering operators to use ACT race field information without approval. Approval to use ACT race fields includes a condition that approved licensed wagering operators are liable to pay a charge for the use of ACT race field information.

Examples of race field information are the time and date of the race, the names of horses or greyhounds nominated for a race, the name of a rider and the outcome of a race.

The controlling bodies are the Canberra Racing Club, the Canberra Harness Club and the Canberra Greyhounds Club.

Approval holders whose annual assessable turnover on all three codes of races in the ACT is above a threshold must pay the charge. This is expected to impact ACTTAB, and other TABs, betting exchanges and large bookmakers .

The estimated total annual revenue to the controlling bodies from this charge is \$1.5 million.

The ACT Gambling and Racing Commission (the Commission) is required to administer the scheme.

Notes on Clauses

Clause 1 Name of Act

This clause is a formal provision setting out the name of the proposed Act.

Clause 2 Commencement

This clause explains that the proposed Act will commence on 1 March 2010.

Clause 3 Legislation amended

Clause 3 is a formal provision to identify that the legislation to be amended by the proposed Act is the *Racing Act 1999*.

Clause 4 New part 5B Use of race field information

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

Clause 4 inserts new sections 61E through to 61X into section 61 of the Act.

New section 61E Definitions – pt 5B

This section provides definitions of new terms.

“assessable turnover” is the measure by which liability to pay the charge will be determined. ‘Turnover’ is the total amount of bets held on ACT races by the licensed wagering operator. The turnover amount is reduced by the amount of bet backs to achieve the calculation of ‘assessable’ turnover.

A “bet back” is a bet made by a licensed wagering operator to reduce the operator’s risk. For example, if a backer bets a large amount which will increase the risk of the operator having to pay out a larger amount in winnings, then the operator will lay off part or all of this bet to spread the risk or exposure of the operator on the outcome of the particular race.

“Bets held on races conducted in the ACT” are bets accepted by the licensed wagering operator on any race conducted in the ACT and, in the case of a betting exchange, the aggregate of bets made on the backer’s side of wagers. Bets held exclude free or complimentary bets and multi-leg bets that include at least 1 race conducted outside the ACT. These exclusions are to avoid any uncertainty regarding the value of the free and complimentary bets and the apportionment of value of the multi-leg bets.

“Bets paid” describes that all bets and wagers paid or settled by the operator for any race conducted in the ACT are to be considered as bets paid but identifies a number of exclusions.

A “betting exchange” operates differently from other wagering operations in that it acts as a broker between two punters, one being a ‘backer’ and the other a ‘layer’, not between a bookmaker or totalisator and a ‘backer’. In using a betting exchange the ‘backer’ will bet on an event to happen and the exchange will find another punter, the ‘layer’, who bets that the event will not happen. The betting exchange facilitates bets and charges for this service but is not involved in the actual bets. Bets on the ‘backer’s side’ in a betting exchange operation will be included in the licensed wagering operator’s assessed turnover and revenue.

“Licensed wagering operator” is defined to identify those people who must apply to be approved to use ACT race field information.

“Race field information” identifies the information relating to ACT races that a licensed wagering operator may use and for which an approval to use is required.

“Racing authority” is a term used in other States and Territories and is equivalent to a controlling body. These organisations may license wagering operators and perform other controlling functions.

“Relevant net revenue” for a licensed wagering operator means bets held on races conducted in the ACT with the exclusion of bet backs and bets paid (as defined).

“Wagering operator” provides a list of the types of people who undertake the various forms of wagering operations for the purposes of this Bill. Importantly, it includes agents of these people.

New section 61F Offence – use of race field information without approval

This section makes it an offence for a licensed wagering operator to use ACT race field information without approval. It sets a maximum penalty of a fine or imprisonment or both. Approval to use race field information is a fundamental element of the scheme that this Bill enables. This penalty is equivalent to other similar offences for non-compliance under the Act.

New section 61G Offence – failing to pay race field information charge

This section makes it an offence for an approved licensed wagering operator not to pay the charge if that operator meets the stated requirements for liability to pay the charge. The charge is a fundamental element of the scheme that this Bill enables.

The maximum penalty set is a fine or imprisonment or both and is the same as the offence for using race field information without approval and for failing to comply with conditions of approval.

New section 61H Offence – failing to comply with condition on approval

This section makes it an offence not to comply with one or more conditions of approval to use race field information. It sets a penalty of a fine or imprisonment or both. This penalty is equivalent to other similar offences for non-compliance under the Act.

New section 61I - Criminal liability of corporation officers

This section identifies the behaviours and activities of those people in a corporation that will provide the basis of committing an offence under the Act. The penalty for corporate bookmakers is included to enable imprisonment to apply to individual officers in corporations. Otherwise the imprisonment option would only, and unfairly, apply to individuals.

Division 5B.2 Approval and conditions

New section 61J – Application for approval to use race field information

This section provides for a person to apply to the Commission for approval to use ACT race field information. The Commission can only issue an approval if an application is received, so this provision ensures the formality of a written application. Information required in the application will be provided on the application form which will be a notifiable instrument in accordance with s53D of the *Gambling and Racing Control Act 1999*.

An application fee may be determined under section 67 of this Bill. This fee relates to the application requirement and is different from the race field information charge, and the administration fee referred to in s61T(3)(a).

New section 61K – Issue of approval

This section makes it a requirement for the Commission to issue an approval or refuse to do so. This means the Commission must decide one way or the other. The Commission can only issue an approval if it is satisfied that the applicant is a licensed wagering operator and is a suitable person to hold an approval. Suitability criteria are identified in s61L.

New section 61L – Suitable person

This section lists the suitability criteria that must be considered by the Commission in assessing applications. This requirement ensures that the integrity of ACT racing is maintained. The section also refers to and defines a corporation's 'executive officer' to ensure that the suitability criteria are applied to all appropriate influential persons in the corporation.

New section 61M – Condition on approval – race field information charge

This section specifies that a condition of approval is that the licensed wagering operator must pay any applicable race field charge decided under division 5B.3. This makes the condition applicable to all approvals.

New section 61N – Other conditions of approval

Other conditions that will apply to all approval holders will be prescribed by regulation. Examples of the sorts of conditions that may be prescribed are those that relate to integrity of the racing industry and the approval holder's operations, as well as notifying the Commission of any relevant change in the approval holder's situation.

These provisions apply to approvals and renewal of approvals.

New section 61O – Form of approval

This section states the minimum information that must be included in the approval to use ACT race field information.

New section 61P – Renewal of approval

This section provides for a licensed wagering operator to apply to the Commission for renewal, rather than repeating the initial approval process. This process will be less onerous administratively and will enable continuous approval periods.

The Minister may determine an application for renewal fee.

New section 61Q – Issue of renewed approval

As for initial approvals, this section makes it a requirement for the Commission to renew or refuse to renew an application, and that an approval can only be made if the Commission is satisfied that the applicant is a licensed wagering operator and a suitable person.

New section 61R – Revocation of approval

This section specifies the grounds for revocation of an approval. These grounds reflect essential elements of the race fields approval scheme and would occur if the approval holder fails to comply with a condition of approval, stops being a suitable person, stops being a licensed wagering operator or contravenes a provision of this part of the Act.

Division 5B.3 Race field information charge

New section 61S – Liability to pay race field information charge

Subsection (1) (a) provides that a licensed wagering operator must pay any applicable race field charge if, at the time they apply for approval or renewal of approval, their assessable turnover in the most recent complete financial year exceeds an amount determined by the Minister.

Subsection (1) (b) provides that a licensed wagering operator must pay any race field information charge for a year where at the conclusion of that year the assessable turnover exceeds the amount determined by the Minister even if their assessable turnover in the last completed financial year, at the time of the licensed wagering operator's application for approval or application for renewal of approval, did not exceed the amount determined by the Minister.

Subsection (2) provides that licensed wagering operators will be refunded if they have paid the race field information charge, but their assessable turnover for the year in which they paid the charge does not exceed the assessable threshold amount determined by the Minister.

Subsection (3) provides that a regulation may prescribe payment arrangements such as when the payments must be made.

Subsections (4) and (5) provide for the Minister to determine, by Disallowable Instrument, the relevant level of assessable turnover.

New section 61T – Setting a race field information charge

This section allows the controlling body, or Approved Racing Organisation (ARO), as appropriate, to set a race field information charge only in relation to races for which that controlling body or ARO has responsibility. An ARO is defined in the *Racing Act 1999*. The intention of including AROs is to incorporate additional forms of racing that may be introduced into the ACT in the future.

The section also provides for the controlling bodies, or AROs, as appropriate, to advise the Commission in writing of the charge, and for the Commission to advise licensed wagering operators of the new charge before 30 June each year.

Subsection (2) specifies the nature of a race fields information charge.

Subsection (3) clarifies that the charge is a debt due by a licensed wagering operator to the relevant controlling body or ARO. That is, even if the charge is collected by the Commission the charge is payable to the relevant controlling body or ARO.

New section 61U – Race field information fund

This section requires the Commission to open and maintain a banking account for the purpose of receiving the charges payable and making certain payments from it. The account is necessary to segregate monies for the stated purposes in the Act. The approval holders who are liable to pay the charge will be required to pay the charge amount into the account. The Commission will then pass the relevant amounts on to each club, and ARO if applicable. The relevant amounts are the amounts received from approval holders relating to the wagering on each code less the administration fee and less any refunds. The administration fee reflects the cost of administration of the scheme by the Commission on behalf of the clubs.

New section 61V – Reporting

This section makes it a legal requirement for licensed wagering operators to report their assessable turnover, relevant net revenue and any other prescribed matter. How the reporting is to occur may be prescribed by regulation.

New section 61W – Commission to undertake functions

This section requires the Commission to collect and distribute a race field charge and any other ancillary functions that are required to ensure the operation of division 5B.3.

New section 61X – Authorisations for Trade Practices Act and Competition Code

This section authorises specified agreements between controlling bodies or AROs, or between controlling bodies or AROs and any corresponding body of another State or external territory, in relation to appointing an agent or collection by an agent of the charge. This authorisation is required to ensure that the provisions of the Commonwealth *Trade Practices Act 1974* and the Competition Code are not breached.

Clause 5 New section 67

New section 67 – Determination of fees

This section provides for the Minister to determine any fees for this proposed scheme in accordance with the Act, and for those fees to be determined by disallowable instrument.

Clause 6 Schedule 3

Schedule 3 in the Act is the list of decisions that are reviewable by the ACT Administrative and Civil Tribunal, and the relevant entities. The full explanation of Schedule 3 is in Part 6 of the Act.

Clause 7 Dictionary, note 2

This clause refers to note 2 in the Dictionary to the *Racing Act 1999*. Note 2 sets out terms that are defined in the Legislation Act dictionary, part 1. The amendment includes 2 additional terms that are defined in the Legislation Act that were not previously used in the Racing Act.

Clause 8 Dictionary, new definitions

This section inserts new terms relevant to the use of race field information and the references to where the definitions are made.