

**2012**

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

**RACING AMENDMENT BILL 2012**

**EXPLANATORY STATEMENT**

**Presented by  
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## Overview

Controlling bodies for thoroughbred, harness and greyhound racing across Australia charge a fee for the use of race field information (e.g. list of entries running in a particular race) by wagering operators, such as bookmakers. Different models have been adopted by different jurisdictions for determining this fee.

In response to emerging developments in the charging models across Australia, including a High Court decision in relation to the New South Wales (NSW) model earlier this year, the Government is seeking to amend the Territory's model to provide that the racing industry controlling bodies will be responsible for the setting, administration and collection of the race field information charge.

The proposed amendments align the Territory's scheme with similar schemes operating in other jurisdictions including Victoria and NSW.

The Independent Competition and Regulatory Commission (ICRC) report entitled *Investigation into the ACT Racing Industry – Final Report* (Report 2 of 2011, April 2011) included two recommendations in relation to how the current race field information charge scheme operates. At that point in time, it considered the regime to be suitable and appropriate to the circumstances, but highlighted the virtue of reassessing that regime once the High Court decisions around the legal challenges to the NSW scheme had been made known.

The Government indicated that it would assess the need for amendments to the scheme in light of the High Court decision, approaches in other jurisdictions, and submissions from industry, to ensure that the ACT has an appropriate and adequate payments system.

The Racing Amendment Bill 2012 ('the Bill') will amend the *Racing Act 1999* and the *Racing (Race Field Information) Regulation 2010* to provide that:

- a) the three controlling bodies (i.e. the thoroughbred racing, harness racing and greyhound racing clubs) have the ability to directly set and collect race field information charges from wagering operators; and
- b) a controlling body has the discretion to set the quantum of a race field information charge to be paid by a wagering operator.

The Bill will also provide that any one of the three ACT controlling bodies may act as an agent for the other bodies in relation to the race field information charge.

The Bill will commence on a day fixed by notice by the Minister. At present, it is proposed that the Bill would commence no later than 1 March 2013.

Given the complexities of changing the method of calculation of liability for the race field information charge, particularly part way through the financial year, the Bill establishes transitional arrangements such that the ACT Gambling and Racing Commission (effectively acting as an agent for the controlling bodies) continues to administer the financial arrangements of the scheme as they relate to activity in the 2012-13 financial year.

The approval of entities, and the setting (and notification) of fees and thresholds would become the responsibility of the controlling bodies from the date of commencement of the amendments (as noted above, proposed to be no later than 1 March 2013). However, existing arrangements with the ACT Gambling and Racing Commission assessing the liability of approved entities, and payment to the racing clubs of fees collected would remain in place to finalise the transactions associated with activity in the current financial year.

These transitional arrangements provide that the integrity of the scheme is maintained, and that the controlling bodies are provided with an appropriate and tested system of administering the race field information charge scheme.

Once fully implemented, the new arrangements mean that the ACT Gambling and Racing Commission would no longer play a role in administering the race field information charge scheme. However, the proposed amendments would not affect the Commission's current broader responsibilities in relation to licensing wagering operators in the Territory.

## Details of the Racing Amendment Bill 2012

### **PART 1        PRELIMINARY**

#### **Clause 1        Name of Act**

This clause is a formal provision setting out the name of the Act as the *Racing Amendment Act 2012*.

#### **Clause 2        Commencement**

The Act commences on a day fixed by the Minister by written notice. If not commenced earlier, the provisions of the Act are subject to the general six-month automatic commencement as established by the Legislation Act, s 79.

#### **Clause 3        Legislation amended**

This clause provides that the Act amends the *Racing Act 1999* and the *Racing (Race Field Information) Regulation 2010*.

### **PART 2        RACING ACT 1999**

#### **Clause 4        Definitions – part 5B, Section 61E**

This clause provides that the definitions of *assessable turnover*, *bet back*, *bets held on races conducted in the ACT* and *bets paid* be removed from section 61E, as under the amended model they are no longer required by the Gambling and Racing Commission ('the Commission') to assess the race field information charge payable. Note, however, that these definitions are included in the Regulation to ensure that the controlling bodies are provided with relevant information to assist in their administration of the charge (see clause 38 below).

#### **Clause 5        Section 61E, new definitions**

This clause provides a reference to the meaning of *race field information charge* in section 61M (1).

The clause also establishes the definition of the term *relevant controlling body*.

#### **Clause 6        Section 61E, definition of *relevant net revenue***

This clause removes the definition of *relevant net revenue* from section 61E as this information is no longer required by the Commission to assess the race field information charge payable.

#### **Clause 7        Offence—failing to pay race field information charge Section 61G (b)**

This clause establishes an offence for failure to pay a race field information charge, where it is a condition of the approval that a charge is payable.

**Clause 8      Offence—failing to comply with condition on approval Section 61H (b)**

This clause updates the existing offence provision of failing to comply with a condition on the approval to reflect that a condition would be imposed by the relevant controlling body rather than the Commission, or by regulation.

**Clause 9      Section 61J**

This clause updates section 61J and establishes the application process for an approval to use race field information, including that the relevant controlling body can determine how and when an application must be made. This section also provides that certain information may be required by the relevant controlling body or by regulation.

**Clause 10      Issue of approval Section 61K (1)**

This clause updates the existing provision in relation to the issuing of approvals to reflect that a decision would be made by the relevant controlling body.

**Clause 11      Section 61K (2) and note**

This clause provides matters that the relevant controlling body must take into account in deciding whether to issue an approval, including whether the applicant is a licensed wagering operator, is a suitable person (as set out in section 61L) and that any other matter prescribed by regulation has been considered or disregarded as required by regulation.

**Clause 12      Suitable person Section 61L (1)**

This clause updates the existing provision setting out matters to be considered in deciding whether an applicant is a suitable person to hold an approval to use race field information to reflect that the relevant controlling body will now issue the approvals.

To enable this assessment to occur, an applicant may be required to provide information to establish that they are suitable to hold an approval, including information on the applicant's personal and business financial positions and whether any prosecution or disciplinary action is pending.

The collection and consideration of such information by the relevant controlling body engages an applicant's right to privacy and reputation under the *Human Rights Act 2004*. This provision was designed to ensure that the integrity of racing in the ACT is maintained and, as with all of Part 5B which was inserted into the Act in 2009, was previously assessed to be compatible with human rights (see Compatibility Statement to the Racing Amendment Bill 2009).

Section 11(1) of the *Human Rights Act 2004* provides that the family is the natural and basic group unit of society and is entitled to be protected by society. The proposed Bill will provide a measure of protection of the family, through taking steps to ensure the integrity of the racing industry and wagering activity.

As the assessment of suitability will now be carried out by the relevant controlling body rather than the Commission under the amended model, provisions have been included to

ensure that the relevant controlling body is required to comply with National Privacy Principles (see clause 25 below).

**Clause 13      New section 61L (1) (f)**

This clause establishes that a regulation may set out other matters that must be considered by a relevant controlling body when deciding if an applicant for an approval to use race field information is a suitable person.

**Clause 14      Section 61L (2)**

This clause updates the existing provision that other matters may be taken into account in deciding an approval to reflect that the relevant controlling body will now issue the approvals.

**Clause 15      Section 61M**

This clause establishes that an approval or renewal for a licensed wagering operator to use race field information is conditional on the operator paying the amount determined by the relevant controlling body as the race field information charge. Under this clause the relevant controlling body has discretion in setting the charge, including setting a zero amount where considered appropriate. However, a regulation may set out requirements in relation to the way a relevant controlling body determines a race field information charge, including the maximum amount of the charge. The clause also provides that the charge is a debt payable to the relevant controlling body.

**Clause 16      Other conditions of approval Section 61N (b)**

This clause updates the existing provision to reflect that an approval or renewal can be subject to conditions set by regulation or by the relevant controlling body.

**Clause 17      Section 61P**

This clause updates section 61P, which establishes the renewal process for an approval to use race field information, including that the relevant controlling body can determine how and when an application must be made. This section also provides that certain information may be required by the relevant controlling body or by regulation.

**Clause 18      Issue of renewed approval Section 61Q (1)**

This clause updates the existing provision in relation to the renewal of approvals to reflect that a decision would be made by the relevant controlling body.

**Clause 19      Section 61Q (2) and note**

This clause provides matters that the relevant controlling body must take into account in deciding whether to issue a renewal of an approval, including whether the applicant is a licensed wagering operator, is a suitable person (as set out in section 61L) and that any other matter prescribed by regulation has been considered or disregarded as required by regulation.

**Clause 20      Revocation of approval Section 61R**

This clause updates the existing provision in relation to the revocation of approvals to use race field information to reflect that the revocation would be determined by the relevant controlling body.

**Clause 21      Division 5B.3 heading**

This clause amends the heading of Division 5B.3 to reflect the amendments made to that Division.

**Clause 22      Sections 61S and 61T**

This clause removes section 61S and 61T from the Act. Under the amended model, the liability to pay a race field information charge is established as a condition of the approval (see clause 15, Section 61M above), and section 61S is no longer required. Section 61T is also no longer required as the relevant controlling body has the discretion to set the race field information charge.

**Clause 23      Section 61U**

This clause provides that a relevant controlling body may act as an agent for the collection of the race field information charge, or other matters under that Part of the Act, on behalf of another relevant controlling body. The previous provision relating to the race field information fund is removed as it is no longer required under the amended model.

**Clause 24      Section 61V**

This clause provides reporting requirements for relevant controlling bodies, including a requirement to provide the Minister with information on the total amount of charges collected in the previous financial year, and an estimate of charges expected in the following year. The clause also provides that a regulation may include other matters that the report must address, and the timing of such a report.

**Clause 25      Section 61W**

This clause removes the requirement for the Gambling and Racing Commission to undertake functions relating to the collection and distribution of the race field information charge (note, however, that transitional arrangements may apply).

The clause also provides that the National Privacy Principles set out in the *Privacy Act 1988* (Cth), schedule 3, apply to a relevant controlling body, even if the body would not otherwise be required to comply with the Principles. This provision is necessary to ensure that privacy and confidentiality is appropriately maintained under the amended model.

**Clause 26      Authorisations for Competition and Consumer Act and Competition Code  
Section 61X (1) (a)**

This clause updates existing provisions regarding authorisations under the *Competition and Consumer Act 2010* (Cth) and Competition Code to reflect the revised role of relevant controlling bodies.

**Clause 27 Section 61X (1) (b) and (c)**

This clause updates existing provisions regarding authorisations under the *Competition and Consumer Act 2010* (Cth) and Competition Code to reflect the revised role of relevant controlling bodies.

**Clause 28 New part 10**

This clause provides for a new Part 10 which sets out Transitional Arrangements. These transitional provisions will expire 12 months after commencement, as they are intended only to operate for a limited period while the new model is implemented.

*Section 100 Definitions, part 10*

This section inserts the definitions of *commencement day*, *pre-amendment part 5B* and *post-amendment part 5B* for the purposes of part 10.

*Section 101 Existing approvals etc to use race field information*

This section provides that approvals or renewals to use race field information issued before the commencement day are taken to be approvals under post-amendment part 5B.

*Section 102 Commission to act as relevant controlling bodies' agent*

This section, as part of the transitional arrangements, provides that the Commission will act as an agent for the relevant controlling bodies for the purposes of invoicing, collection and payment of the race field information charge from the commencement day until 30 June 2013. For undertaking this work, section 102(2) provides that the Commission may deduct a fee of 5% of the total race field information charge collected.

*Section 103 Permitted disclosure of information to relevant controlling bodies*

This section provides that the Commission may give the relevant controlling bodies information provided by entities as part of the application process, where that information is necessary for the bodies to carry out their functions under part 5B of the Act. This provision is necessary as the Commission is required to comply with the *Information Privacy Principles* relating to the disclosure of information.

*Section 104 Transitional regulations*

This section provides that additional regulations may address any other required transitional matter.

*Section 105 Expiry – pt 10*

This section provides that the transitional provisions expire one year after commencement.

**Clause 29 Dictionary, definitions**

This clause removes the definitions of *assessable turnover*, *bet back*, *bets held on races conducted in the ACT* and *bets paid* from the Act's Dictionary, as these terms are no longer included in the Act (see also clause 4 above).

**Clause 30 Dictionary, definition of *controlling body*, paragraph (b) and (c)**

This clause corrects incorrect descriptions of the above entities.



**Clause 31 Dictionary, definition of *race field information charge***

This clause references the definition of *race field information charge* provided in section 61M(1).

**Clause 32 Dictionary, new definition of *relevant controlling body***

This clause references the definition of *relevant controlling body* provided in section 61E.

**Clause 33 Dictionary, definition of *relevant net revenue***

This clause removes the definition of *relevant net revenue* from the Dictionary, as this term is no longer included in the Act (see also clause 7 above).

**PART 3 RACING (RACE FIELD INFORMATION) REGULATION 2010**

**Clause 34 Sections 5 to 11**

This clause removes the existing sections 5 to 11 of the Regulation as they are no longer required under the amended model, and replaces them with provisions relating to matters relevant to the issuing and renewal of approvals, based on similar requirements in NSW and Victoria.

*Section 5 Prescribed information for application for, or renewal of, approval—  
Act, s 61J (2) (b) and s 61P (3) (b)*

This section sets out information that must be included in an application for, or renewal of, an approval to use race field information. The information includes the name and licence information of the applicant; what the race field information will be used for; and information on the wagering, criminal and disciplinary history of the applicant, key employees and close associates. An application must also include information on an applicant's policy and procedure for dealing with racing integrity issues.

*Section 6 Prescribed matters to be considered or disregarded in deciding application for, or renewal of, approval—Act, s 61K (2) (b) and s 61Q (2) (b)*

This section sets out matters that must be considered or disregarded by a controlling body when making a decision to issue or renew an approval. Matters to be considered include whether the approval would undermine the integrity of races conducted in the ACT. Matters to be disregarded include the location of an individual or corporation and the jurisdiction under which the applicant is licensed or authorised to undertake a wagering business.

*Section 7 Prescribed conditions of approval or renewal – Act, s 61N (a)*

This section sets out conditions that apply to an approval or a renewal of an approval to use race field information. The conditions include requirements relating to the provision of information to and monitoring by the relevant controlling body, and that a secure operating and recording system must be used. Licensed wagering operators must establish the identity of a person when opening betting accounts and must not open accounts for persons who have been disqualified, suspended or warned-off. A licensed wagering operator must

cooperate and provide information to any inquiry or investigation conducted by a relevant controlling body, and must notify the controlling body about matters to do with the controlling interests, financial circumstances and any disciplinary action against the operator. This section also includes the definition of *warning-off notice*.

**Clause 35 Dictionary, note 3**

This clause amends Note 3 to reflect that the terms *assessable turnover*, *bet back*, *bets held on races conducted in the ACT*, *bets paid*, *commission*, *controlling body* and *relevant net revenue* are either defined in the Regulation itself rather than the Act or have been removed from the Regulation.

**Clause 36 Dictionary, note 3**

This clause amends Note 3 to add a reference to the term *betting exchange*, which is defined in the Act.

**Clause 37 Dictionary, new definitions**

This clause inserts the definitions of *bet back*, *bets held on races conducted in the ACT*, *bets paid* and *wagering turnover* in the Regulation.

**Clause 38 Dictionary, definition of *warning-off notice***

This clause removes the definition of *warning-off notice* as it is included in clause 34 above.