

Race Fields Legislation – Australian Wagering Operators

INFORMATION REGARDING “RACE FIELDS” FOR AUSTRALIAN WAGERING OPERATORS

Further amendments to the *Racing Administration Act 1998 (NSW)* which require the approval of Racing NSW to any use of NSW thoroughbred race field information (whether that use occurs in NSW or elsewhere) unless the use is specifically exempt under the Regulations commenced on 3 December 2008. These amendments refined the Race Fields Publication approval process that became effective on 1 September 2008.

It is an offence under the Racing Administration Act, punishable by fines and/or imprisonment, to use NSW thoroughbred race field information without the necessary approval from Racing NSW.

This document outlines Racing NSW’s approach in relation to applications relating to use of NSW thoroughbred race field information in Australia by wagering operators who hold a wagering licence issued under the laws of an Australian State or Territory.

Separate arrangements will apply to wagering operators who are not licensed in an Australian State or Territory and to wagering operations conducted outside Australia by Australian-licensed wagering operators. Such operators should contact Racing NSW for further information.

Please check the Racing NSW website regularly for updates.

WHAT IS “NSW THOROUGHBRED RACE FIELD INFORMATION”?

“NSW thoroughbred race field information” is any information that identifies, or is capable of identifying, the name/s or number/s of the horses that have been nominated for, or will take part in, a thoroughbred race to be held at a NSW thoroughbred race meeting or that have been scratched or withdrawn from a thoroughbred race to be held at a NSW thoroughbred race meeting.

CONSIDERATIONS REGARDING AUSTRALIAN WAGERING OPERATORS

The following information is provided for Australian-licensed wagering operators and applies equally to all categories of wagering operator, whether totalizator operators, bookmakers or betting exchanges, who hold a wagering licence issued under the laws of any Australian State or Territory.

In considering an application by a wagering operator for approval to use NSW race field information, Racing NSW will take into account whether the operator holds a wagering licence issued under the laws of an Australian State or Territory and other matters required under the Regulations. However, Racing NSW will not take into account:

- whether the applicant’s wagering licence was issued in New South Wales or under the laws of another Australian State or Territory; or
- the location in Australia in which the applicant resides or carries out his or her activities or, in the case of a corporate applicant, in which it has its head office or principal place of business.

INFORMATION FOR AUSTRALIAN WAGERING OPERATORS

When do I have to apply for approval?

The provisions of the Racing Administration Act make it an offence to use NSW thoroughbred race field information without the required approval from Racing NSW.

Applications should be submitted at least 30 days prior to any intended use of NSW

thoroughbred race field information.

Define uses NSW race field information

The Racing Administration Act defines “uses NSW race field information” extremely broadly to include, amongst other things, any oral, visual, written, electronic or other display or communication. Also included is any recording of race field information on betting sheets, computer records and betting tickets, regardless of whether or not such recording is provided to a third party. At a practical level, any wagering operator who fields on NSW thoroughbred racing should assume their wagering activities will involve the use of NSW race field information and apply for approval from Racing NSW.

How long does an approval last?

The initial approvals granted by Racing NSW to wagering operators will apply from the date of approval to 30 June 2009.

After that, approvals will apply for a financial year – i.e. 1 July to 30 June in the following year.

What fees will I have to pay to Racing NSW?

In relation to approvals to use NSW thoroughbred race field information in Australia in the course of the wagering operations of a Australian-licensed wagering operator, the fee payable to Racing NSW will be equal to 1.5% of the wagering operator’s wagering turnover on NSW thoroughbred race meetings to the extent that turnover exceeds an “exempt turnover threshold”.

The “exempt turnover threshold” is an annual turnover on NSW thoroughbred racing of \$5 million over a financial year. Where an approval is granted during the course of a financial year, the threshold is adjusted pro-rata to reflect the proportion of the financial year in which the approval was effective.

For example, as the initial approvals granted by Racing NSW covered the period from 1 September 2008 to 30 June 2009, the “exempt turnover threshold” for the purpose of those approvals will be \$4,166,167 (being ¹⁰/₁₂ths of the full year amount of \$5 million) and fees will only be charged on turnover on NSW thoroughbred racing in excess of that threshold.

For the purpose of assessing the fees payable to Racing NSW where a number of wagering operators are “related”, a single “exempt turnover threshold” applies to the entire “Related Group”.

For example, if a company and its subsidiary both hold wagering licences granted under the laws of an Australian State or Territory and each hold approvals from Racing NSW for a full financial year, in that financial year those two companies would pay fees at a rate equal to 1.5% of the amount by which their combined wagering turnover on NSW thoroughbred racing exceeded \$5 million. As the companies are related they would not each be entitled to a separate exemption on their first \$5 million of turnover on NSW thoroughbred racing. Rather a single \$5 million threshold would apply to their combined turnover on NSW thoroughbred racing.¹

Wagering operators will be regarded as being “related” and so have a single “exempt turnover threshold” for their combined wagering turnover if:

- they are “related bodies corporate” within the meaning of the Corporations Act (i.e. one

¹ Note: The \$5 million threshold assumes that the approval is in place for a full financial year. The amount of the threshold will be adjusted pro-rata for approvals granted during a financial year so that, for example, the first approvals granted by Racing NSW will cover the period from 1 September 2008 to 30 June 2009 so the threshold which applies for that period will be \$4,166,167.

is a subsidiary of the other);

- one of the wagering operators “controls” the other or the same person “controls” both wagering operators (in this context, “control” has the same meaning as in the Accounting Standards);
- a wagering operator is a “key employee” (which has the same meaning as given in the Racing Administration Regulations 2005), a director or an “associate” (within the meaning of the Corporations Act) of another wagering operator;
- they have a common “key employee” or a common director (*e.g. if a person is a director or key employee of two companies both of which have an Australian wagering licence, then those two companies are considered related*);
- the wagering operator or a “key employee” of the wagering operator is a partner in another wagering operation that is conducted as a partnership; or
- if both wagering operators are “related” to a common wagering operator (*e.g. “Company A” and its subsidiary “Company B” are related. If “Mr X” is a director of Company B, he would be related to both Company B and to Company A*).

What turnover is the fee charged on?

All turnover in respect of bets made in the course of the Australian wagering operations of an Australian-licensed wagering operator is relevant to the determination of fees payable to Racing NSW. However fees will only apply to that turnover which is on NSW thoroughbred racing and which exceeds the “exempt turnover threshold” described above.

“Turnover” in this context refers to the total amount of wagers made on the “backers” side of wagering transactions made in relation to NSW thoroughbred races.

Separate fee arrangements will apply to wagering operators who are not licensed in an Australian State or Territory and to wagering operations conducted outside Australia by Australian-licensed wagering operators. Such operators should contact Racing NSW for further information.

How will “bet backs” be treated for the purpose of determining fees?

Unlike totalizators and betting exchanges, wagering operators’ laying fixed-odds bets (i.e. bookmakers’ odds) are “at risk” and can suffer a net loss (i.e. turnover is less than amounts paid to their wagering customers on winning bets) on an event based on the outcome of that event.

A wagering operator laying fixed-odds bets is entitled to a “credit” (i.e. effectively a deduction on their turnover for the purpose of assessing fees) for a genuine bet back if, but only if, the bet back is made via an account (i.e. no “credits” for cash bets) with an Australian-licensed wagering operator who:

- has a race field information use approval from Racing NSW; AND
- is actually paying fees to the NSW racing industry in that financial year.

The onus is on the wagering operator claiming the credit for a bet back to demonstrate that they are entitled to that credit (*e.g. a bookmaker will have to produce the details of the relevant account with the other Australian-licensed wagering operator and be able to prove it was a genuine bet-back meeting the above requirements*). If the wagering operator can not satisfactorily demonstrate that those requirements have been satisfied then the wagering operator will be assessed on the full amount of the bet without any “offsetting credit” for the bet back.

How often will I need to pay fees?

Fee instalments will be paid monthly based on a “monthly instalment rate” determined by Racing NSW for each individual wagering operator. This provides wagering operators with a

degree of certainty in relation to cashflow and reduces their administration.

Each wagering operator will be notified of their monthly instalment rate for the financial year at the same time as they are notified that their application has been approved. In determining a wagering operator's monthly instalment rate, Racing NSW will have regard to matters such as the wagering operator's turnover on NSW thoroughbred racing in previous years and their turnover forecast and also to any unusual events which may have impacted turnover on NSW thoroughbred racing.

If at the end of a calendar quarter, the fees payable by a wagering operator based on their actual "financial year to date" turnover as at the end of that quarter are higher than the instalments that the wagering operator has paid in the financial year to date, the wagering operator will need to make a supplementary payment to Racing NSW equal to the excess.

Fees will be finally determined at the end of the financial year based on the wagering operator's actual turnover on NSW thoroughbred racing and any adjustments required – either additional payments by the wagering operator (to the extent that the final fee is greater than the instalments paid) or refunds by Racing NSW (to the extent that the final fee is less than the instalments paid) will be made once the wagering operator's turnover on NSW thoroughbred racing for the financial year is finally determined.

What financial information will I need to provide to Racing NSW?

At the end of each calendar quarter, wagering operators will need to provide a return certified as being true and correct by the wagering operator (or in the case of a company, by a director) showing the wagering operator's turnover on NSW thoroughbred racing for the relevant quarter and for the financial year to date.

In addition, at the end of the financial year, each wagering operator will need to provide Racing NSW with a certificate from a registered auditor verifying the wagering operator's annual turnover on NSW thoroughbred racing during the financial year. Wagering operators whose turnover on NSW thoroughbred racing in the financial year is less than \$4 million, will have the option of providing a statutory declaration verifying their turnover on NSW thoroughbred racing instead of providing a certificate from a registered auditor.

Racing NSW will have the right to have an audit conducted by an auditor nominated by Racing NSW to verify the amount of fees payable.

What other conditions (i.e. in addition to those regarding fees) will apply to an approval?

In addition to conditions relating to fees, the approval will be subject to conditions designed to enable Racing NSW to administer the arrangements and to discharge its responsibilities and functions regarding the protection of the integrity and reputation of NSW thoroughbred racing industry.

These conditions will include that the wagering operator must:

- maintain a wagering licence under the laws of an Australian State or Territory which authorises it to carry out its wagering activities;
- conduct appropriate identification of account customers;
- have appropriate internal procedures and controls for identifying suspect betting transactions or other matters impacting on racing integrity and for reporting to Racing NSW any matter relating to NSW thoroughbred racing identified through those procedures and controls;
- not open an account for a person who is warned off a racecourse or who is a disqualified person under the rules of racing without prior approval and notify Racing NSW if any person who is warned off a racecourse or who is a disqualified person under the rules of racing attempts to open an account with that wagering operator;

- provide Racing NSW with access to the wagering operator's betting information and analyses in relation to NSW thoroughbred racing if requested by Racing NSW in connection with its functions regarding the integrity and reputation of NSW thoroughbred racing;
- provide Racing NSW with all information in the wagering operator's power, possession or control (including details of any betting accounts) which may be requested by Racing NSW in connection with any investigation or inquiry specified by Racing NSW and provide such other assistance as may be requested by Racing NSW in connection with such investigations or inquiries;
- maintain appropriate internal procedures and controls to enable the wagering operator to comply with the conditions attaching to the approval;
- maintain a proper record and audit trail of all wagers;
- use appropriately secure computer systems in the wagering operations;
- participate in an on-line wagering monitoring system specified by Racing NSW if required by Racing NSW;
- notify Racing NSW of significant events, such as changes in control, changes in financial position or prosecutions or disciplinary action being taken against the wagering operator under any legislation or the rules of racing or betting.

The ability of the wagering operator to comply with such conditions will be considered in assessing applications for approval.

Will my information be treated confidentially?

Information provided by wagering operators in connection with an application for approval or in accordance with conditions attaching to an approval will be regarded as confidential and will not be disclosed to other wagering operators or publicised. This will be subject to exceptions of the kind which commonly apply in relation to confidentiality obligations such as where the disclosure is required by law or is relevant to an investigation by a regulatory body.

Where can I get an application form?

Applications are available on the Racing NSW website www.racingnsw.com.au or by contacting Racing NSW on (02) 9551 7500.

Information which will need to be provided in or accompany the application form for a wagering operator will include:

- the applicant's name and contact details;
- the applicant's proposed use of NSW thoroughbred race field information (including the class of races and the proposed times, places and manner of use);
- details of the applicant's wagering licence;
- details of the types of wagering and bet-types offered by the applicant;
- details of the applicant's wagering activities;
- details of the applicant's wagering turnover on NSW thoroughbred racing for the financial year ended 30 June 2006, the financial year ended 30 June 2007 and the financial year ended 30 June 2008 and, to the extent available, the applicant's forecast or anticipated turnover on NSW thoroughbred racing for the financial year ending 30 June 2009;
- the experience, disciplinary record and repute of the applicant and, where applicable, its directors, close associates and key employees, including whether there is a history of

- integrity breaches and any criminal convictions or disciplinary action under legislation, rules of racing or rules of betting;
- details of the applicant's policy and procedures for identifying suspect betting transactions, fraud or other matters impacting on racing integrity or the reputation of racing; and
 - details of all wagering operators who are "related" to the applicant (as outlined above).

Each wagering operator (including those which are part of a related group) will need to complete a separate application form.

MORE INFORMATION, LEGISLATION AND REGULATIONS

For more information, including a copy of the relevant legislation and regulations, please return to the RFL home page.

ENQUIRIES

All enquiries in the first instance should be directed to Clare Wilson, Race Fields and Wagering Supervisor, Racing NSW (02) 9551 7589