



New South Wales

Racing Administration Amendment (Publication of Race Fields) Regulation 2008

under the

Racing Administration Act 1998

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Racing Administration Act 1998*.

GRAHAM WEST, M.P.,
Minister for Gaming and Racing

Explanatory note

The *Racing Legislation Amendment Act 2006* amends the *Racing Administration Act 1998* (*the Act*) to make further provision with respect to the publication of certain information (whether in New South Wales or elsewhere) about intended races of horses or greyhounds to be held at race meetings on licensed racecourses in New South Wales. In general, the amendments provide that it will be an offence for a person to publish a NSW race field (as defined in the Act) whether in New South Wales or elsewhere unless the person:

- (a) is authorised to do so by a race field publication approval granted by the relevant racing control body (as defined in the Act), and complies with the conditions (if any) to which the approval is subject, or
- (b) is authorised to do so by or under the regulations.

The object of this Regulation is to amend the *Racing Administration Regulation 2005* to prescribe certain matters as a consequence of the commencement of those amendments to the Act. In particular, the Regulation:

- (a) provides that certain publications (such as publications for not-for-profit social purposes (eg office sweeps or fundraising calcuttas) and publications by certain racing bodies and media bodies) are authorised and therefore not unlawful, and
- (b) sets out the fees that may be imposed for race field publication approvals granted by relevant racing control bodies, and
- (c) prescribes the kinds of conditions that a relevant racing control body may impose on such approvals, and
- (d) prescribes the grounds for the cancellation or variation of an approval, and
- (e) deals with applications for approvals, and

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- (f) sets out the criteria that relevant racing control bodies must take into account when determining whether or not to grant an approval.

The Regulation also contains a transitional provision.

This Regulation is made under the *Racing Administration Act 1998*, including sections 33, 33A, 33B and 37 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Racing Administration Amendment (Publication of Race Fields) Regulation 2008*.

2 Commencement

This Regulation commences on 1 July 2008.

3 Amendment of Racing Administration Regulation 2005

The *Racing Administration Regulation 2005* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] Part 3

Insert after Part 2:

Part 3 Publication of NSW race fields

14 Interpretation

(1) In this Part:

approval means a race field publication approval.

approval holder means a person who holds an approval.

betting exchange means a facility, electronic or otherwise, that enables persons:

- (a) to place or accept, through the operator of the betting exchange, wagers with other persons, or
- (b) to place with the operator of the betting exchange wagers that, on acceptance, are matched with opposing wagers placed with and accepted by the operator,

but does not include a facility, electronic or otherwise, that enables persons to place wagers only with a bookmaker or a totalizator.

key employee, in relation to an applicant for or holder of an approval, means a person (whether or not appointed under a contract of service) who is:

- (a) employed in a managerial or supervisory capacity in relation to the conduct of wagering operations by the approval applicant or holder, or
- (b) authorised to make decisions, involving the exercise of his or her discretion, that regulate the operations of the approval applicant or holder in relation to the conduct of wagering operations, or
- (c) concerned or engaged, in any manner, in the conduct of wagering operations by the approval applicant or holder.

licensed wagering operator means a wagering operator that holds a licence or authority (however described) under any State or Territory legislation to carry out its wagering operations (whether in New South Wales or elsewhere).

relevant financial interest means:

- (a) any share in the capital of the business, or

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- (b) any entitlement to receive any income derived from the business, whether the entitlement arises at law or in equity or otherwise.

relevant position means the position of director, manager, and other executive position and secretary, however those positions are designated.

relevant power means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others:

- (a) to participate in any directorial, managerial or executive decision, or
- (b) to elect or appoint any person to any relevant position.

totalizator has the same meaning as in section 6 of the *Totalizator Act 1997*.

wagering operator includes a bookmaker, a person who operates a totalizator and a person who operates a betting exchange.

wagering turnover, in relation to a race or class of races, means the total amount of wagers made on the backers side of wagering transactions made in connection with that race or class of races.

- (2) For the purposes of this Part, a person is a **close associate** of an applicant for, or the holder of, an approval if the person:
- (a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in his or her own right or on behalf of any other person), in the business of the approval applicant or holder, and by virtue of that interest or power is or will be able (in the opinion of the relevant racing control body) to exercise a significant influence over or with respect to the conduct of that business, or
- (b) holds or will hold any relevant position, whether in his or her own right or on behalf of any other person, in the business of the approval applicant or holder.

15 Authorisations to publish NSW race fields: section 33 (b)

- (1) The following publications of NSW race fields, whether in New South Wales or elsewhere, are authorised:
- (a) a publication for a not-for-profit social purpose only (such as a Golden Slipper office sweep or a fundraising calcutta),
- (b) a publication by any of the following bodies for its internal administrative or regulatory purposes:
- (i) a relevant racing control body,

- (ii) a body that corresponds to a relevant racing control body under the legislation of another State or Territory,
 - (iii) the Australian Racing Board,
 - (iv) Harness Racing Australia Inc.,
 - (v) Greyhounds Australasia Limited,
 - (c) a publication by the following bodies for the purposes of a race meeting (such as displays, race books for sale and information for the administration and promotion of the race meeting):
 - (i) a New South Wales racing club that is registered with a relevant racing control body,
 - (ii) a racing club of another State or Territory that is registered with or licensed by a body that corresponds to the relevant racing control body of the other State or Territory,
 - (d) subject to subclause (2), a publication by a public news media body in accordance with a contract or other arrangement with a relevant racing control body (or an agent for that body that manages media rights),
 - (e) a publication (or a publication belonging to a class of publications) authorised by the Minister, by order, on the recommendation of the relevant racing control body.
- (2) The Minister may, by order, on the recommendation of the relevant racing control body, limit (in whole or in part) the operation of an authorisation under subclause (1) (d).
- (3) An authorisation under subclause (1) (e) may be revoked (in whole or in part) by the Minister, by order, on the recommendation of the relevant racing control body.

16 Fees for race field publications approvals: section 33A (2) (a)

- (1) A relevant racing control body may impose a condition on an approval (in addition to any other condition relating to fees) that the holder of the approval must pay a fee to cover the cost of assessing the application for the approval.
- (2) A relevant racing control body may impose a condition on an approval that the holder of the approval must pay the following fees:
 - (a) in relation to a publication in Australia of a NSW race field made in the course of the wagering operations of a licensed wagering operator—a fee that does not exceed 1.5% of the

holder's wagering turnover that relates to the race (or class of races) covered by the approval,

- (b) in relation to any other publication of a NSW race field—a fee determined by the relevant racing control body.

Note. In granting race field publications approvals, and imposing conditions on those approvals, relevant racing control bodies are subject to section 92 of the *Commonwealth Constitution* (Trade within the Commonwealth to be free etc).

17 Other conditions on race field publications approvals: section 33A (2) (b)

Note. An approval may relate to a single race or a class of races. A class may be defined in many ways including geography or time.

The following kinds of conditions are prescribed as permissible conditions:

- (a) conditions specifying the duration of the approval (including conditions that the approval operates until it expires or is cancelled),
- (b) conditions specifying the manner of publication that is authorised under the approval,
- (c) conditions specifying events that must be notified to the relevant racing control body, including but not limited to the following events:
- (i) a change in the persons or bodies having a controlling interest in the approval holder,
 - (ii) a change in financial circumstances of the approval holder (such as the insolvency of the approval holder or, for a wagering operator, a significant improvement in wagering turnover),
 - (iii) the commencement (in New South Wales or elsewhere) of any prosecution or disciplinary action against the approval holder under any legislation or any rules of racing or betting,
- (d) conditions requiring the approval holder to provide the relevant racing control body with information and access to enable that body to audit and assess the holder's compliance with the approval (including access to approval holder's financial and wagering records),
- (e) conditions specifying the times within which the approval holder must pay any fees due under the approval (for example, monthly),
- (f) if the approval holder is a wagering operator—conditions requiring the approval holder to provide to the relevant

racing control body details of the approval holder's wagering turnover and specifying the manner and form (for example, electronically) and the times within which those details must be provided to the relevant racing control body (for example, monthly),

- (g) if the approval holder is a wagering operator that conducts wagering operations in Australia—a condition that requires the approval holder to hold (and continue to hold) an appropriate licence or authority (however described) under a relevant State or Territory law that authorises it to carry out those wagering operations,
- (h) if the approval holder is a wagering operator—conditions relating to the preservation of the integrity and reputation of the relevant kind of racing in New South Wales, including, but not limited to, conditions relating to the following:
 - (i) requiring the approval holder to provide the relevant racing control body with access to all the approval holder's betting information and analyses in relation to the races covered by the approval,
 - (ii) requiring the approval holder to furnish information to any inquiries or investigations specified by the relevant racing control body within the time specified by the relevant racing control body,
 - (iii) requiring the approval holder to permit the relevant racing control body to monitor wagering activity that relates to the races covered by the approval,
 - (iv) requiring the approval holder to co-operate with any inquiry or investigation specified by the relevant racing control body (including by providing requested details of any betting account to the inquiry or investigation),
 - (v) requiring the approval holder not to open or maintain any account for a person who has been warned off a racecourse or who is disqualified from participating in any racing activities by a relevant racing control body,
 - (vi) requiring the approval holder not to open an account for a person who has not properly established their identity (for example, by way of the 100 point identification checks commonly used by banks),
 - (vii) requiring the approval holder to use a secure computer system for the holder's wagering

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- operations to ensure that a proper audit trail of all wagers is kept,
- (viii) requiring the approval holder to participate in any on-line wagering monitoring system specified by the relevant racing control body.

18 Grounds for cancellation or variation of approvals: section 33A (4)

- (1) The following grounds for the cancellation or variation of an approval are prescribed:
- (a) the approval holder has breached a condition of the approval,
 - (b) there has been a change in the persons that have a controlling interest in the approval holder,
 - (c) the approval holder or a key employee of the approval holder has been convicted of an offence whether in New South Wales or elsewhere,
 - (d) disciplinary action has been taken against the approval holder or a key employee of the approval holder under any legislation or any rules or betting of racing whether in New South Wales or elsewhere,
 - (e) the approval holder has employed or engaged a person as a key employee who has a criminal record or has been the subject of disciplinary action under any legislation or any rules of racing or betting whether in New South Wales or elsewhere.
- (2) Without limiting subclause (1), a change in financial circumstances of the approval holder (such as a significant improvement in the wagering turnover of the holder or the insolvency of the holder) is prescribed as a ground for the variation of an approval.

19 Applications for race field publications approvals: section 33B (2)

- (1) An approval application must:
- (a) be in writing, and
 - (b) be in a form approved by the relevant racing control body, and
 - (c) contain the following information:
 - (i) the name and contact details of the applicant,
 - (ii) details of the proposed publication or publications of NSW race fields (including the race or class of

aces to which the approval is to relate and the time and manner of publication), and

- (d) if the applicant is a wagering operator, contain the following information:
- (i) details of the applicant's licence to operate (whether under legislation of New South Wales or elsewhere),
 - (ii) details of the types of wagering offered by the applicant,
 - (iii) details of the applicant's history of wagering operations and publications of NSW race fields (including details of the applicant's past wagering turnover in relation to racing in New South Wales),
 - (iv) details of the criminal history (if any) of the key employees and close associates of the applicant that is known to the applicant,
 - (v) details of any disciplinary action under any legislation or any rules or betting of racing (whether in New South Wales or elsewhere) that has been taken against the key employees and close associates of the applicant that is known to the applicant,
 - (vi) details of the applicant's policy and procedure for dealing with racing integrity issues relating to racing in New South Wales (such as suspect betting transactions and frauds).

- (2) An approval application is to be made at least 30 days before the race to which the approval relates (or if the approval is to relate to a class of races, the first race belonging to that class) is to take place.

20 Criteria for determination of applications: section 33B (3) (b) and (4)

In determining an approval application, the relevant racing control body:

- (a) must take into account whether:
- (i) the applicant is a fit and proper person to hold the approval, and
 - (ii) granting the approval will undermine the integrity of the conduct in New South Wales of the racing relevant to the control body concerned, and

- (b) must not take into account the location in Australia that the applicant:
 - (i) resides in or carries out his or her activities (in relation to an individual), or
 - (ii) has its head office or principal place of business (in relation to a corporation), and
- (c) in relation to an applicant that is a wagering operator, must take into account whether or not the applicant holds a licence or authority (however described) under State or Territory legislation to carry out its wagering operations (whether in New South Wales or elsewhere), and
- (d) in relation to an applicant that is a licensed wagering operator, must not take into account whether the applicant is licensed under the legislation of New South Wales as opposed to the legislation of another State or Territory.

[2] Part 4

Re-number Part 3 (Miscellaneous) and clauses 14–17 (within that Part) as Part 4 and clauses 21–24, respectively.

[3] Clause 25

Insert after clause 24 (as re-numbered by item [2]):

25 Transitional

- (1) A person does not commit an offence against section 33 of the Act (as inserted by the *Racing Legislation Amendment Act 2006*) during the period commencing on 1 July 2008 and ending on 1 September 2008.
- (2) Section 33 of the Act (as in force immediately before its substitution by the *Racing Legislation Amendment Act 2006*) continues to have effect until 1 September 2008.