

Race Fields Legislation – Australian Wagering Operators

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INFORMATION REGARDING “RACE FIELDS” FOR AUSTRALIAN WAGERING OPERATORS

The Betting and Racing Act 1998 (NSW) requires the approval of Racing NSW to Use any NSW Thoroughbred Race Field information (whether that use occurs in NSW or elsewhere) unless the Use is specifically exempt under the Regulations.

It is an offence under the Betting and Racing 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 A “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or will take part in, a thoroughbred race to be held at a NSW thoroughbred race meeting or that have been scratched or withdrawn from a thoroughbred race to be held at a NSW thoroughbred race meeting.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, which 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, 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 Betting and Racing Act make it an offence to Use NSW Thoroughbred Race Field Information without the required approval from Racing NSW. An application should be submitted at least 30 days prior to the intended Use of NSW Thoroughbred Race Field Information.

Define uses of NSW Race Field Information?

The Betting and Racing Act defines “Use of 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?

Approvals apply for a financial year – i.e. 1 July to 30 June in the following year, or part thereof if the application is received during the course of the financial 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 an Australian-licensed wagering operator, the Approval Holder must pay to Racing NSW a fee of an amount equal to the following percentages in respect of the Approval Period:

- (1) 1% of the Approval Holder’s Under Exempt Threshold Turnover;
- (2) as to the Approval Holder’s Over Exempt Threshold Turnover:
 - (a) 2% in respect of any race held at a Standard Race Meeting (other than Turnover of wagers made at Totalizator Derived Odds);
 - (b) 2.5% in respect of any race held at a Premium Race Meeting (other than Turnover of wagers made at Totalizator Derived Odds);
 - (c) 3% in respect of Turnover of wagers at any race held at a Premier Race Meeting (other than Turnover of wagers made at Totalizator Derived Odds),
 - (d) 2.5% in respect of Turnover of wagers made at Totalizator Derived Odds on any race held at a Standard Race Meeting;
 - (e) 3% in respect of Turnover of wagers made at Totalizator Derived Odds on any race held at a Premium Race Meeting; and

(f) 3.5% in respect of Turnover of wagers made at Totalizator Derived Odds on any race held at a Premier Race Meeting.

(Premier/Premium/Standard Race Meetings: For example, if a race meeting is held at Rosehill that has at least one race with prizemoney of \$150,000 or more and other race meetings are held in NSW on the same day at say Kembla Grange and Wagga Wagga that do not have a race with prizemoney of \$150,000 or more, the fee shall be an amount equal to the applicable Premium Race Meeting fee of the Approval Holder's Turnover on the Rosehill Race Meeting and the amount equal to the applicable Standard Race Meeting fee of the Approval Holder's Turnover on the Kembla Grange and Wagga Wagga race meetings (subject to the application of the Approval Holder's Exempt Turnover Amount)). The same principles apply where there is a Premier Race Meeting involved.

The "exempt turnover threshold" is an annual net 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, an application is received for a commencement date of 1 September 2016, the approval granted by Racing NSW will cover the period from 1 September 2016 to 30 June 2017, the "exempt turnover threshold" for the purpose of this approval 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 the Approval Holder and its subsidiary company would collectively pay fees at a rate equal to the Standard Race Meeting fee (or the Premium Race Meeting fee when required in accordance with clause 2.1) of the amount by which their combined NSW Thoroughbred Turnover (net of any Bet Back credits) exceeded \$5 million (subject to the conditions of clause 2.2(f)). As the Approval Holder and its subsidiary company are Related they would not each be entitled to the benefit of paying 1% on their first \$5 million of NSW Thoroughbred Turnover (net of any Bet Back credits). Rather a single \$5 million threshold would apply to their combined NSW Thoroughbred Turnover (net of buy back credits) and Racing NSW would allocate that single threshold between the Approval Holder and its subsidiary.)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;
- 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 Betting and Racing Regulations 2012), a director or an "associate" (within the

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, an approval granted by Racing NSW on 1 September 2016 will cover the period from 1 September 2016 to 30 June 2017 so the threshold which applies for that period will be \$4,166,667.

- 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.

“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 fields 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 cannot 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?

The frequency of Fee instalments to be paid is determined by the Approval Holder’s assessed NSW Thoroughbred Turnover for the Approval period:

1. **Approval Holder’s whose assessed NSW Thoroughbred Turnover is above \$5 million for the Approval period** - the Approval Holder will be required to pay 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 cash flow 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, 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 had paid in the financial year to date, the wagering operator will need to make a supplementary payment to Racing NSW equal to the excess.

If at the end of calendar quarter the fees payable by a wagering operator based on their actual “financial year to date” turnover as at the end of the quarter is less than the instalments that the wagering operator had paid in the financial year to date, Racing NSW may, in its absolute discretion, refund the amount of the excess instalments.

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.

2. Approval Holder’s whose assessed NSW Thoroughbred Turnover is between \$2 million and less than \$5 million for the Approval period - the Approval Holder will be required to pay a “quarterly instalment” based on the Approval Holder’s actual Net assessable turnover during the Quarter.
3. Approval Holder’s whose assessed NSW Thoroughbred Turnover is less than \$2 million for the Approval period - the Approval Holder will be required to pay a “bi-annual instalment” based on the Approval Holder’s actual Net assessable turnover during the six monthly period.

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

At the end of each calendar quarter, wagering operators whose net assessable turnover has been assessed at over \$2 million in a financial year (or pro-rata thereof) are required 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 for Standard race meetings and for Premium race meetings. Also required is a breakdown of the Approval Holder’s NSW Thoroughbred Turnover detailing the amount wagered on each race meeting held in New South Wales during the quarter.

In addition, at the end of the financial year, such wagering operators 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 net assessable turnover has been assessed below \$2 million are required to provide a Bi-annual 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 period 1 July to 31 December.

In addition, at the end of the financial year, such wagering operators will need to provide Racing NSW with 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 a betting account or permit transactions on a betting account if a person is warned off a racecourse or who is a disqualified person under the Rules of Racing without prior approval. If any person who is warned off a racecourse or who is a disqualified person under the Rules of Racing attempts to open a betting account or transact on a betting account with a wagering operator they must notify Racing NSW;
- 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 attached 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.racingsnw.com.au or by contacting Racing NSW on (02) 9551 7650.

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 and a copy of such;
- details of the types of wagering and bet-types offered by the applicant;
- details of the applicant's wagering activities;
- details to the extent available, the applicant's forecast or anticipated turnover on NSW thoroughbred racing for the financial year to which the approval will relate;
- 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 Race Fields Legislation home page.

ENQUIRIES

All enquiries in the first instance should be directed to Kyle Bettler, Race Fields and Wagering, Racing NSW (02) 9551 7650 or rf@racingnsw.com.au.