

Racing Administration Regulation 2012

[2012-410]



New South Wales

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New South Wales

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Racing Administration Regulation 2012



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Racing Administration Regulation 2012*.

2 Commencement

This Regulation commences on 1 September 2012 and is required to be published on the NSW legislation website.

Note—

This Regulation replaces the *Racing Administration Regulation 2005* which is repealed on 1 September 2012 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definition

(1) In this Regulation:

the Act means the *Racing Administration Act 1998*.

(2) Notes included in this Regulation do not form part of this Regulation.

Part 2 Responsible gambling practices

Division 1 Problem gambling signage and information

4 Definitions

In this Division:

Authority means the Independent Liquor and Gaming Authority constituted under the *Gaming and Liquor Administration Act 2007*.

problem gambling information means the Gambling Help line phone number operated under contractual arrangements made by the NSW Office of Liquor, Gaming and Racing.

5 Approval of gambling information brochures

(1) The Authority may approve one or more pamphlets or brochures containing problem

gambling information in the English language (a ***problem gambling information brochure***).

- (2) A problem gambling information brochure must contain advice in the Arabic, Chinese, Korean, Turkish and Vietnamese languages that:
 - (a) indicates the substance of the information contained in English in the brochure, and
 - (b) advises that, on request, the information will be supplied in the relevant language by a non-proprietary association that conducts a race meeting at a licensed racecourse.
- (3) Subclause (2) does not prevent a notice under this clause containing other information.
- (4) The Authority may approve one or more pamphlets or brochures containing problem gambling information in the Arabic, Chinese, Korean, Turkish and Vietnamese languages (a ***community language problem gambling information brochure***).
- (5) The Authority may vary or withdraw any approval given under this clause.

6 Provision of problem gambling information brochures

- (1) A non-proprietary association that conducts a race meeting at a licensed racecourse must ensure that:
 - (a) copies of at least one type of problem gambling information brochure approved by the Authority under clause 5 (1) are made available in each part of the racecourse on which betting is conducted, and
 - (b) those copies are displayed in such a manner and in such a place that it would be reasonable to expect that a person in the part of the racecourse in which the brochures are displayed would be alerted to their presence.

Maximum penalty: 50 penalty units.

- (2) The brochures must be in a form approved by the Authority and be obtained from the NSW Office of Liquor, Gaming and Racing.

7 Provision of community language problem gambling information brochures

- (1) A person may request a non-proprietary association that conducts a race meeting at a licensed racecourse to supply a community language problem gambling information brochure approved by the Authority under clause 5 (4) in one of the languages specified in that subclause.
- (2) A non-proprietary association must supply a community language problem gambling information brochure in accordance with a request made under subclause (1) as soon

as practicable after being requested to do so.

Maximum penalty: 50 penalty units.

- (3) The brochures must be in a form approved by the Authority and be obtained from the NSW Office of Liquor, Gaming and Racing.

8 Gambling information and warnings

A licensed bookmaker must ensure that each betting ticket supplied by the bookmaker to a person contains the following:

Think! About your choices

Call Gambling Help

1800 858 858

www.gamblinghelp.nsw.gov.au

Maximum penalty: 50 penalty units.

9 Counselling signage—notice to be displayed

- (1) A non-proprietary association that conducts a race meeting at a licensed racecourse must:
- (a) display a notice that complies with this clause in the vicinity of the main entrance to the racecourse and in each part of the racecourse on which betting is conducted, and
 - (b) display the notice in such a manner and in such a place that it would be reasonable to expect that a person using the part of the premises in relation to which the notice is displayed would be alerted to its contents.

Maximum penalty: 50 penalty units.

- (2) The notice must contain the following:

Think! About your choices

Gambling More, enjoying it less?

For free and confidential information and advice about problem gambling, please contact Gambling Help

1800 858 858

www.gamblinghelp.nsw.gov.au

- (3) The notice must be in a form approved by the Authority and be obtained from the

NSW Office of Liquor, Gaming and Racing.

10 ATM and EFT signage

- (1) A non-proprietary association that conducts a race meeting at a licensed racecourse must display a notice in accordance with this clause in a prominent position on or adjacent to each automatic teller machine (ATM) and electronic funds transfer facility (EFT) located at the racecourse.

Maximum penalty: 50 penalty units.

- (2) The notice must contain the following:

Think! About your choices

Call Gambling Help

1800 858 858

www.gamblinghelp.nsw.gov.au

- (3) Subclause (2) does not prevent a notice under this clause containing other information.
- (4) The matter contained in the notice must be in letters and figures of not less than 0.2 centimetres in height.
- (5) The notice may consist of a permanently visible light-emitting display that forms part of the machine or facility.

Division 2 Gambling advertising and inducements

11 Definitions

In this Division:

gambling advertising means advertising that gives publicity to, or otherwise promotes or is intended to promote, participation in gambling activities.

publish has the same meaning as it has in section 27 of the Act.

12 Prohibitions on gambling-related advertising

- (1) A non-proprietary association or licensed wagering operator, or an employee or agent of a non-proprietary association or licensed wagering operator, must not publish any gambling advertising:
 - (a) that encourages a breach of the law, or
 - (b) that depicts children gambling, or

- (c) that is false, misleading or deceptive, or
- (d) that suggests that winning will be a definite outcome of participating in gambling activities, or
- (e) that suggests that participation in gambling activities is likely to improve a person's financial prospects, or
- (f) that promotes the consumption of alcohol while engaging in gambling activities, or
- (g) that is not published in accordance with decency, dignity and good taste and (in the case of a television commercial) in accordance with the *Commercial Television Industry Code of Practice*, registered by the Australian Communications and Media Authority, as in force at the time the gambling advertising is published, or
- (h) that offers any credit, voucher or reward as an inducement to participate, or to participate frequently, in any gambling activity (including as an inducement to open a betting account).

Maximum penalty: 50 penalty units.

- (2) A non-proprietary association or licensed wagering operator, or an employee or agent of a non-proprietary association or licensed wagering operator, must not publish any gambling advertising in writing in a newspaper, magazine, poster or other printed form that does not contain the following:

Think! About your choices

Call Gambling Help

1800 858 858

www.gamblinghelp.nsw.gov.au

Maximum penalty: 50 penalty units.

- (3) A person other than a non-proprietary association or licensed wagering operator, or an employee or agent of a non-proprietary association or licensed wagering operator, must not publish any advertising that does any of the things referred to in subclause (1) (a)–(h).

Maximum penalty: 50 penalty units.

- (4) Subclause (3) does not apply if the advertising relates to a non-proprietary association or licensed wagering operator and the publication of the advertising was approved in writing by the non-proprietary association or licensed wagering operator or an employee or agent of the non-proprietary association or licensed wagering operator.
- (5) A non-proprietary association or licensed wagering operator, or an employee or agent

of a non-proprietary association or licensed wagering operator, must not enter into or extend the duration of any contract or arrangement for the publication of gambling advertising that does not comply with this clause.

Maximum penalty: 50 penalty units.

13 Gambling inducements

A non-proprietary association or licensed bookmaker, or an employee or agent of a non-proprietary association or licensed bookmaker, must not offer or supply any free or discounted liquor as an inducement to participate, or to participate frequently, in any gambling activity conducted at a racecourse.

Maximum penalty: 50 penalty units.

Part 3 Use of NSW race field information

14 Interpretation

(1) In this Part:

approval means a race field information use approval.

approval holder means a person who holds an approval.

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.

relevant financial interest means:

- (a) any share in the capital of the business, or
- (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, secretary or other executive position, 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.

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 use NSW race field information: section 33 (1) (b)

- (1) The following uses of NSW race field information, whether in Australia or elsewhere, are authorised:
 - (a) a use for a not-for-profit social purpose only (such as a Golden Slipper office sweep or a fundraising calcutta),
 - (b) a use 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 use 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 use 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 use (or a use belonging to a class of uses) 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 information use 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 held by a licensed wagering operator that the operator must pay the following if NSW race field information is used in Australia in the course of the operator's wagering operations:
- (a) a fee that does not exceed 4% of the operator's wagering turnover in relation to races covered by the approval (but only on wagering turnover derived from wagers laid by the operator at totalizator derived odds),
 - (b) a fee that does not exceed of 2.5% of the operator's wagering turnover in relation to races covered by the approval (on wagering turnover derived from wagers laid by the operator at odds other than totalizator derived odds),
 - (c) any amount of GST payable in respect of a fee payable under paragraph (a) or (b).
- (2A) A relevant racing control body may impose a condition on an approval that the holder of the approval must pay a fee determined by the relevant racing control body in relation to the use of NSW race field information, other than a use for which a fee is payable under subclause (2).
- (3) In this clause:

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

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

totalizator derived odds means any odds derived from or contingent on totalizator odds but does not include totalizator odds.

totalizator odds means any odds which are dependent on the result of the working of a totalizator on an event or contingency.

Note—

In granting race field information use 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 information use 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.

- (1) 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 use 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 the 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 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,
 - (ix) requiring the approval holder to accept a bet, up to a maximum amount specified in the condition, at odds that are publicly displayed by the approval

holder (including by requiring the approval holder to do anything to comply, or not do anything to avoid compliance, with the condition, such as closing or placing restrictions on a person's betting account).

(2) Despite clause 18, an approval may be varied by a relevant racing control body to impose a condition referred to in clause 17 (1) (h) (ix) at any time on the grounds that the relevant racing control body considers that the imposition of the condition is necessary.

(3) In this clause:

publicly display odds, means to display odds to the public generally including, but not limited to:

(a) on a semaphore board, or

(b) at an electronic betting terminal, or

(c) on a website without requiring a person to identify himself or herself (for example, by requiring a person to log in or to provide personal information).

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 of racing or betting 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.

(3) Without limiting subclause (1), a change in the maximum race field information use fee is prescribed as a ground for the variation of an approval if the purpose of the variation is to give effect to a change in the race field information use fee.

(4) In this clause:

maximum race field information use fee means the amount prescribed by clause 16 (2) (a).

race field information use fee means any fee imposed by a relevant racing control body in relation to a use in Australia of NSW race field information made in the course of the wagering operations of a licensed wagering operator.

19 Applications for race field information use 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 use or uses of NSW race field information (including the race or class of races to which the approval is to relate and the time and manner of use), 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 uses of NSW race field information (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 of racing or betting (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 in which the applicant:
 - (i) resides 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.

Part 4 Miscellaneous

21 Exemption from offence provision relating to on-line service providers: section 30 (4)

- (1) Any person who:
 - (a) is a member of the Internet Industry Association, and
 - (b) is bound by the codes of practice prepared by that Association,is exempt from the operation of section 30 (3) of the Act.
- (2) If the Minister is satisfied that any such member has failed to comply with a code referred to in subclause (1), the Minister may, by notice in writing given to the member, exclude the member from the exemption under this clause for such period as is specified in the notice.

22 Remedial orders

The following offences are prescribed for the purposes of section 35A of the Act:

- (a) offences against sections 29, 30 and 33 of the Act,

(b) offences against clauses 6, 7, 9, 10, 12 and 13 of this Regulation.

23 Savings

Any act, matter or thing that, immediately before the repeal of the *Racing Administration Regulation 2005*, had effect under that Regulation continues to have effect under this Regulation.

24 Transitional

The amendment of clause 16 by the *Racing Administration Amendment (Fees) Regulation 2013* does not apply to a race held before the commencement of that amendment.