



POLICY STATEMENT

PROVISION OF PERMITS TO VETERINARIANS TO PROVIDE SERVICES IN THE NEW SOUTH WALES THOROUGHBRED RACING INDUSTRY

NSW Local Rules 82C and 82D

1. Policy Statement

This policy is developed to assist veterinarians in understanding the protocols and obligations associated with the implementation of NSW LR82C, which is due to be implemented into NSW on the following dates.

- Metropolitan Area – 1 September 2015
- Provincial & Country Area – 1 December 2015

The policy sets out operational protocols and rules relating to the implementation.

2. Legislation

Racing NSW is the body appointed by the **Thoroughbred Racing Act 1996** to control and supervise Thoroughbred Racing in New South Wales. Racing NSW's powers include the power to license or register persons associated with racing.

Section 42 of the Act details the right of a person aggrieved by the decision of a racing authority to appeal to the Racing NSW Appeals Panel.

Section 15 of the **Racing Appeals Tribunal Act 1983** details the right of a person aggrieved by a decision of the Racing NSW Appeals Panel or Racing NSW to appeal to the Racing Appeals Tribunal.

3. Rules of Racing

NSW LR82C mandates that no veterinarian shall provide veterinary services, other than emergency services, to a thoroughbred horse in training &/or competing in NSW unless that veterinarian has been issued a permit by Racing NSW. **LR82C** states;

LR 82C (1) Subject to subrule (2):

- a) *No veterinarian shall provide veterinary services to a horse in training and/or competing in New South Wales unless that veterinarian is registered with the Veterinary Practitioners Board of NSW or equivalent interstate body and has been issued a permit by Racing NSW.*
 - b) *A trainer shall not allow a horse under his care or control in New South Wales to receive veterinary services from any person other than a veterinarian who is registered with the Veterinary Practitioners Board of NSW or equivalent interstate body and who has been issued a permit by Racing NSW.*
- (2) *Subrule (1) of this rule does not apply in emergency circumstances where the health or welfare of a horse is at risk if veterinary services are not provided immediately and a veterinarian who has been issued a permit by Racing NSW is not available to provide those services.*

(3) For the purposes of this rule and LR 82D:

“permit” is a permit as referred to in the definition of “Licence” in the Rules and is subject to the Policy Statement that appears at the end of these Local Rules;

“veterinary services” means any services (including the prescribing or provision of any medication) provided to or in connection with a horse by a person who is a registered veterinarian.

4. Powers to Inspect, Observe or Search

In light of the concerns expressed by veterinarians in respect of privacy considerations in relation to their premises and surgery, Racing NSW is prepared to put in place procedures that have to be followed by the Stewards in exercising their powers under AR8B to enter and search premises of licensed persons (a veterinarian that has been issued a permit by Racing NSW is a licensed person for the purposes of the *Thoroughbred Racing Act 1996* (NSW) and the Rules of Racing).

Accordingly, **AR8B** is subject to LR82D and the matters set out in in the remainder of this clause 4.

AR8B states;

AR 8B. *The Stewards shall have the power at any time to enter upon the premises occupied by or under the control of a licensed person and used in any manner in relation to any licence (hereinafter referred to as the premises) to:*

- (i) *Inspect, observe and search the premises and also search any licensed person thereon.*
- (ii) *Examine any horse, take possession thereof and cause such horse to be-*
 - (a) *removed from the premises and detained ; or*
 - (b) *confined to, or otherwise detained at, or within, the premises – for such period and on such terms and for such purposes as they consider necessary.*
- (iii) *Examine the premises and any article or thing situated thereon and take possession of any article or thing found as the result of such search and remove from the premises any article or thing of which possession has been taken and retain the same for such period as Stewards consider necessary under these rules.*

4.1 Premises

As it relates to veterinarians, the power for Racing NSW to inspect, observe and search shall be limited to a veterinarian being located on or adjacent to the premises of a licensed trainer or a racecourse and may include the search and/or inspection of the

veterinarian's vehicle or person. It is a requirement of the veterinarian to comply with any request made by Racing NSW in those circumstances.

For example, if a veterinarian is at the stables of a licensed trainer and the Racing NSW Stewards attending the stables witness the veterinarian and trainer injecting a horse with the veterinarian then putting the needle in his car which is parked in the carpark outside the stables, then the Racing NSW Stewards will be able to search the veterinarian's person, his/her bag and his/her car (which is adjacent to, not on the stables of the licensed trainer) and take possession of items relevant to whether there has been a breach of the Rules of Racing.

4.2 Veterinary Premise or Surgery

Racing NSW acknowledges privacy considerations in respect to the enacting of AR8B as it relates to a veterinary premise or surgery. Having regard to this, Racing NSW will adhere to the following protocol as set out in clause **4.3** – which shall require the issue of a “Permit to Search” – prior to conducting a search or inspection of a premise or surgery occupied by or under the control of a veterinarian who has been issued a permit by Racing NSW. Such a search or inspection may include, but is not limited to, a search or inspection of the veterinarian's vehicle or person. For the avoidance of doubt, clause 4.3 does not refer to a search covered by clause 4.1.

4.3 Permit to Search Protocol

4.3.1 Upon having just cause to do so, Racing NSW shall make an application to the Principal Member of the Racing NSW Appeals Panel for the issue of a Permit to Search a premise or surgery occupied by or under the control of a veterinarian who has been issued a permit by Racing NSW.

4.3.2 The Principal Member shall give consideration to the application having regard to the just cause being shown by the Stewards.

4.3.3 The Principal Member shall have the power to grant, deny or amend the terms of the application as he/she sees fit.

4.3.4 Upon a Permit to Search being granted by the Principal Member, the permit must include the following details.

- (i) Name of the veterinarian in respect of which the premise or surgery is to be searched
- (ii) Address of the premise or surgery to be searched
- (iii) Purpose of the search including specific item/s being searched for
- (iv) Scope of the search including what items are permitted to be taken into the possession of Racing NSW
- (v) In respect to electronic veterinary records the permit shall outline the process to be undertaken in respect to the imaging of data from the

veterinarian's electronic records such as mobile devices and computers. Racing NSW shall take all reasonable measures to ensure that the veterinarian's business is not impacted by having mobile devices and computers taken away from the premises or surgery. Whenever possible Racing NSW shall endeavour to have electronic records imaged on site and, if it is necessary to retain possession of mobile devices and computers, will endeavour to do so outside business hours. Racing NSW will implement appropriate chain of custody and secure storage mechanisms in respect of any items retained by Racing NSW.

4.3.5 The search of the premises or surgery is to be conducted by Racing NSW Stewards and/or Investigators and must be done so in the presence of the Racing NSW Official Veterinarian, his/her nominated independent veterinarian or a Veterinary Practitioners Board Inspector.

4.3.6 Subsequent to the Permit to Search being executed, Racing NSW shall inform the Principal Member that the search has been completed and a report prepared to ensure that such search was conducted in accordance with the permit. The report shall include a list of items taken by Racing NSW and data imaged.

4.3.7 Definition of Just Cause

Refers to the reasonable grounds upon which Racing NSW shall apply for a Permit to Search a premise or surgery occupied by or under the control of a veterinarian who has been issued a permit by Racing NSW. Reasonable grounds include:

- (i) Reasonable suspicion of Racing NSW that, in connection with thoroughbred racing, the veterinarian has been procuring, purchasing, supplying, administering or otherwise dealing with substances that are banned by the Rules of Racing.
- (ii) The finding of a substance banned by the Rules of Racing in a sample taken from a horse in which Racing NSW has a reasonable suspicion was treated by the veterinarian.
- (iii) Statistical and/or scientific information obtained or produced by Racing NSW whereby a licensed person or persons utilising the veterinary services of the veterinarian has a significantly increased level of success.
- (iv) Reasonable suspicion of Racing NSW of any unethical or banned practice or action in connection with thoroughbred racing by the veterinarian.

LR82D dealing with the above process states as follows:

LR 82D *Prior to Stewards exercising their powers under AR 8B in respect of a premises or surgery occupied by or under the control of a veterinarian who has been issued a permit by Racing NSW, the following shall apply:*

(1) Racing NSW shall make an application to the Principal Member for the issue of a permit to search.

(2) The Principal Member shall have the power to, and shall:

- (a) grant the application and issue a permit to search in terms sought by Racing NSW or as otherwise amended by the Principal Member; or*
- (b) reject the application and not issue a permit to search.*

(3) A permit to search shall contain the following information:

- (a) the name of the veterinarian who has been issued a permit by Racing NSW;*
- (b) the address of the premises or surgery occupied by or under the control of the veterinarian who has been issued a permit by Racing NSW;*
- (c) the purpose of the search including specific item/s being searched for;*
- (d) the scope of the search including specific item/s that are permitted to be taken into the possession of Racing NSW; and*
- (e) an outline of the process to be undertaken by Racing NSW in respect of the imaging of data from the electronic records of the veterinarian who has been issued a permit by Racing NSW (if relevant).*

(4) This rule does not apply to any search of the vehicle or person of a veterinarian who has been issued a permit by Racing NSW conducted by Stewards while that veterinarian is located on a trainer's approved premises or racecourse.

(5) For the purposes of this rule:

“permit to search” means a permit to search issued by the Principal Member prior to Stewards exercising their powers under AR 8B in respect of a premises or surgery occupied by or under the control of a veterinarian who has been issued a permit by Racing NSW;

“Principal Member” means the Principal Member of the Appeal Panel appointed pursuant to section 46 of the Thoroughbred Racing Act 1996 (NSW).

5. Protocols for Dealing with Irrelevant or Legally Privileged Information

Upon Racing NSW obtaining data or records from a veterinarian such data is to be placed into the exclusive possession of Racing NSW’s Legal Department for consultation with the veterinarian or the veterinarian’s legal representative to identify information which may be considered irrelevant or legally privileged.

Racing NSW’s Legal Department shall exclude any irrelevant or legally privileged data or records (as reasonably determined by Racing NSW’s Legal Department) before providing the data or records to Racing NSW.

- 5.1** Irrelevant information is communications made or documents prepared that are not relevant to the Racing NSW investigation.
- 5.2** Legally privileged information is communications made or documents prepared for the dominant purpose of:
- (i) the veterinarian’s legal representative providing legal advice to the veterinarian; or
 - (ii) the veterinarian being provided with legal services in relation to current or anticipated legal proceedings.

6. Stewards’ Investigations and Inquiries and Appeals

6.1 Stewards’ Investigations and Inquiries

The primary role of the Stewards outside the running of race meetings is to investigate possible breaches of the Rules of Racing. This frequently involves investigating whether horses have been administered prohibited substances or received treatment in breach of the Rules of Racing including treatment on race day.

The Stewards conduct preliminary investigations, including interviewing persons and taking statements, in order to form a view whether a formal Inquiry should be commenced. When a formal Inquiry is commenced, witnesses and the person(s) alleged to have breached the Rules of Racing are required to attend Racing NSW’s offices to give evidence. After consideration of all of the evidence, the Stewards then determine whether charges should be laid.

When charges are laid, a date is set for the hearing of those charges by the Stewards. The persons charged are entitled to require any witnesses relied upon to attend for cross-examination. At the conclusion of that hearing of the charges, the Stewards will consider all of the evidence and determine whether the charges are proven and, if so,

what penalty should be applied. The penalties can range from a reprimand, a fine not exceeding \$100,000, a suspension and, in the most severe of cases, a disqualification.

Inquiries and investigations conducted by Racing NSW, involving the attendance of a veterinarian, shall be done so in the presence (either in person or by tele-conference) of the Racing NSW Official Veterinarian or his/her duly authorised veterinarian representative. The veterinarian shall be provided with reasons as to why they are required to attend the inquiry or investigation and whether their attendance is for a possible contravention of the rules or as a witness. In respect to emergency circumstances, the Racing NSW Official Veterinarian shall assess and provide evidence as to what is considered to be an emergency circumstance.

6.2 Appeal Panel

A person that is disqualified, suspended or fined more than \$10 by the Stewards has a right of appeal to the Appeal Panel which is appointed by Racing NSW pursuant to Part 4 of the *Thoroughbred Racing Act 1996* (NSW). The Appeal Panel is presided over by the Principal Member who must be an Australian lawyer of at least 7 years standing. The current Principal Member is Mr R Clugston who was a Magistrate for many years and also includes two Senior Counsels. Racing NSW will appoint a senior veterinarian to the Appeal Panel who will sit on any appeals relating to an appeal by a veterinarian that has been found guilty of breaches of the Rules of Racing.

Any appeal to the Appeal Panel is a rehearing and the parties are entitled to rely on new evidence. Further, an appellant is able to apply to the Appeal Panel for a stay of the decision appealed against pending the outcome of the appeal to the Appeal Panel.

6.3 Racing Appeals Tribunal

There is a further right of appeal to the Racing Appeals Tribunal from the Appeal Panel in respect of disqualifications, suspensions for 3 months or more, revocations of licences or fines of \$2,000 or more. The Racing Appeals Tribunal is appointed by the Minister for Racing and is currently Mr David Armati, who was a Magistrate for many years and also the Chairperson of the Liquor Administration Board and NSW Licensing Court. The Racing Appeals Tribunal can also seek assistance of an expert, such as a veterinarian, from any person who, in its opinion, has special knowledge of, and experience in, the racing industry.

An appeal to the Racing Appeals Tribunal is also a rehearing and the parties are entitled to rely on new evidence. As with appeals to the Appeal Panel, an appellant can apply for a stay of the findings of the decision appealed against, pending the outcome of the appeal to the Racing Appeals Tribunal.

6.4 Attendance at Stewards Inquiries and requirement to give evidence

AR175(f) provides Racing NSW with the power to penalise any person who refuses or fails to attend or give evidence at any investigation, inquiry or appeal. Therefore it is a requirement that if a veterinarian is required to attend an inquiry they do so.

AR175 – *The Principal Racing Authority (or the Stewards exercising the powers delegated to them) may penalise;*

(f) Any person who refuses or fails to attend or give evidence at any investigation, inquiry or appeal when directed or requested by the Principal Racing Authority, or other person authorised by the Principal Racing Authority, to do so.

6.5 Legal Representation at an inquiry or hearing

Even though **AR199B** provides that a person shall not be entitled to be represented by any other person, whether a member of the legal profession or otherwise, it is the policy of Racing NSW to allow persons to be assisted by a legal representative at an inquiry or investigation. This assistance does not absolve the veterinarian of his or her obligation to provide evidence, however it is the practice of Racing NSW to allow legal representatives to ask questions of witnesses and make submissions on behalf of their client.

6.6 Raceday Stewards Inquiries or Investigations

Due to the short time frames in respect to inquiries and investigations conducted on raceday, veterinarians are required to attend these inquiries or investigations when requested at short notice. In these circumstances it may not be possible for a legal representative to be available and this does not provide grounds for the veterinarian refusing or failing to attend a raceday inquiry or investigation when directed or requested to do so.

7. Carriage & Dispensing of Veterinary Medications

Racing NSW recognises the requirement of a veterinarian to carry a range of medications to service both racing and non-racing clients. However, the Rules of Racing require that the possession and supply of such medications should conform to the requirements of relevant Commonwealth and NSW State legislation which include:

- Agricultural and Veterinary Chemicals Code Act (Cth) (Agvet Code)
- Poisons and Therapeutic Goods Act and Regulation (NSW)
- Stock Medicines Act (NSW)
- Veterinary Practice Act and Regulation (NSW)

This legislation currently includes (but is not limited to) the following obligations:

- The proper supply of restricted (S4) drugs, including the proper labelling of any S4 that is dispensed to a client, that the quantity of supply and purpose of any prescription is appropriate, and that proper records of supply are kept by the veterinarian.
- The possession and supply by the veterinarian of an unregistered veterinary chemical product only if:
 - the product does not require registration according to the requirements of the Agvet code, or
 - the product is supplied to the veterinarian under a permit issued by the APVMA, or
 - the product is compounded and properly labelled by the veterinarian or a registered pharmacist for the treatment of a particular horse for a particular condition, when no other product registered for veterinary use can effectively treat that condition.
- The proper storage and recording of use any Schedule 8 drugs carried by the veterinarian.

7.1 Anabolic steroids

There is a total ban on the administration of anabolic androgenic steroids to thoroughbreds, from birth to retirement from racing. It is acknowledged that a veterinarian may carry supplies of anabolic steroids for use in horses outside of racing, but that proper records of their use must be maintained as required by law.

7.2 Substances specified in AR177B(2)

Veterinarians must be aware of AR177B(2) which specifies a range of substances that are totally banned in racing. Their presence in any premises used in relation to the training or racing of horses is an offence. The exceptions to this Rule for the purpose of carriage by a veterinarian are registered veterinary products containing Schedule 8 substances for veterinary use, and anabolic androgenic steroids for use in horses not associated with thoroughbred racing.

8. Suspension or revocation of permit

A veterinarian's permit will not be suspended or revoked unless it has been proven that there has been a serious breach of the Rules of Racing. All decisions made by Racing NSW and its Stewards are subject to the rules of procedural fairness and natural justice including the rights of a veterinarian to respond to any charges by way of calling evidence and making submissions.
