



Policy Statement

PROVISION OF PERMITS TO VETERINARIANS TO PROVIDE SERVICES IN THE NEW SOUTH WALES
THOROUGHBRED RACING INDUSTRY
NSW LOCAL RULES 82C & 82D

Revision 7th May 2019



1. Policy Statement

This policy is developed to assist veterinarians in understanding the protocols and obligations associated with the implementation of **NSW LR 82C**, which has been in place in NSW since 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 LR 82C mandates that no veterinarian shall provide veterinary services, other than in the circumstances of an emergency, to a thoroughbred horse in training &/or competing in NSW unless that veterinarian has been issued a permit by Racing NSW. The detail of the **LR 82C** 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

Prior to the implementation of permits for veterinarians by Racing NSW, veterinarians and their professional associations expressed concern in respect of privacy considerations in relation to their premises and surgery. As a result, Racing NSW put in place procedures that must be followed by the Stewards, in exercising their powers under **AR 22** 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, **AR 22** is subject to **LR 82D** and the matters set out in in the remainder of this clause 4.

AR 22 states:

AR 22 *Investigations and inquiries*

(1) Without limiting any other Stewards’ powers, the Stewards have the following powers in relation to investigations and inquiries:

(a) to investigate and/or inquire into any matter in connection with racing, including without limitation:

(i) any matter in connection with any race meeting; and

(ii) any incident or occurrence in connection with any official trial, jump-out, trackwork, or training facility.

(b) to hear and make a determination in relation to any matter in connection with racing, including without limitation:

(i) any matter in connection with any race meeting; and

(ii) any incident or occurrence in connection with any official trial, jump-out, trackwork, or training facility;

(c) to take any action the Stewards deem necessary in respect of any horse involved in any investigation or inquiry conducted under subrule (1)(a) or (b);

(d) to require production and take possession of and examine (by any means) any mobile phones, computers, tablets, other electronic devices, books, documents and records (including telephone or financial records) in relation to any race meeting and/or any investigation, inquiry, hearing or proceeding;

(e) to order the examination of any horse, including to determine its age or identity;

(f) to take possession of any horse, whether dead or alive, in order to conduct whatever tests and/or examinations the Stewards consider necessary;

(g) to take (or cause to be taken) any sample from any horse and perform (or require to be performed) any testing or analysis of that sample to determine whether any prohibited substance is in the system of the horse;

(h) to take (or cause to be taken) any sample from any rider before or after any race, official trial, jump-out or trackwork;

(i) to take (or cause to be taken) any sample from any horse handler before or after handling any horse at any race meeting, official trial, jump-out or trackwork, where a Steward reasonably suspects that the horse handler is affected by a banned substance under AR 137(1).

(j) to arrange or facilitate any test to determine whether any prohibited substance or banned substance is in a sample;

(k) to search any licensed person or any gear or equipment and to take possession of anything the Stewards believe could provide evidence of a breach of the Rules;

(l) at any time to enter the premises occupied by or under the control of a licensed person and used in any manner relating to any licence to:

(i) inspect and search the premises;

(ii) search any licensed person or registered person on the premises;

(iii) examine any horse, take possession of it and cause that horse to be:

(A) removed from the premises and be detained; or

(B) detained at or within the premises,

for a period and on terms the Stewards consider necessary; and

(iv) examine and/or take possession of anything located on or in the premises and retain it for a period the Stewards consider necessary.

(2) Stewards who enter premises under powers in these Australian Rules may bring with them persons or items they consider necessary to assist in the exercise of their powers, performance of their functions or carrying out of their duties.

(3) In relation to the powers of entry of premises under these Australian Rules, the onus of proving that the premises are not being used in any manner relating to any licence is on the licensed person who has the occupation or control of the premises, and the use of them.

4.1 Premises

As it relates to permitted 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 vehicle, 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 vehicle (which is adjacent to, not on the stables of the licensed trainer) and take possession of items relevant or seen as necessary in ascertaining whether there has been a breach of the Rules of Racing.

4.2 Veterinary Premise or Surgery

Racing NSW acknowledges the privacy considerations in respect to the enacting of **AR 22** 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.

LR 82D 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 possible treatment on race day.

The Stewards routinely conduct preliminary investigations, including interviewing persons and taking statements, in order to form a view as to 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 as directed by the Stewards. 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 that any witnesses to be relied upon attend to allow 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 Chief Veterinary Officer or his/her duly authorised veterinary 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 Chief Veterinary Officer 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 Beasley SC. 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

***AR 232(h)** 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.*

***AR 226** – 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 **AR 281** 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

With reference to the short time frames in respect to inquiries and investigations being conducted on a race day, 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, however, this does not provide grounds for the refusal of a veterinarian to attend a race day 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. The Rules of Racing, however, require that the possession and supply of such medications should conform to the requirements of relevant Commonwealth and NSW State legislation which includes but is not limited to:

- 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)

In implementing this legislation, Racing NSW requires the following (but not limited to) obligations of permitted veterinarians:

- The proper supply of restricted (S4) therapeutics, including the proper labelling of any S4 that is dispensed to a client, and 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 relevant legislation, 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.

Note that the points outlined above have been made following consultation with and utilising published resources of the:

- Veterinary Practitioners Board of NSW (VPB NSW)
- Australian Pesticides and Veterinary Pharmaceuticals Authority (APVMA)
- Therapeutic Goods Administration (TGA)

Permitted veterinarians are referred to the following resources for further information:

- NSW VPB Boardtalk June 2018. Issue 48 pp. 8-10;
 - ▶ <https://www.vpb.nsw.gov.au/2018-june-compounded-pharmaceuticals>
- The Public Chemical Registration Information System:
 - ▶ <https://portal.apvma.gov.au/pubcris>
- The Australian Register of Therapeutic Goods;
 - ▶ <https://www.tga.gov.au/artg>

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 Schedule 1, Part 1, Division 1 - Prohibited List A

Veterinarians must be aware of Schedule 1, Part 1, Division 1 - Prohibited List A in the Rules of Racing, which specifies a range of substances that are banned in racing at all times. 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.

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