

Review of Thoroughbred Racing Act 1996 No 37

From the Australian Veterinary Association Ltd



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Contact: Ms Marcia Balzer, National Public Affairs Manager, marcia.balzer@ava.com.au,
02 9431 5060, 0430 175 310

Background

The Australian Veterinary Association (AVA) is the national organisation representing veterinarians in Australia. Our 8000 members come from all fields within the veterinary profession. Clinical practitioners work with companion animals, horses, farm animals, such as cattle and sheep, and wildlife. Government veterinarians work with our animal health, public health and quarantine systems while other members work in industry for pharmaceutical and other commercial enterprises. We have members who work in research and teaching in a range of scientific disciplines. Veterinary students are also members of the Association.

The veterinary profession's involvement in thoroughbred racing is to provide health and welfare services to horses used in thoroughbred racing. It is also to provide veterinary oversight at race meetings. It is a requirement of all race meetings to have an on-course veterinarian to oversee the health and welfare of all horses competing and to assist stewards with investigating the performance of any horse contrary to expectations.

Significantly, of all vets who treat thoroughbreds, only a tiny minority exclusively treat racehorses. Many treat all types of horses while a significant proportion treat a number of different species with only a small percentage of their work being for thoroughbred horses.

Racing NSW is proposing a second licence for veterinarians who treat thoroughbred horses in the racing industry. This move was recently challenged in the NSW Supreme Court. Justice Rothman handed down his decision on Monday 24 March and he agreed that the *Thoroughbred Racing Act 1996* as it stands allows Racing NSW to license vets. The legal case was unable to take into consideration any terms and conditions imposed by such a licence which has been published by Racing NSW.

Double regulation

Veterinarians are already comprehensively regulated through the NSW Veterinary Practitioners Board under the *Veterinary Practice Act 2003*.

Racing NSW has only brought two complaints about veterinarians before the NSW Veterinary Practitioners Board during the last seven years. This suggests that additional regulation is either unnecessary or, if Racing NSW does know of real suspected cases of veterinarians misbehaving, they have failed in their duty of office in not reporting such cases to the existing regulator, the Veterinary Practitioners Board.

It makes no sense to have two different statutory authorities trying to decide whether a veterinarian has breached his or her professional obligations. In fact, veterinarians guilty

of serious misconduct can be removed from the profession entirely only by the path initiated by the Veterinary Practitioners Board. We see this as a critical tool in effectively enforcing the integrity of racing – one not available to Racing NSW stewards.

Racing NSW proposed licence contradicts current legislation

There are conflicts between the conditions of the proposed Racing NSW licence and the NSW Veterinary Practitioners Act 2003. These conflicts are likely to cause significant problems in the implementation of any scheme to license racing veterinarians. In particular:

- The right for stewards to seize any clinical records contradicts the Queensland Supreme Court determination that veterinary records are the property of the veterinarian and an animal's owners have no legal right to access those records (*Maquire v Lynch* [2007]QCA 290). This is also the view of the NSW Veterinary Practitioners Board (see http://boardtalk.vpb.nsw.gov.au/page/Ownership_of_Records).
- The prohibition against treating thoroughbred racehorses in training unless the veterinarian is licensed is contrary to the *Trade Practices Act*.
- Stewards would decide whether a horse was seriously ill enough to warrant treatment by an unlicensed veterinarian. This decision is legally a diagnosis, which is an 'act of veterinary science' only able to be lawfully made by a registered veterinarian.
- If the stewards fine or suspend a licensed veterinarian after finding him or her guilty of contravening the rules of racing, the veterinarian must still be investigated by the Veterinary Practitioners Board if a complaint is made. If the person was already punished by Racing NSW, this would lead to double disciplinary action.
- The right for stewards to seize prohibited drugs is likely to breach poisons control regulations that prescribe who is lawfully able to handle prescription medications. It's also unreasonable as many drugs prohibited by Racing NSW are legal to use in non-racehorses and it is perfectly acceptable for vets to have these in their possession under the Therapeutics Act.
- The terms and conditions of the licence as published by Racing NSW require the veterinarian to submit to 'exclusive jurisdiction' of Racing NSW in all matters arising in relation to racing. This clearly contravenes the jurisdiction of the NSW Veterinary Practitioners Board to regulate registered veterinarians:

TERMS AND CONDITIONS OF LICENCE:

1. The Licensed Veterinarian acknowledges and agrees to be subject to and be bound by/agree to the below:

d) The Licensed Veterinarian submits to the exclusive jurisdiction of each Principal Racing Authority, its officials and Stewards in respect of all matters arising in relation to racing in the State or Territory of that Principal Racing Authority

Thoroughbred Racing Act not intended to licence veterinarians

The proposed imposition of a licence of veterinarians is contrary to the intent of the powers provided by the Thoroughbred Racing Legislation Amendment Bill 2004 which was introduced to clarify and strengthen Racing NSW powers over licensed persons, triggered by a lack of control over bookmakers. The bill makes no mention of the intent to license anyone other than those already licensed, being those with a direct pecuniary interest.

Similarly the explanatory memorandum only addresses the need for existing licensed persons to be better scrutinised as a 'fit and proper person' without criminal conviction. See full explanatory notes at:

<https://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/0/372418C5F6A9A6BACA256E52002E202B?Open&shownotes#>

Likewise there is no Hansard record of any parliamentary debate supporting the extension of the licensing powers to anyone beyond those occupations named.

Conclusion

As the providers of health and welfare services for racehorses, veterinarians do play an important and necessary role in thoroughbred racing. It is vitally important that veterinarians attending to race horses understand and promote the integrity of this sport as expected in every other endeavour, and we agree that effective regulation is very important. But veterinarians are already comprehensively regulated by the existing licensing requirements of the *Veterinary Practitioners Act 2003*.

Racing NSW has exploited an unintended loophole in legislation to over-reach its powers in seeking to have veterinarians licensed. This move that will almost certainly deliver the opposite of what was intended in the *Thoroughbred Racing Act 1996* and be to the detriment of racing in NSW

Veterinarians should be specifically excluded from those people listed in Clause 14AA of the *Thoroughbred Racing Act* who are able to be licensed by Racing NSW.

The Australian Veterinary Association recommends that parliament takes the opportunity presented by the current review to close this loophole in Clause 14AA, in order to avoid the need for further legislative change in the near future. Missing this opportunity will result in legal and practical difficulties, not least between two statutory authorities attempting to regulate the same group of people.