Hendra Vaccination and Liability Issues

by Greer Oliver of Hemming Hart Lawyers

It is unfortunate that the danger and effects of Hendra Virus are so well known after many tragic losses of both horses and humans. Following the development of the vaccination, some event operators, associations and venue operators have insisted that competing horses be vaccinated as a condition of being allowed to compete. The following article briefly examines the issue of compulsory vaccinations and provides some simple answers to important questions relevant to horse owners, competitors, volunteers, event operators, venue owners and spectators alike.

Can an event operator force me to vaccinate my horse?

If you choose to compete with your horse at an event run by a particular association, organisation or club (let’s call them ‘event operators’), then a condition of entry into the competition can be that all competing horses be vaccinated against Hendra Virus. Event operators have an obligation to ensure that every person and horse who attends an event operated by them is safe from harm - safe at the event itself and safe from other competitors and their horses attending the event.

If you are a member of an association, upon becoming a member you agree to abide by the terms, conditions and regulations which govern the association. Even if you aren’t a member of a particular association and only attend events run by an event operator of that nature, upon paying a nomination fee or registering for an event, you agree to abide by the terms, conditions and regulations which apply to the event. If a condition of entry to the event is that each horse competing must be vaccinated, then the organisation operating the event can insist that this condition be met prior to allowing entry to the event.

Similarly, a venue owner, such as a local showground (let’s call them ‘venue operators’), can also impose a condition on competitors that their horses attending the venue be vaccinated. Venue operators have similar obligations as event operators and must take appropriate steps to ensure that their patrons are sufficiently protected, equally at the venue itself and from other patrons and their horses whilst at the venue.

Together, an event operator and a venue operator can impose any condition they believe to be reasonable in order to provide a safe event and venue for all concerned - competitors, officials and spectators alike. Compulsory vaccination conditions have already been imposed at various events and levels throughout Australia. For example, Equestrian New South Wales have imposed a compulsory vaccination condition on any events where horses are required to stay overnight and all horses competing at the Royal Queensland Show in Brisbane in 2013 were required to be vaccinated in order to compete.

What if I don’t vaccinate my horse?

If you elect not to vaccinate your horse, you may be prevented from competing at events which impose a compulsory vaccination condition. As a condition of entry, an event and/or venue operator can request that horse owners demonstrate that their horses have been vaccinated. In those circumstances, asking horse owners to demonstrate that vaccination has occurred is not an unreasonable request. If a compulsory vaccination condition has been imposed by the event operator, the venue operator, or both, and your horse is not vaccinated or you cannot demonstrate that your horse has been vaccinated, then the event operator can refuse to allow you to compete and the venue operator could refuse to allow entry onto the premises.

Demonstrating that your horse has been vaccinated will likely involve preventing the vaccination records you keep to the relevant person. However, regulations of vaccination may vary from competition to competition and from venue to venue. Prior to competing at an event, it would be prudent for competitors to confirm whether compulsory vaccination is required by either the event operator or venue operator and, if so, to carry the relevant vaccination records confirming that your horse has been vaccinated.

What if I don’t vaccinate my horse and say that I have?

If you do not vaccinate your horse and advise an event operator or venue operator that you have, you run the risk if your horse has the virus or is in the shedding/infectious phase of your horse infecting other horses and potentially people.

It is discovered that your knowingly misled an event and/or venue operator, you leave yourself exposed to potential liability for the damages and costs associated with any infections that your horse could include lock down of a venue and clean up expenses, quarantine expenses, veterinary treatment expenses, medical expenses for any people exposed, and any other loss or damage suffered. It is likely the event and/or venue operator or insurer would foot these expenses initially. However, the event and/or venue operator of insurer could later make a claim against you for the repayment of the expenses they incurred or damage they have suffered. The basis of a claim like this would be that the event and/or venue operator or insurer would not have incurred the expenses if you had complied with the compulsory vaccination condition imposed on the event and, as a result, you should compensate the event and/or venue operator or insurer for the damage suffered.

Other penalties will vary widely and will depend on the event operator’s regulations, any terms, conditions or regulations imposed by the venue operator, state legislation and local government regulations or by-laws. Penalties could include a fine being imposed, being banned from a particular venue or being banned from competing in events. If you would like more information about possible penalties, you should approach the event operator and venue operator for more information. Criminal charges could also apply in the event that a competitor knowingly and intentionally exposed their infected horse to other uninfected horses and people.

What if I’m a volunteer/official at an event and I am infected with Hendra from an unvaccinated horse?

Both the event operator and the venue operator have an obligation to provide you with a safe place of work even if you are a volunteer. If infected, you could make a claim for compensation against the event and/or venue operator and the owner of the infected horse.

Event and venue operators have public liability insurance and sometimes volunteer insurance for this purpose and would likely be in a position to make a claim on their insurance to assist in paying compensation to you if you were infected and suffered damage (financial or otherwise) as a result. The ability to make a claim like this applies to both compulsory and non-compulsory vaccination events. It is reasonably foreseeable to expect that Hendra exposure may occur at any equestrian event and so event and venue operators should have sufficient public liability insurance for this purpose.

The decision to vaccinate or not vaccinate is a personal choice for individual horse owners. That choice will be unique and dependent on various circumstances. The intention of this article is not to provide advice on the pros and cons of vaccinating, but to make horse owners aware of their obligations, and the obligations of event operators and venue operators.

For their own protection, the protection of their horses and the protection of other horses and people, horse owners should be aware of and comply with the terms and conditions that apply to the events in which they choose to compete. Compliance with the competition terms and conditions will afford horse owners the most protection against infection from Hendra Virus, and the best opportunity to recover compensation in the unlikely event that infection occurs and any resulting loss or damage is suffered.

For more information on liability issues, contact Greer Oliver on 07 3002 8700 or email equine@hemhart.com.au.