

# HOW IS HORSE RACING NOT ANIMAL CRUELTY?

This Fact Sheet is for general information purposes and is not legal advice. It provides a brief overview only of this area of the law. If you require legal advice relating to your particular circumstances you should contact the ADO or another solicitor.

## THE PROBLEM: RACING IS INHERENTLY HARMFUL TO HORSES

During the running of the 2020 Melbourne Cup, the horse Anthony Van Dyck's fetlock fractured on the final bend so he was taken from the track and put down (ie killed).[1] In the previous nine years, seven horses had died during or shortly after the Melbourne Cup due to injuries sustained during the race.



Anthony Van Dyck before the 2020 Melbourne Cup

According to the RSPCA, there are 'significant problems associated with the horseracing industry.'[3] These include:

- Risk of injury, pain and death relating to over-exertion during races and training.
- Use of whips, spurs and tongue ties, which may result in discomfort, pain and/or permanent injury.
- Overbreeding and oversupply of racehorses, many of whom are sent to be slaughtered (known as 'wastage').

## So why isn't horseracing an animal cruelty offence in law?



## RACEHORSES AND ANIMAL WELFARE LAW IN NSW

The *Prevention of Cruelty to Animals Act 1979* (NSW) ("POCTAA") defines **cruelty** as an act or omission which leads to an animal being unreasonably, unnecessarily or unjustifiably over-worked, over-driven, over-ridden or over-used.[4] If the act of cruelty results in a serious injury or a situation where it is considered cruel to keep the animal alive, then it is 'aggravated cruelty'.[5]

In NSW, POCTAA does not contain an explicit exemption from or defence to cruelty offences for the treatment of thoroughbred horses used for racing.

## QUICK FACTS [2]

- In a recent 12-month period in Australia, **168 racehorses** died at the track as a result of racing, equaling one dead horse every 2 days.
- The state with the highest recorded deaths was NSW with **53 deaths** in the past year.
- The most lethal track in Australia was Thoroughbred Park in Canberra, ACT with **6 deaths** in the past year.
- The most common cause of death was an injury sustained to the horse's forelimb with **63 instances** in the past year.

The *Thoroughbred Racing Act 1996* (NSW) establishes Racing NSW as the body in charge of regulating and controlling thoroughbred horse racing in NSW. Racing NSW's 'Rules of Racing' defines **cruelty** as 'any act or omission as a consequence of which a horse is mistreated.'[6] This definition lacks clarity and does not elaborate on what constitutes mistreatment (which is not a defined term).

Racing NSW's rules require that owners and trainers 'exercise reasonable care, control and supervision...to prevent any such horse from being subject to cruelty or unnecessary pain or suffering'[7] and that horses are 'not to be directly or indirectly sent to an abattoir, knackery or similarly disposed of'.[8]

However, the NSW rules merely state that any person who fails to comply with them 'may be penalised'. It is not clear whether there are penalties for breaching these guidelines or any kind of independent or external assessment to ensure compliance.

Thus, a **lack of clarity** and meaningful consequences for non-compliance in NSW's legislation and the industry's rules raise serious questions about the ability of the law to protect racehorses in NSW.



The horse Cliffsofmoher was put down after sustaining an injury in the 2018 Melbourne Cup.

## RACEHORSES AND ANIMAL WELFARE IN THE ACT

The definition of **cruelty** in the *Animal Welfare Act 1992* (ACT) includes causing an animal pain 'that is unjustifiable, unnecessary or unreasonable in the circumstances' and 'abusing, terrifying or tormenting' an animal.[9]

However, if conduct that would amount to cruelty to an animal under the law complies with an approved code of practice, then the law states that this conduct is not animal cruelty.[10] To put it another way, the conduct is legalised cruelty.

The Code of Practice for the Welfare of Horses in the ACT ("the Code") is the only approved code of practice dealing with horses in the ACT. It was approved in 1993, almost 30 years ago.[11] An updated version was drafted in 2021 but it has yet to be approved.



So, overriding a horse such as Anthony Van Dyck or The Cliffsofmoher could be considered cruelty under ACT law if it could be shown that the Code was not complied with. It must also be shown that riding the horse caused pain that is unjustifiable, unnecessary or unreasonable in the circumstances, or that riding the horse is a form of abuse, torment or terror.

### DISCLAIMER

While all care has been taken in preparing the information on this fact sheet, it is not a substitute for legal advice. For any specific questions we recommend you seek legal advice. The Animal Defenders Office accepts no responsibility for any loss or damage suffered by people relying on the information contained in this fact sheet.

[1] M Hytner, 'Melbourne Cup: Anthony Van Dyck euthanised, Kerrin McEvoy fined \$50k for whip breach', *The Guardian*, 3 November 2020.

[2] From 1 August 2022 to 31 July 2023; <https://www.horseracingkills.com/issues/deathwatch/>.

[3] <https://kb.rspca.org.au/knowledge-base/what-are-the-animal-welfare-issues-with-thoroughbred-horse-racing/>.

[4] POCTAA s 4 (2) (b).

[5] *Ibid* s 4 (3).

[6] Rules of Racing of Racing NSW: <https://www.racingnsw.com.au/wp-content/uploads/NSWRules.pdf>, AR 2.

[7] *Ibid*, LR 114 (3).

[8] *Ibid*, LR 114 (5) (e).

[9] *Animal Welfare Act 1992* (ACT) s 6A.

[10] *Ibid* s 20.

[11] <http://www.legislation.act.gov.au/di/1993-162/current/pdf/1993-162.pdf>. The code was amended in 1996 to cover horses used in riding centres and boarding stables: <https://www.legislation.act.gov.au/di/1996-9/>.