

Do animal welfare laws protect racehorses?

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.

During the running of the 2020 Melbourne Cup, the horse Anthony Van Dyck fractured his fetlock on the final bend and was taken from the track and put down (ie killed).¹ In the same race, a jockey broke racing rules by whipping horse Tiger Moth 13 times in the first 100 metres of the race and 21 times overall, exceeding the maximum number of five whips before the 100-metre mark.² The ADO estimates that at the speed of the race, 13 strikes of the whip in 100 metres could mean two strikes per second. In similar scenes, during the 2018 Melbourne Cup horse The Cliffsofmoher fractured his shoulder and was put down. Anthony Van Dyck is the seventh horse in seven years to die due to injuries sustained in the Melbourne Cup.



Anthony Van Dyck before the 2020 Melbourne Cup

These incidents are not isolated to the Melbourne Cup. In a recent 12-month period in Australia, 119 racehorses died at the track as a result of racing, equalling one dead horse every 3 days.³ The state with the highest recorded deaths was NSW.

Under Australian animal welfare laws, a person who ‘overrides, overdrives, overworks ... or terrifies an animal’ which results in the death of the animal commits aggravated cruelty on that animal.⁴

Why aren’t riders and trainers of horses like Anthony Van Dyck, Tiger Moth and The Cliffsofmoher prosecuted under animal welfare laws? Are horseracing practices that inflict pain and suffering on the horses actually lawful?

This fact sheet looks at how the law protects—or fails to protect—racehorses in NSW and the ACT.

What are the animal welfare issues associated with horse racing?

According to the RSPCA, there are ‘significant problems associated with the horseracing industry that need to be resolved in order to protect the welfare of racehorses.’⁵ 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.
- Significant overbreeding and oversupply of racehorses, many of whom are sent to knackeries and abattoirs to be slaughtered (known as ‘wastage’).

How is horse racing legal in NSW and the ACT, despite these animal welfare concerns?

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.⁶ 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’.⁷ The horse Anthony Van Dyck was reported as being ‘unable to be saved due to the nature of the injury sustained’.⁸ On The Cliffsofmoher’s death, racing authorities said that he ‘had to be humanely euthanised after sustaining a fractured right shoulder during the running of the Melbourne Cup.’⁹



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

<https://www.theguardian.com/sport/2020/nov/03/anthony-van-dyck-tragedy-again-mars-melbourne-cup-as-horse-euthanised>

² The Rules of Racing of Racing Victoria (as at 1/7/2020), AR 132A (7) (a) (ii), <https://www.racingvictoria.com.au/the-sport/racing/-/media/ac1be4e7ccd746dda1381e8526ef6bb5.ashx>.

³ From 1 August 2017 to 31 July 2018; <https://www.horseracingkills.com/issues/deathwatch/>.

⁴ *Prevention of Cruelty to Animals Act 1986* (Vic) s 10; and *Prevention of Cruelty to Animals Act 1979* (NSW), ss4(2)(b) and (3).

⁵ http://kb.rspca.org.au/What-are-the-animal-welfare-issues-associated-with-Thoroughbred-racing-in-Australia_631.html. See also: http://kb.rspca.org.au/What-is-the-RSPCA-position-on-whips-in-Thoroughbred-racing_244.html.

⁶ POCTAA s 4 (2) (b).

⁷ Ibid s 4 (3).

⁸ M Hytner, footnote 1.

⁹ <https://www.theage.com.au/sport/racing/the-cliffsofmoher-dies-after-suffering-injury-in-melbourne-cup-20181106-p50ecn.html>.

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

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' use the national industry definition of 'cruelty', which includes 'any act or omission as a consequence of which a horse is mistreated.'¹⁰ This definition lacks clarity and does not elaborate on what constitutes mistreatment.

Racing NSW's rules include a rule regarding 'the welfare of thoroughbred horses from birth, during their racing careers and on retirement'.¹¹ The rules require owners, trainers and people in possession or control of a racehorse to 'exercise reasonable care, control and supervision...to prevent any such horse from being subject to cruelty or unnecessary pain or suffering.'¹² They also state the horse is 'not to be directly or indirectly sent to an abattoir, knackery or similarly disposed of'.¹³

However, in terms of penalties or consequences for non-compliance, the new rules merely state that any person who fails to comply with them 'may be penalised'.¹⁴ Racing NSW has adopted the Australian horseracing industry guidelines that purport to ensure the wellbeing and health of racehorses.¹⁵ Again, it is not clear whether there are penalties for breaching these guidelines or whether there is independent or external assessment to ensure compliance.

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

Racehorses and animal welfare law in the ACT

The definition of **cruelty** in the *Animal Welfare Act 1992* (ACT) includes causes an animal pain 'that is unjustifiable, unnecessary or unreasonable in the circumstances' and 'abusing, terrifying or tormenting' an animal.¹⁶

However, if conduct that would amount to cruelty to an animal under the law nonetheless complies with an approved code of practice, then the law states that this conduct is not animal cruelty.¹⁷ To put it another way, the conduct is legalised cruelty.



The *Code of Practice for the Welfare of Horses in the A.C.T.* ("the code") is the only approved code of practice dealing with horses in the ACT and is extremely outdated. It was approved in 1993¹⁸ and last amended in 1996.¹⁹ It pre-dates the ACT's online legislation register and is not available online.

One of the rare references in the code to horse racing states that in 'flat or harness racing...[n]o horse should be whipped if it is clear that it will not achieve a place'.²⁰ In the short section on 'Racing and Competitive Discipline Codes' the code references the rules of a thoroughbred racing governing body that ceased to exist in 2011 (the 'Australian Jockey Club').²¹

Thus, 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.²²

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 in this fact sheet.

¹⁰ *Rules of Racing of Racing NSW*, as amended 19 August 2020: <http://www.racingsw.com.au/wp-content/uploads/NSWRules20180801.pdf>, AR 2.

¹¹ *Ibid*, LR 114 (1).

¹² *Ibid*, LR 114 (3).

¹³ *Ibid*, LR 114 (5) (e).

¹⁴ *Ibid*, LR 114 (6).

¹⁵ <http://racingsw-prod-alb-v00-1971180292.ap-southeast-2.elb.amazonaws.com/wp-content/uploads/2017/08/Welfare-Guidelines-for-Horse-Racing.pdf>.

¹⁶ *Animal Welfare Act 1992* (ACT) s 6A.

¹⁷ *Ibid* s 20.

¹⁸ <http://www.legislation.act.gov.au/di/1993-162/current/pdf/1993-162.pdf>.

¹⁹ 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/>.

²⁰ *Code of Practice for the Welfare of Horses* (ACT) s 4.2.

²¹ <https://www.australianjockeyclub.com.au/history-timeline/> (visited 18 Nov 2020).

²² *Animal Welfare Act 1992* (ACT) ss 6A and 7.