

Animal welfare laws and 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 your solicitor.

On the day of the 2017 Melbourne Cup, the horse Regal Monarch broke down in a preliminary race and was later put down.

In a recent 12-month period in Australia, 137 racehorses died at the track as a result of racing.¹

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.²



Regal Monarch, Melbourne Cup Day 2017

Why aren't riders and trainers of horses like Regal Monarch prosecuted under animal welfare laws? Are other animal welfare issues associated with horse racing unlawful?

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

What are the animal welfare issues associated with horse racing?

According to the RSPCA, there is ‘a number of significant problems associated with the horseracing industry that need to be resolved in order to protect the welfare of racehorses.’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.
- 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 the ACT and NSW, despite the animal welfare concerns cited by the RSPCA?

Racehorses and the law in the ACT

The definition of animal 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.⁴

However, if conduct that would amount to ‘animal cruelty’ under the law nonetheless complies with an approved code of practice, then the law states that this the conduct is not animal cruelty.⁵ To put it another way, the conduct is legalised cruelty.



Is there an approved code of practice covering horse racing in the ACT?

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. The code is extremely outdated. It was approved in 1993⁶, and last amended in 1996.⁷ 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’.⁸ In the short section on

¹ From 1 August 2016 to 31 July 2017; <https://www.horseracingkills.com/issues/deathwatch/>.

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

³ 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.

⁴ *Animal Welfare Act 1992* (ACT) ss 6A (a) and (c).

⁵ *Ibid* s 20.

⁶ <http://www.legislation.act.gov.au/di/1993-162/current/pdf/1993-162.pdf>.

⁷ The code was amended in 1996 to cover horses used in riding centres and boarding stables:

<http://www.legislation.act.gov.au/di/1996-9/19960206-11319/pdf/1996-9.pdf>

⁸ *Code of Practice for the Welfare of Horses* (ACT) s 4.2.

'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').⁹ The code pre-dates the ACT's online legislation register and is not available online.

Thus, overriding a horse such as Regal Monarch 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 the riding of the horse caused pain that is unjustifiable, unnecessary or unreasonable in the circumstances, or that the riding of the horse is a form of abuse, torment or terror.¹⁰

Racehorses and the law in NSW

The *Prevention of Cruelty to Animals Act 1979* (NSW) ("POCTAA") defines cruelty as including an act or omission which leads to an animal being unreasonably, unnecessarily or unjustifiably over-worked, over-driven, over-ridden or over-used.¹¹ If the act of cruelty results in such a serious injury, or in a situation where it is considered cruel to keep the animal alive, then it is 'aggravated cruelty'.¹² Reports of Regal Monarch's death stated that the horse was 'euthanised on veterinary advice as a result of the injuries sustained'.¹³



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'.¹⁴ This definition lacks clarity and does not elaborate on what would constitute mistreatment.

In October 2017 Racing NSW's Rules incorporated new local rules that deal with 'the welfare of thoroughbred horses from birth, during their racing careers and on retirement'.¹⁵ The new rules require owners, trainers and people with a racehorse in their possession or control to 'exercise reasonable care, control and supervision...to prevent any such horse from being subject to cruelty or unnecessary pain or suffering'.¹⁶ They also state that the horse is 'not to be...sent to an abattoir, knackery or similarly disposed of'.¹⁷

However, enforcement is the weak point. The new rules merely state that any person who fails to comply with them 'may be penalised'.¹⁸

Racing NSW has adopted the Australian horseracing industry guidelines that purport to ensure the wellbeing and health of racehorses.¹⁹ Again, it is not clear whether there are any penalties for breaching these guidelines or whether there is independent/external assessment to ensure compliance.

Thus, a lack of clarity and enforceability in the state's legislation and the industry's rules raise serious questions about the ability of the law to protect racehorses in New South Wales.

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⁹ <https://www.australianjockeyclub.com.au/history-heritage/>.

¹⁰ *Animal Welfare Act 1992* (ACT) s 6A.

¹¹ POCTAA s 4 (2) (b).

¹² *Ibid* s 4 (3).

¹³ <http://www.skynews.com.au/news/top-stories/2017/11/07/regal-monarch-euthanised-after-cup-day-fall.html>

¹⁴ *Rules of Racing of Racing NSW*, as amended 1 October 2017: <http://racingnsw-prod-alb-v00-1971180292.ap-southeast-2.elb.amazonaws.com/wp-content/uploads/2017/08/Rule-of-Racing.pdf>, AR 1.

¹⁵ *Ibid*, LR 114 (1).

¹⁶ *Ibid*, LR 114 (3).

¹⁷ *Ibid*, LR 114 (5) (e).

¹⁸ *Ibid*, LR 114 (6).

¹⁹ <http://racingnsw-prod-alb-v00-1971180292.ap-southeast-2.elb.amazonaws.com/wp-content/uploads/2017/08/Welfare-Guidelines-for-Horse-Racing.pdf>.