



NSW YOUNG LAWYERS FACT SHEET

# ANIMALS IN ENTERTAINMENT

The treatment of animals used in events such as horse racing and greyhound racing is a source of considerable public concern and debate, particularly in recent years. Rodeos, zoos and circuses continue to be popular forms of entertainment, but have harmful impacts on the animals used and exhibited. This fact sheet covers the law governing animals used for entertainment in New South Wales (NSW) and Australia, including for horse racing, greyhound racing, rodeos, zoos and circuses.

## Horse Racing

Horse racing is a multibillion-dollar industry in Australia with more than 19,000 races run per year.<sup>1</sup> There are more than 35,000 racing horses currently in Australia,<sup>2</sup> and around 13,000 foals are bred for racing each year.<sup>3</sup> The industry is characterised by a high turnover rate; almost 40 per cent of racehorses leave the industry every year and are 'discarded' due to poor performance, illness, injury or behavioural problems.<sup>4</sup> While some horses will be sold for recreational use, many will be sent to abattoirs or knackeries for slaughter. Despite growing public concern about the cruelty of horse racing, the industry is largely self-regulated.

Racehorses are at risk of injury and death during training and races, particularly immature horses (two-years-old or less) and racehorses used for jumps racing. If serious injuries such as fractures and ruptured ligaments or tendons are inflicted and cannot be treated, it can result in immediate euthanasia.<sup>5</sup>

Racehorses endure strict individualised training to achieve high performance, usually with a lack of social stimulation.

This places mental pressure on the animals, which can result in the development of harmful behaviours such as cribbing and self-mutilation.<sup>6</sup>

Horses are pushed to the limit during races, particularly with the use of whips, spurs and tongue ties that inflict pain, injury and discomfort. Rules regarding the use of whips, set out by Australian Rules of Racing, stipulate that whips should be used no more than 5 times before the 100-metre mark in a race. However, in the final 100 metres of a race, the use of whips is not limited.<sup>7</sup>

## Greyhound Racing

On 7 July 2016, the NSW Government announced a ban on greyhound racing. The ban was in response to an inquiry that found overwhelming evidence of systemic animal cruelty, including mass greyhound killings and live baiting. The inquiry found the existence of fundamental animal welfare issues that could not be remedied.<sup>8</sup> However, the ban was reversed on 11 October 2016. Following the reversal of the ban, the NSW Parliament passed the *Greyhound Racing Act 2017* (NSW) which aims to implement a number of the recommendations made by the Greyhound Industry Reform Panel.

The Office of Racing, under the NSW Department of Customer Service, is responsible for administering the *Greyhound Racing Act 2017* (NSW) (the 'Act') and the *Greyhound Racing Regulation 2019* (NSW) ('the Regulation'). The Act established a new regulator of the greyhound racing industry, the Greyhound Welfare and Integrity Commission,

and a reconstituted Greyhound Racing NSW as the body responsible for the commercial aspects of greyhound racing.

The Commission's objectives include promoting and protecting the welfare of greyhounds, safeguarding the integrity of greyhound racing and betting, and maintaining public confidence in the greyhound racing industry.<sup>9</sup>

The Regulation creates a new registration system for a wider range of industry participants (breeders, track owners, greyhound owners, greyhound healthcare professionals and personnel associated with racing), which aims to establish a database that can track greyhound ownership. Under the Regulation, participants charged with animal cruelty offences are subject to reporting obligations, and it is an offence to breach the Codes of Practice developed by the Commission.<sup>10</sup>

Australia also exports greyhounds to other jurisdictions around the world. Significant welfare concerns exist surrounding the live export of greyhounds. In 2017, three greyhound owners were fined for exporting 166 dogs to cruel conditions in China. The unauthorised greyhound export scheme relied on buying unwanted dogs at cheap prices from NSW racetracks and selling them to China for profit.<sup>11</sup> In 2019 alone, Australia has permitted the export of 170 dogs, most of which have been exported to New Zealand.<sup>12</sup>

## Rodeos

A rodeo is a form of 'entertainment' or 'sport' in which untrained horses and cattle are used to demonstrate riding and handling skills. Events include bronco riding, bull riding, calf roping and steer wrestling. Each of these activities has the potential to result in serious injury to the animal and human participants.

Bulls and horses that are ridden in rodeos are provoked into bucking through the use of spurs, electric prodders and a flank strap, which is wrapped around the animal's midsection. Animals in rodeos frequently suffer debilitating or fatal injuries and display signs of extreme distress.<sup>13</sup>

The Australian Capital Territory prohibits rodeos under the *Animal Welfare Act 1992* (ACT). Victoria and South Australia have minimum enforceable standards. Victoria does not permit the excessive use of electric prodders on cattle and prohibits its use on horses. In all other Australian states and the Northern Territory, electric prodders can be used on both cattle and horses in rodeos.<sup>14</sup>

In NSW, the welfare of animals in rodeos is regulated under the *Prevention of Cruelty to Animals Act 1979* (NSW) ('POCTA') and the NSW Code of Practice for Animals Used in Rodeo Events (the 'Code'). Under POCTA, it is a criminal offence to commit an act of cruelty upon an animal. Cruelty refers to an act that 'unreasonably, unnecessarily or unjustifiably' inflicts pain on an animal, and does not necessarily require an intention to harm.<sup>15</sup>

The Code stipulates that 'no animal shall be beaten or cruelly prodded'.<sup>16</sup> Other provisions under the Code include:<sup>17</sup>

- Only cattle or horses may be used in rodeo events;
- Animals should be fed and given water at least once every 24 hours;
- Animals should not be confined in a vehicle for more than 24 hours without being unloaded, properly fed, watered and rested;
- The use of sticks, metal piping, wood, heavy leather belts, wooden paddles and similar implements is prohibited;
- Contestants who drag or 'jerk down' an animal will be disqualified. 'Jerking down' involves flipping over a calf onto its back when it is roped;
- Animals must be inspected on the day of an event by a veterinarian or an experienced stockperson.

The Code aims to ensure compliance with POCTA, which prohibits animal baiting and fighting and bull-fighting, which also applies to the use of cattle in a rodeo.<sup>18</sup> The Code is generally enforced by recognised industry bodies such as the Australian Professional Rodeo Association.<sup>19</sup>

The Australian Professional Rodeo Association also has its own voluntary Code of Conduct for animal welfare standards in rodeos. The Code of Conduct outlines conditions such as minimum requirements for yards, chutes and holding pens, animal treatment requirements, and incident reporting protocols to which all members of the Association must adhere.<sup>20</sup>

## Zoos and Circuses

In NSW, the welfare of animals in zoos and circuses is regulated under the *Exhibited Animals Protection Act 1986* (NSW) (the 'Act') and the *Exhibited Animals Protection Regulation 2010* (NSW). The legislation prescribes the manner in which animals can be exhibited, including minimum standards and requirements for licences, approvals and permits.<sup>21</sup> The legislation applies to 'animal display establishments', which are defined as zoos, aquariums and marine parks.<sup>22</sup> For the purposes of the legislation, circuses are considered a 'mobile animal display establishment'.

The Act, which is enforced by the NSW Department of Primary Industries (DPI), prohibits the exhibition of animals without a licence.<sup>23</sup> A licence holder must also hold an approval to exhibit specified species, ranging from hammerhead sharks, crocodiles and pythons, to ostriches, koalas, sloths and elephants.<sup>24</sup> Approval is only issued if the Secretary of the DPI is satisfied that the person to whom the approval is issued has appropriate qualifications or experience to exhibit animals of the specified species.<sup>25</sup>

The Act states that standards may be prescribed with respect to the facilities for the exhibition of animals and the conduct of animal display establishments.<sup>26</sup> Any licence holder must comply with the prescribed standards.

If a zoo in NSW imports an exotic species, federal environmental law and international wildlife trade law will apply.<sup>27</sup>

## Circuses

Circuses are a source of significant animal welfare concerns. A study conducted in 2009 found that wild animals held in circuses suffer greatly, spending the majority of the day confined, about 1-9% of the day performing/training and the remaining time in exercise pens that are smaller than the minimum zoo standards for outdoor enclosures.<sup>28</sup> The study concluded that non-domesticated animals considered suited to circus life should exhibit low space requirements, simple

social structures, low cognitive function and an ability to be transported without adverse welfare effects. None of the most common species exhibited by circuses, such as elephants, lions and other large cats, meet thIS criteria.<sup>29</sup>

Lismore City Council has banned all animal circuses in its locality and Northern Beaches Council has banned circuses that use exotic animals in its zone.<sup>30</sup> However, the use of animals in circuses remains legal in the state of NSW.<sup>31</sup>

*This fact sheet has been prepared by the NSW Young Lawyers Animal Law Committee for information only and is not a substitute for legal advice. This information is up to date as at September 2019.*

## Endnotes

- 1 Racing Australia, *Racing Australia Fact Book 2017/18* (December 2018) Racing Australia, <[publishingservices.risa.com.au/otherpublications/Fact%20Book%202017-2018/](http://publishingservices.risa.com.au/otherpublications/Fact%20Book%202017-2018/)>.
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- 3 Ibid 42.
- 4 Animals Australia, *Horse Racing Animals Australia* <[www.animalsaustralia.org/issues/horse\\_racing.php](http://www.animalsaustralia.org/issues/horse_racing.php)>.
- 5 RSPCA, *What Are The Animal Welfare Issues With Thoroughbred Horse Racing?* (2 May 2019) RSPCA Knowledgebase <<https://kb.rspca.org.au/knowledge-base/what-are-the-animal-welfare-issues-with-thoroughbred-horse-racing/>>.
- 6 Animals Australia, above n 4.
- 7 Racing Australia, *Australian Rules of Racing* (1 August 2019) Racing Australia, 67, 68 <[https://www.racingaustralia.horse/uploadimg/Australian\\_rules\\_of\\_Racing/Australian\\_Rules\\_of\\_Racing\\_01\\_August\\_2019.pdf](https://www.racingaustralia.horse/uploadimg/Australian_rules_of_Racing/Australian_Rules_of_Racing_01_August_2019.pdf)>.
- 8 Special Commission of Inquiry into the Greyhound Racing Industry in NSW, NSW Government, Report of the Special Commission of Inquiry into the Greyhound Racing Industry in NSW (2016).
- 9 Office of Racing, *Greyhound Racing* NSW Government Office of Racing <<https://www.industry.nsw.gov.au/racing/greyhound-racing>>.
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- 11 Christopher Knaus, 'Australian greyhound owners fined over export to cruel conditions in China', *The Guardian* (online) 10 November 2017 <[www.theguardian.com/world/2017/nov/10/australian-greyhound-owners-fined-over-exports-to-cruel-conditions-in-china](http://www.theguardian.com/world/2017/nov/10/australian-greyhound-owners-fined-over-exports-to-cruel-conditions-in-china)>.
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- 13 RSPCA, *What Laws Protect Animals in Rodeos?* (12 August 2019) RSPCA Knowledgebase <<https://kb.rspca.org.au/knowledge-base/what-laws-protect-animals-in-rodeos/>>.
- 14 Ibid.
- 15 *Bell v Gunter* (unreported 24 October 1997); *Fleet v District Court of NSW & Ors* [1999] NSWCA 363; *Pearson v Janlin Circuses Pty Ltd* [2002] NSW 1118.
- 16 NSW Department of Primary Industries, *NSW Code of Practice for Animals Used in Rodeo Events* NSW Department of Primary Industries <[www.dpi.nsw.gov.au/animals-and-livestock/animal-welfare/general/codes-of-practice/rodeo-code](http://www.dpi.nsw.gov.au/animals-and-livestock/animal-welfare/general/codes-of-practice/rodeo-code)>.
- 17 Ibid.
- 18 *Prevention of Cruelty to Animals Act 1979* (NSW) ss 18, 18A; NSW Department of Primary Industries, *NSW Code of Practice for Animals Used in Rodeo Events* NSW Department of Primary Industries <[www.dpi.nsw.gov.au/animals-and-livestock/animal-welfare/general/codes-of-practice/rodeo-code](http://www.dpi.nsw.gov.au/animals-and-livestock/animal-welfare/general/codes-of-practice/rodeo-code)>.
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- 23 Ibid s 12(1).
- 24 *Exhibited Animals Protection Act 1986* (NSW) ss 22, 24; *Exhibited Animals Protection Regulation 2010* (NSW) sch 2.
- 25 *Exhibited Animals Protection Act 1986* (NSW) s 23.
- 26 Ibid s 14.
- 27 Australian Government Department of Environment and Energy, *Wildlife Trade Resources* Australian Government Department of Environment and Energy, <[www.environment.gov.au/biodiversity/wildlife-trade/publications](http://www.environment.gov.au/biodiversity/wildlife-trade/publications)>.
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- 29 Ibid.
- 30 Gotsis, above n 21; The power is provided for under the *Local Government Act 1983* (NSW) ch 7.
- 31 Gotsis, above n 21.