

Submission
No 72

INQUIRY INTO PROPOSAL TO DEVELOP ROSEHILL RACECOURSE

Organisation: Animal Defenders Office Inc.

Date Received: 18 July 2024



Animal Defenders Office

Using the law to protect animals

The Animal Defenders Office is accredited by Community Legal Centres Australia Inc.

Chair, The Hon. Scott Farlow MLC
Select Committee on the Proposal to Develop Rosehill Racecourse
Legislative Council
NSW Parliament

RosehillRacecourse@parliament.nsw.gov.au

18 July 2024

Inquiry into the proposal to develop Rosehill Racecourse

Dear Sir/Madam

Thank you for the opportunity to contribute to the inquiry into the proposal to develop Rosehill Racecourse (**the inquiry**).

The submissions of the Animal Defenders Office (**ADO**) are set out below.

1 Overview of the ADO

The ADO is a nationally accredited not-for-profit community legal centre specialising in animal law, with a focus on providing free animal law services to the community.¹ The ADO was established in 2013 and has been run by volunteers since that time. The ADO is a member of Community Legal Centres NSW Inc., the peak body representing community legal centres in NSW.

2 Terms of reference

The ADO provides its submissions in response to the inquiry's following term of reference:

- 1. That a select committee be established to inquire into and report on the proposal to develop Rosehill Racecourse, and in particular: (g) the impact on animal welfare and any integrity concerns associated with the proposal which relate to animal welfare.*

3 The ADO's submissions

The ADO provides the following submissions on the proposal to sell and develop Rosehill Racecourse in Sydney NSW (**the proposal**).

3.1 Conditional support for the proposal

The ADO supports the proposed sale and closure of Rosehill Racecourse on the condition that the proceeds of the sale are invested in animal welfare initiatives in the industry. This position is based on the view that pain and suffering for horses is inherent in the horse

¹ Further information about the Animal Defenders Office can be found at: www.ado.org.au.

racing industry, that the pain and suffering is unnecessary and unjustifiable, and that NSW animal welfare laws and industry rules do not protect racehorses.

3.2 *Animal welfare concerns in the horse racing industry*

Concerns about animal welfare standards in the horse racing industry are well documented.² Some of the main concerns are discussed below.

3.2.1 Deaths on the Track³

In 2022-23, 168 official racehorse deaths were reported on tracks around Australia, meaning that a horse was killed, on average, every two days on Australian racetracks. NSW reported the highest number of race deaths in 2022-23 at 53, approximately one death every week. These figures do not include horses who are euthanised away from the track, or who are sent to knackeries as 'wastage'. The number of reported racehorse deaths in 2022-23 is consistent with death rates over the previous decade. This is strong evidence to suggest that the horse racing industry is failing to meet basic animal welfare standards.

3.2.2 Exercise-Induced Pulmonary Haemorrhage (EIPH)

EIPH is a highly prevalent disease in racehorses, which is caused by exposure to overly strenuous exercise, and results in bleeding in the lungs.⁴ Racing Victoria has acknowledged that this condition appears, in varying degrees, in around 75% of racehorses. While the industry may suggest it is responsible for less than 2% of deaths in the industry, this statistic overlooks deaths associated with EIPH which go undiagnosed and unreported.⁵ Regardless of these numbers, EIPH presents as a significant animal welfare concern in the horse racing industry.

3.2.3 Whipping

The ADO submits that the practice of whipping thoroughbred racehorses inflicts harm on the horses and is unnecessary. Racing NSW still allows an unlimited use of the whip in the final 100 metres of a race,⁶ when horses are most fatigued and have the least capacity to respond. RSPCA Australia suggests not only that there is no evidence to show that whipping influences the performance of a horse, but also that the practice results in pain, localised trauma and tissue damage.⁷ This is supported in a study by Professor Paul McGreevy from the Faculty of Veterinary Science at Sydney University who notes that, '[i]f flogging a dead horse is futile, flogging a tired horse is worse still since such animals feel the pain while unable to respond.'⁸ The ADO notes that Norway has a viable and profitable horse racing industry and yet the

² RSPCA Australia, 'What are the animal welfare issues with Thoroughbred horse racing?', updated 22 January 2024, <https://kb.rspca.org.au/knowledge-base/what-are-the-animal-welfare-issues-with-thoroughbred-horse-racing/>.

³ Coalition for the Protection of Racehorses, *Deathwatch Report 2023 (Deathwatch Report 2023)* 4 – 6, <https://horseracingkills.com/wp-content/uploads/2023/10/DeathWatch2023.pdf>.

⁴ Racing Victoria, 'An update on "Bleeders" and EIPH', *Racing Victoria* (webpage, 2023) https://www.racingvictoria.com.au/the-horse/veterinary-care/~/_media/eb7a9d978aee49b08317d1e3fdff300f.ashx.

⁵ Crispe, E, 'Exercised-induced pulmonary haemorrhage in Thoroughbred racehorses: an investigation of risk factors, the association with race day performance and a longitudinal study' (2018) 51(1) *Equine Veterinary Journal* 45.

⁶ *Rules of Racing* AR132.

⁷ RSPCA Australia, 'There are serious animal welfare issues with horse racing, spanning the entire lifecycle of the horse' RSPCA (webpage, 2024) <https://www.rspca.org.au/key-issues/horse-racing/>.

⁸ Lydia Tong et al, 'A Comparative Nero-Historical Assessment of Gluteal Skin Thickness and Cutaneous Nociceptor Distribution in Horses and Humans' (2020) 10(11) *Animals* 2094.

use of whips has been progressively phased out.⁹ In Australia, the Australian Veterinary Association's policy on the use of whips on horses at competitive events recommends that 'Whip use must not be used to influence the result of a competitive event.'¹⁰

3.2.4 Knackeries and Abattoirs

'Wastage' is a term used to refer to horses rejected by the industry.¹¹ It includes both the breeding of thoroughbreds who never make it to the racetrack, and racehorses who are retired from racing. When a thoroughbred is born in Australia, his or her chance of success on the track is minimal. It is estimated that of the roughly 13,000 foals produced in Australia each year in the horse racing industry, only 4,000 will ever run in a race.¹² This leaves 9,000 foals effectively useless to the industry. Of the horses who are raced, approximately 40% earn no money at all, and only 13% earn enough to cover their costs.¹³ The large-scale practice of slaughtering ex-racehorses was exposed in the ABC TV report titled '*The Final Race. The Dark Side of the Horse Racing Industry*'.¹⁴ This investigation uncovered the industry's support for the slaughter of retired racehorses, many of whom were sworn at, kicked, beaten and electrocuted by knackery workers.

3.3 *Lack of legislative protection for racehorses*

The ADO submits that NSW's animal welfare laws and the industry's own rules do not protect racehorses from the harmful practices inherent in the industry.

3.3.1 NSW animal welfare law

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.¹⁵ If the act of cruelty results in a serious injury or a situation where it is considered cruel to keep the animal alive, it is 'aggravated cruelty'.¹⁶

According to the report on horses who died on Australian racetracks in 2022-23:

...the most prevalent cause of death was catastrophic front limb injury with sixty-three occurrences. Catastrophic hind limb injury was the second leading cause of death with sixteen occurrences. Other causes of death were cardiac causes, massive bleeds, shoulder injury, pelvis injury, severe laceration, spinal injuries, aneurysm, skull fractures, and severe neurological injuries from head trauma.¹⁷

Based on this evidence, the ADO submits that it would be reasonable to attribute the deaths of horses on racetracks to the horses being 'over-worked, over-driven,

⁹ <https://www.thoroughbreddailynews.com/a-whip-free-day-of-racing-in-norway/>.

¹⁰ Ratified 7 Dec 2022, <https://www.ava.com.au/policy-advocacy/policies/horse-health-and-welfare/use-of-whips-on-horses-at-competitive-events/>.

¹¹ RSPCA Australia, 'What happens to horses that leave the racing industry?', updated 30 October 2020, <https://kb.rspca.org.au/knowledge-base/what-happens-to-horses-that-leave-the-racing-industry/>.

¹² Coalition for the Protection of Racehorses, 'Wastage', *Coalition for the Protection of Racehorses* (webpage, 2024) <https://horseracingkills.com/campaigns/wastage/>.

¹³ Ibid.

¹⁴ 'The Dark Side of the Horse Racing Industry' *The 7.30 Report* (Australian Broadcasting Corporation, 2019) <https://www.abc.net.au/news/2019-10-17/the-dark-side-of-the-horse-racing-industry/11614022>.

¹⁵ POCTAA s 4(2)(b).

¹⁶ Ibid s 4(3).

¹⁷ Deathwatch Report 2023 p 7.

over-ridden or over-used' and thereby constituting an animal cruelty offence under POCTAA.

The ADO notes that POCTAA does not contain an explicit exemption or defence to cruelty offences for the treatment of thoroughbred horses used for racing.

Despite these racehorse deaths appearing to breach animal welfare laws, the ADO is unaware of any instances of those responsible for the horses who die on NSW racetracks being investigated or prosecuted for animal cruelty.

3.3.2 Industry rules

There is no code of practice for thoroughbred racehorses prescribed under NSW animal welfare laws.

However, the *Thoroughbred Racing Act 1996* (NSW) establishes Racing NSW as the body in charge of regulating and controlling thoroughbred horse racing in NSW, and Racing NSW has its own set of rules known as the 'Rules of Racing' (**rac**ing rules).¹⁸ These rules use the national industry definition of 'cruelty', which includes 'any act or omission as a consequence of which a horse is mistreated.'¹⁹ The ADO submits that this definition lacks clarity and does not elaborate on what constitutes mistreatment (which is not a defined term), making enforcement difficult.

The racing rules include a rule regarding 'the welfare of thoroughbred horses from birth, during their racing careers and on retirement'.²⁰ The racing rules require that owners, trainers and people in possession or control of a racehorse 'exercise reasonable care, control and supervision...to prevent any such horse from being subject to cruelty or unnecessary pain or suffering'²¹ and that horses are 'not to be directly or indirectly sent to an abattoir, knackery or similarly disposed of'.²²

However, in terms of consequences of non-compliance, the rule states merely that any person who fails to comply 'may be penalised'.²³ It is not clear whether there are penalties for breaching the guidelines or whether there is independent or external assessment to ensure compliance or any guidance for enforcement officers on when to penalise.

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

3.4 *Community concerns regarding animal welfare in the horse racing industry*

The horse racing industry is experiencing a growing backlash from Australians, who are voicing their discontent with an organisation that profits from exploiting and harming animals. This may be due in part to the rise of social media and information interconnectedness which demands greater accountability for industries such as horse racing, the existence of which relies on a social licence to thrive and prosper. This growing discontent has resulted in

¹⁸ *Rules of Racing of Racing NSW* (as amended 1 July 2024) (**rac**ing rules), <https://www.racingnsw.com.au/wp-content/uploads/NSWRules.pdf>.

¹⁹ Racing rules AR 2.

²⁰ *Ibid*, LR 114 (1).

²¹ *Ibid*, LR 114 (3).

²² *Ibid*, LR 114 (5)(e).

²³ *Ibid*, LR 114 (6).

resistance to events such as the Melbourne Cup,²⁴ including by long-standing corporate sponsors such as Myer and David Jones.²⁵ It appears that aligning brands with an industry that has a poor animal welfare record is no longer good for business.

3.5 Proceeds from the proposal used to improve animal welfare standards

Given the inherent animal welfare concerns in the horse racing industry, the ADO submits that any money gained from the proposal should be dedicated to improving the animal welfare standards in the industry. A financial investment by the ATC in improving animal welfare could be regarded by the industry as an investment in the future of the industry itself in Australia. Given the growing discontent with horse racing, both domestically and internationally,²⁶ the industry should listen and respond, or risk becoming redundant.²⁷

4 ADO's recommendations

The ADO makes the following recommendations:

1. The proposed sale of Rosehill by the ATC to the NSW Government proceeds.
2. The ATC uses the proceeds of the Rosehill sale to:
 - a. Work with industry bodies such as Racing NSW to create more transparent and thorough reporting and accountability mechanisms relating to animal welfare in horse racing, including reporting on the fate of horses 'off track'.
 - b. Establish processes, policies and plans to protect and trace every racehorse from birth to death, while advocating for the elimination of wastage in the industry. This should include reducing the unnecessary production of foals, as well as allowing horses to live out their natural lives in retirement without killing them prematurely.
 - c. Invest money in establishing sanctuaries for horses bred and rejected by the industry (aka 'wastage').
 - d. Place a cap on breeding numbers and make the NSW racing industry responsible for the welfare of all horses it breeds and profits from.
 - e. Establish a working group, including animal welfare organisations, to:
 - i. phase out cruel practices such as whipping; and
 - ii. consider animal welfare concerns in the industry and how these can be alleviated, with consideration given to the Five Domains Welfare Model²⁸ for all racehorses.

²⁴ Paul Karp, 'Melbourne Cup: most Australians have little or no interest in 'race that stops the nation', Essential poll finds', *The Guardian Online* (webpage, 6 November 2023) <https://www.theguardian.com/australia-news/2023/nov/07/melbourne-cup-2023-horse-race-field-broadcast-horses-australia-interest-day>.

²⁵ Melissa Singer, 'As Myer and the Melbourne Cup part ways, there's still hope for race day fashion', *The Sydney Morning Herald* (webpage, 30 June 2023) <https://www.smh.com.au/lifestyle/fashion/as-myer-and-the-melbourne-cup-part-ways-there-s-still-hope-for-race-day-fashion-20230626-p5djfx.html>.

²⁶ Mikaella McInerney, 'The Slow Decline of Our Cruellest Sport' (webpage, 22 April 2024) <https://thehumaneleague.org/article/horse-racing-decline>.

²⁷ Michael Lynch, 'Racing must confront its 'wastage' problem', *The Sydney Morning Herald* (online, 18 October 2019) <https://www.smh.com.au/sport/racing-must-confront-its-wastage-problem-quickly-20191018-p531wy.html>.

²⁸ RSPCA Australia, 'What are the Five Domains of Animal Welfare', updated 19 January 2024, <https://kb.rspca.org.au/knowledge-base/what-are-the-five-domains-of-animal-welfare/>.

Thank you for taking these submissions into consideration.

Yours sincerely

James Burford and Tara Ward

Legal Intern and Managing Solicitor

Animal Defenders Office