Select Committee on Jumps Racing inquiry into jumps racing

The Animal Law Institute is a not for profit community legal centre that is dedicated to protecting animals and advocating for their interests through the Australian legal system.
Submission to the Select Committee on Jumps Racing in relation to its inquiry into jumps racing

Introduction

1. The Animal Law Institute (ALI) welcomes the opportunity to make this submission to the Select Committee on Jumps Racing (Committee) regarding jumps racing in South Australia and whether or not it should be banned.

2. By way of background, ALI is a registered charity and a not for profit community legal centre that is dedicated to protecting animals and advocating for their interests through the Australian legal system. ALI is a member of the peak bodies, the Victorian Federation of Community Legal Centres and the National Association of Community Legal Centres.

Executive summary

3. ALI supports a ban on jumps racing in South Australia primarily because:
   a. despite the introduction of numerous safety measures, it appears impossible to avoid an unacceptable rate of horse fatalities;
   b. horses are still far more likely to be injured while competing in jumps racing in comparison to flats racing;
   c. there do not appear to be key economic drivers in support of retaining the industry; and
   d. the sport has faced considerable criticism from the community recently and does not appear to have wide community support.

4. If the Committee recommends that jumps racing be banned or phased out in South Australia, ALI suggests that the Committee also recommend that the Animal Welfare Act 1985 (SA) (Act) be amended to express that jumps racing is a ‘prohibited activity’ for the purpose of section 14 of the Act.
**Introduction of jumps racing as a ‘prohibited activity’**

5. If the Committee recommends that jumps racing should be banned in South Australia, ALI suggests that it also recommends that the ban be expressed in the Act. While it has been suggested that jumps racing may already be considered a contravention of sections 13(1) or 13(2) of the Act,¹ ALI is not aware of any cases where a person has been prosecuted under those provisions for involving a horse in jumps racing. Accordingly, an express prohibition in the Act would provide clarity surrounding whether the sport is in fact illegal in South Australia.

6. Section 14(1) of the Act makes it an offence for a person to ‘take part in a prohibited activity’ and a contravention of this offence attracts a maximum penalty of $50,000 or 4 years’ imprisonment. Also, section 14(2) of the Act makes it an offence for a person to be ‘present in a place at which a prohibited activity is occurring’ and attracts a maximum penalty of $20,000 or 2 years’ imprisonment if contravened.

7. For the purpose of section 14, ‘prohibited activities’ are defined in section 14(5) of the Act. Section 14(5) states:

   ‘(5) For the purposes of this section, the following are prohibited activities:

   (a) organised animal fights;
   (b) live baiting;
   (c) releasing an animal from captivity for the purpose of it then being hunted or killed (whether by a person or otherwise);
   (d) selling or supplying an animal to a person for the purpose of the animal being used in an activity referred to in a preceding paragraph;
   (e) keeping or preparing an animal for the purpose of using the animal in an activity referred to in a preceding paragraph.’

8. Accordingly, if the Committee supports a ban on jumps racing, we suggest that the Committee recommend that a new section 14(5)(f) be included in the Act which reads as follows:

   ‘(5) For the purposes of this section, the following are prohibited activities:

   (a) organised animal fights;
   (b) live baiting;

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(c) releasing an animal from captivity for the purpose of it then being hunted or killed (whether by a person or otherwise);

(d) selling or supplying an animal to a person for the purpose of the animal being used in an activity referred to in a preceding paragraph;

(e) keeping or preparing an animal for the purpose of using the animal in an activity referred to in a preceding paragraph;

(f) jumps racing.’

9. To ensure that there is no doubt about what constitutes jumps racing, ALI also suggests that a definition of jumps racing be inserted into section 3 of the Act in appropriate alphabetical order, or alternatively insert that definition in a new section 14(9) of the Act. The defeated Animal Welfare (Jumps Racing) Amendment Bill 2015 (SA) (Bill) proposed to define ‘jumps racing’ as ‘a steeplechase or hurdle race involving the racing of horses.’ In ALI’s view, the definition of jumps racing proposed in the Bill is clear and is consistent with how the sport is commonly understood. As such, the Committee may wish to adopt this definition if it recommends that a new section 14(5)(f) be inserted into the Act to recognise ‘jumps racing’ as a ‘prohibited activity’.

10. ALI understands that the Bill sought to achieve the same objective by proposing to insert a separate provision stating that ‘a person must not organise, promote or participate in, or participate in organising or promoting, jumps racing.’

11. However, following the recent amendment to section 14 of the Act, ALI is of the view that an amendment to section 14(5) is preferable to the proposal to include a new section in the Act specifically relating to jumps racing. ALI considers that the key objective of the Bill can still be achieved under the preferred proposal, while ensuring that each ‘prohibited activity’ is governed consistently.

12. Also, for the reasons outlined in the Law Society of South Australia submission in response to the Bill, the proposal to include an express prohibition of jumps racing in the Act is consistent with the Act’s overarching objective to promote animal welfare.

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3 Ibid.
4 Submission on the Animal Welfare (Jumps Racing) Amendment Bill.
As the risk of fatality to horses is still evident, the sport should be banned to eliminate this risk

Previous reviews and implementation of safety measures

13. As the Committee is no doubt aware, the proposal to ban jumps racing in South Australia is not a new proposal and was considered in detail by the Senate Select Committee on Animal Welfare (Senate Select Committee) during its 1991 inquiry. Following the inquiry the Senate Select Committee produced a report in which it stated that:

‘Based on the evidence received during the inquiry, the Committee has serious concerns about the welfare of horses participating in jump races. These concerns are based on the significant probability of a horse suffering serious injury or even death as a result of participating in these events, and in particular steeplechasing. This concern is exacerbated by evidence suggesting that, even with improvements to the height and placing of jumps, training and education, the fatality rate would remain constant. The Committee, therefore, can only conclude that there is an inherent conflict between these activities and animal welfare.’

14. Despite subsequent numerous formal inquiries being conducted in 1994, 1998, 2002, 2008 and 2010, ALI is of the view that while the fatality rate appears to have decreased, there is no indication that it can be reduced to an acceptable level.

15. From the outset ALI notes that although a number of the statistics and reports in this submission relate to the Victorian jumps racing industry, ALI considers this information to be relevant to South Australia given the obvious alignment of the two industries.

16. Notably, the deaths of a raft of horses in the 2008 racing season saw the suspension of jumps racing in Victoria and retired County Court David Jones was appointed to undertake a review of, and report on, safety considerations (Judge Jones report). The Judge Jones report cited a further need for dramatic change to the conditions involved in jumps racing including track condition, the nature of the obstacles, and the establishment of a permanent Jumps Review Panel and a Jumps Riders Skills Panel to ensure jockeys are suitably trained for jumps races. ALI understands that the majority of these recommendations were implemented, but the 2009 jumps racing season saw an increase in the rate of fatalities, leading to a further inquiry by Racing Victoria. The 2009 review led to an initial plan to phase out jumps racing entirely in the state of Victoria within two years.

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7 Judge David Jones, Review of Jumps Racing in Victoria, Commissioned by Racing Victoria Limited (November 2008).
years, but this plan was subsequently replaced by a series of new standards aimed at ensuring higher standards of safety.

17. In 2010, Key Performance Indicator (KPI) targets of racing fatalities were introduced in Victoria, with a target of not more than 6.5 deaths per 1000 starts (0.65%). Additional changes were also introduced prior to commencement of the 2011 racing season including:
   a. improving sight lines on obstacles and reviewing the placement of wings;
   b. improving schooling and trialling facilities at training venues;
   c. reviewing the racing program; and
   d. assessing the suitability of venues to conduct steeplechase races.\(^9\)

18. The KPI threshold was discontinued entirely the following year in lieu of confirmation from Racing Victoria that jumps racing would be monitored on an ongoing basis and that future reviews would be conducted if required.\(^10\)

**Considering fatality rates in light of recent measures**

19. In assessing the extent to which new measures have succeeded in safer jumps racing programs, changes made to the industry must be viewed in light of statistics relating to falls and fatalities in jumps racing.


21. The findings of the Ruse et al study were as follows:

   ‘There were ten horse fatalities in races over the study period, with an overall fatality rate of 5.1 fatalities per 1000 horses starting in a jump race (0.51%). There was significant disparity between the fatality rate for hurdles, 0.75 fatalities per 1000 starts (0.075%) and steeplechases, 14 fatalities per 1000 starts (1.4%).\(^{12}\)’

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\(^12\) Ibid, 1072.
22. The overall fatality rate of 0.51% falls just below the previous KPI of 0.65%, but the steeplechase fatality rate of 1.4% exceeds this figure by more than twofold. This is despite the attempts to implement changes across the jumps racing industry to ensure minimised fatality rates.

23. In determining trends in data, Ruse et al compared their own findings to those of previous studies, incorporating prior years of competition into their research, in particular the well-known 2006 article by Boden et al titled ‘Risk of fatality and causes of death of Thoroughbred horses associated with racing in Victoria, Australia: 1989-2004’[^13] (Boden et al). The study comprised an analysis of competitors in the Victorian horse racing industry between 1989 and 2004, which encapsulated 743,552 starts across both flat races and jumps races.

24. The study found that:

> ‘Over the 15 years study period, there were 743,552 starts (719,695 flat and 23,857 jump starts) and 514 fatalities. Of the 514 fatalities, 316 occurred in flat races and 198 in jump races (101 in hurdle and 97 in steeplechase races). The risk of fatality in flat starts was 0.44 per 1000 starts (316/719,695) whereas that in jump starts was 8.3 per 1000 starts (198/23,857). The risk of fatality in jump starts was 18.9 times that in flat starts.’[^14]

25. The findings of Boden et al have been referred to as a point of comparison between key studies on horse fatalities, although we note it predates the safety implementations introduced in response to the Judge Jones report and the 2009 Racing Victoria inquiry. The outcome of those was that allowed jumps racing was permitted to continue on the basis that there was adherence to stricter safety guidelines.

**Gaps in data**

26. Despite the concise manner in which data was collected for each of the above mentioned studies, any results must be read in consideration of confirmed gaps in the published data and the difficulty encountered in being able to obtain accurate statistics.

27. Ruse et al notes that fatality figures compiled in terms of race starts resulting in death do not consider fatalities that occur as a result of training or trials. Similarly, horses scratched in the lead-up to events are not included in the final results of the study as their fates often remain unknown and unaccounted for, and a race fatality is only considered by the study in cases where the horse dies during, immediately at the conclusion of, or within 24 hours of a race as a consequence of an injury suffered during a race. Longer-term injuries that subsequently lead to

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[^14]: Ibid, 314.
[^15]: Ruse et al, 1077.
or contribute to a horse’s death do not form part of the study, and fatality rates published should only be viewed as an analysis of the horses that manage to survive long enough to actually get to the start of a race. The authors also make note of the detailed methodology required in compiling all the relevant data, and that while all the data used is publicly available, they are ‘also highly fragmented and dispersed, requiring considerable effort to assemble and integrate.’\textsuperscript{16}

28. Boden \textit{et al}, in a follow-up publication referring to jumps racing-specific data, notes a similarly involved process required to obtain the necessary data for the study, citing that three separate databases were used to cross-reference all race data, and discrepancies between records meant a number of recorded fatalities were excluded from the published results.\textsuperscript{17}

29. For these reasons, we think it is important to note that the fatality rates recorded in the respective articles represent a conservative figure of total fatalities during the relevant periods.

\textbf{Horses are still more likely to be injured in jumps racing than they are in flats racing}

30. Due to the nature of the sport, the types of catastrophic injuries that horses can sustain are increasingly higher in jumps racing than in flats racing. According to Boden \textit{et al}, at the time of their study not only was the risk of ‘catastrophic limb injury 17.7 times greater in jump starts than in flat starts’, but ‘the risk of fatal cranial or vertebral injury was 120.7 times greater in jump starts than in flat starts’.\textsuperscript{18}

31. These findings show a clear pattern of heightened risk of injury in jumps racing. This is not a new finding; Bailey \textit{et al} (1998) showed a similar discrepancy in the injury toll between horses engaged in flat \textit{versus} jumps racing.\textsuperscript{19} The overall musculoskeletal injury risk of horses in hurdle races was four times that of flat races, and the injury risk of horses in steeplechase races was eight times that of flat racing.\textsuperscript{20} Also, the rate of musculoskeletal injuries and musculoskeletal injuries in jumps racing is significantly more than in flats racing. The incidents per 1000 for musculoskeletal injuries in hurdle and steeple races accounted for 17.3 (hurdle) and 29.1 (steeple) compared to 2.9 per 1000 for flats. With fatal musculoskeletal injuries, the incidents were 6.3 (hurdle) and 14.3 (steeple) per 1000, while the rate in flats racing was 0.6.\textsuperscript{21}

\textsuperscript{16} Ibid, 1086.
\textsuperscript{17} Boden \textit{et al}, 423.
\textsuperscript{18} Ibid, 315.
\textsuperscript{20} Ibid, 502.
\textsuperscript{21} Ibid, 501.
32. Factors seen as contributing to this increased risk, as well as the chance of a horse tripping over a barrier, are cited as potentially including the increased length of races, heavier jockeys, jockey error, pre-existing injuries and the likelihood of fatigue.

33. The increased risk to horses of fall and injury carries with it a significantly increased risk to jockeys as well, with a study of jockey falls between 2002-2006 finding that while such falls only occur at a rate of 0.42 per 1000 rides in flat races, the rate of falls increases to 5.26 in jumps races. 88% of these jumps races falls occurred at the jumps themselves.

34. The risk is increased in steeplechases, as there are higher obstacles in comparison to hurdle races, along with a longer course distance which increases the risk of falls brought on by horse fatigue. In contrast to flats racing, the intrinsic risk in jumps racing has also been attributed to the older horse population, and longer race distances.

35. While the risk of injury is higher in steeplechases, the total fatality rate in steeplechase and hurdle races were comparable. As Boden et al showed, of the total fatalities in jumps races (accounting for 198 fatalities within the study period), 101 occurred in hurdle races and 97 occurred in steeplechase races.

36. A study of the relevant time period (1986-1993) found the fatality rates in Victoria surrounding the research and drafting of the 1991 Report were 0.03% for flat races, 0.60% for hurdle races and 1.1% for steeplechases. Such high rates of fatality and injury led the Senate Select Committee to recommend that jumps racing cease completely within the “next three years”.

37. During the 15 year period reported on by Boden et al, a fatality rate of 0.044% was recorded in flat racing, compared to the 0.83% rate determined for jump starts. Comparing the two, jumps racing showed a risk of fatality that was 18.9 times that of flat racing.

38. Ruse et al do not report the flat racing fatality rate for the relevant study period, but if we are to compare it to that of the Boden et al study, we can see that the jumps racing fatality rate of 0.51% is 11.6 times that of the previously determined 0.044% flat racing rate. Even more alarmingly, this indicates the steeplechase fatality rate is 1.4%; 31.9 times that of flat racing.

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23 Ruse et al, 1083.
24 Ibid, 1082.
27 Senate Select Committee 24, [3.23].
28 Boden et al, 314.
39. Looking at the relevant data over the 25 years since the 1991 Report, reports and reviews into jumps racing have noted insufficient reduction in the fatality rate of jumps racing. The 1991 estimate of 1.1% for steeplechase races was an underestimate, as the rate recorded was 1.4%, despite the efforts made to increase safety in races. The racing industry has thereby demonstrably failed to sufficiently reduce the fatality rate in jumps racing. Current fatality figures are comparable with the figures which prompted the Senate Select Committee to recommend phasing out the entire jumps racing industry.

40. Accordingly, it appears that despite the introduction of safety improvements, an unacceptable fatality level is an inevitable consequence of jumps racing, and the risk of death and injury in the sport is far greater than that in flats racing.

**Contribution to the South Australian economy**

41. Arguments have been presented that jumps racing remains crucial to the financial viability of the horse racing industry in general. However, analysis of gambling trends in Victoria shows a significantly lower financial return for jumps racing than demonstrably less dangerous forms of horse racing. While ALI recognises that the figures referred to below are based on the Victorian industry, ALI notes that it is still relevant when discussing the jumps racing industry, given that approximately 10% of the entire annual total of jumps races are held in South Australia.²⁹

42. Ralston and Brackertz analysed the profitability of various forms of horse racing in Victoria and found that for each dollar of prize money offered in a jumps race, only $2.40 is wagered, in comparison to flats racing where each dollar of prize money returns $9.56 in wagering.³⁰ Even high weight racing generates a return of $8.80 per dollar of prize money on offer.³¹

43. This indicates that the potential revenue streams are greater in flats racing and high weights racing than they are in jumps racing. Given the fact that those races are comparatively less likely to result in serious injury or death to a horse, ALI considers that the preferable outcome would be for those involved in jumps racing to transition out of jumps racing.

44. It has been argued that jumps racing can prolong the life of horses that have been retired from the flats racing industry by redirecting them into the jumps racing industry. This argument seems weak. Ruse et al noted ‘given that jump racing accounted for only 1.5% of all thoroughbred racing

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²⁹ Ruse et al, 1078.
³⁰ Liss Ralston & Dr Nicola Brackertz, *Jumping the gun: A statistical analysis of the profitability and safety of jumps, flat and high weight racing in Victoria* (DataMill Consulting, September 2010) i (Ralston & Brackertz).
³¹ Ibid.
in Victoria and South Australia, [this would only apply] to a small minority of race horses’. 32 ALI is of the view that prolonging the life of a small minority of horses by involving them races that pose significantly greater risk of injury and fatality does not promote the objective of maintaining animal welfare in a reasonable way, and is difficult to justify when the industry appears to contribute relatively little to the economy, and alternative less riskier racing formats are well established.

45. ALI understands that high weight racing is a safer alternative for both the horses and jockeys involved. As noted by Ralston & Brackertz ‘there are fewer falls, fewer lost riders and no deaths to starters. Compared to jumps racing, a high proportion of starters in high weight races finish the race (79.8% and 99.4% respectively). This makes high weight races a better proposition for punters and generates more betting revenue’. 33 The considerably lower fatality rate in flats racing would also theoretically increase the odds of horses having extended careers and being available for more competitions.

46. In Victoria, only horses and jockeys engaged in jumps racing are permitted to enter high weight races, 34 meaning current jumps race horses would have an avenue for competition and not simply become wastage. Therefore, holding more high weight races in South Australia may provide an avenue to redirect the horses, jockeys, and trainers from jumps racing into high weight racing thus mitigating any economic loss which may be felt by the minority who are involved in the South Australian jumps racing industry. 35

The sport does not appear to have wide community support

47. As outlined above, despite an increase in measures aimed at addressing animal welfare concerns, there continues to be an unacceptable number of horse fatalities within the jumps racing industry. As such, there has been a notable decline in community support for the sport.

48. In 2009, as a part of its review into jumps racing, Racing Victoria found that 65% of people surveyed agreed that incidents in jumps racing are ‘not an acceptable price to pay for the retention of the sport’. 36

49. In the same year, an independent survey conducted by Footprints Market Research on behalf of the RSPCA came to a similar finding. This survey included 1,701 participants from Victoria, South

32 Ruse et al, 1084.
33 Ralston & Brackertz, i.
34 Ibid, 1.
Australia and Tasmania, with around two-thirds of participants in favour of a ban on the sport.\(^{37}\)

In the same survey, it was reported that ‘a quarter of respondents had stopped attending flat racing because of dissatisfaction with jumps racing’ while ‘43 per cent felt less favourable towards the racing industry in general because jumps racing had been allowed to continue’\(^{38}\)

50. Also, a number of key players within the industry have expressed their support for phasing out the sport in South Australia. In 2012, the South Australian Jockey Club (SAJC) expressed its desire to phase out jumps racing at its Morphettville racecourse, citing public scrutiny of the sport as one of the main drivers of this decision.\(^{39}\) In 2014 the SAJC also called for an end to jumps racing in South Australia, with the chairman saying that ‘it runs the risk of having significant negatives for the SAJC’.\(^{40}\)

51. South Australian Minister for Racing Leon Bignell also commented in early 2015 that he ‘would like to see jumps racing phased out and I think most of the public would....I think most people would say that jumps racing is a thing of the past.’\(^{41}\) This comment was made in response to Thoroughbred Racing SA’s decision to schedule jumps races in 2015 at Morphettville, contrary to the wishes of the SAJC.

52. ALI considers that these comments indicate the community’s discontent with the continuation of the industry, and ALI encourages the Committee to take into account the views expressed by members of the community, the SAJC and the Minister for Racing when considering whether to recommend a ban of jumps racing.

We thank the Committee for considering our submission.

Should the Committee have any questions regarding this submission, please do not hesitate to contact The Animal Law Institute via email at policy@ali.org.au.

Yours sincerely

The Animal Law Institute

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\(^{38}\) Ibid.


\(^{40}\) Ibid.