

THE USE OF ELECTRIC PRODDERS ON RODEO HORSES IN AUSTRALIA: REGULATORY INCONSISTENCY AND POTENTIAL ILLEGALITY

MORGAN STONEBRIDGE,* DI EVANS,** JANE KOTZMANN,***
AND ANDREW MCLEAN****

Inflicting electric shock on a horse can cause significant pain for which they are not adapted. This is recognised in the animal welfare legislation of all Australian jurisdictions, which prohibit the use of electrical devices on horses. However, rodeo horses are exempted from this protection in some jurisdictions. This article analyses the regulatory framework to determine if legislative exemptions result in different legal protections for horses depending on whether they are used in rodeos or horse racing. It also considers instances of actual use of electrical devices on horses to determine whether the current regulatory framework is capable of enforcement. It argues that possession of electric prodders near horses at rodeos should be made an offence in all jurisdictions.

I INTRODUCTION

In 2022, a photograph was circulated showing a jockey holding a ‘jigger’ in his hand while training for the Birdsville Races.¹ A jigger is a handheld device used to administer an electric shock, and its use in the racing industry is prohibited across

* PhD Candidate, Deakin University Law School. Email: m.stonebridge@deakin.edu.au.

** Senior Scientific Officer, Science Team, RSPCA Australia, Deakin, Canberra, ACT 2600, Australia. Email: devans@rspca.org.au.

*** Senior Lecturer, Deakin University Law School. Email: j.kotzmann@deakin.edu.au; ORCID iD: <<https://orcid.org/0000-0003-1834-5480>>.

**** Australian Equine Behaviour Centre, Tuerong, Victoria 3915. Email: andrewmclean@esi-education.com. Many thanks to Gayle D’Arcy for her assistance and advice which contributed to this article and to anonymous reviewers who provided feedback in relation to earlier drafts of this article. Thank you also to AnimalKIND for their investigations into the use of electric prodders in rodeos which made Part IV of this article possible.

1 Vincene Overs, ‘Birdsville Pair Found Guilty in Jigger Inquiry’, *Queensland Racing Integrity Commission* (Web Page, 8 February 2023) <<https://qric.qld.gov.au/news/birdsville-pair-found-guilty-in-jigger-inquiry>>; Dan Prosser and Danielle O’Neal, ‘Champion Bush Trainer, Wife and Jockey Banned by Racing Watchdog over Birdsville Jigger Scandal’, *ABC News* (online, 9 March 2023) <<https://www.abc.net.au/news/2023-03-09/todd-austin-ric-mcmahon-banned-after-birdsville-jigger-probe/102072038>>.

all Australian states.² The reaction was swift, with the Queensland Racing Integrity Commission ('QRIC') suspending and eventually disqualifying those involved.³ The nationwide prohibition on electric prodders for horses in the racing industry alongside the prompt response from the industry itself gives the impression of a strong regulatory scheme with effective enforcement.⁴ However, this depiction belies the current state of protection horses have from electric prodders in Australia.

The use of electric shock to train or goad animals is permissible in certain circumstances. Most notably, electric shock devices are commonly used to move animals such as cattle in saleyards, abattoirs, and for purposes of transport. Electrical pain is deployed via various apparatus such as cattle prodders and so-called jiggers. This article is concerned with the use of these devices on bucking horses in rodeos, who, in New South Wales ('NSW'), the Northern Territory, Western Australia, and South Australia,⁵ are excluded from the regulatory protection applied to horses in the racing industry.

The infliction of electric shock poses a significant danger to the life of an animal. Indeed, seminal studies on the psychological effects of uncontrollable electric shock on dogs and rats revealed that some of the research animals died.⁶ More broadly, the application of an electric prodder to an animal is likely to cause them significant pain.⁷ Further, if the power is sufficiently high, thermal burns can occur within the bodies of animals as well as cardiac and respiratory arrest.⁸ However, thermal burns may not necessarily be obvious on an animal's skin because of the

-
- 2 Each Australian jurisdiction prohibits the use of electric jiggers on animals, with exemptions made for certain uses. See *Animal Welfare Act 1992* (ACT) s 13 ('AWA ACT'); *Prevention of Cruelty to Animals Act 1979* (NSW) s 16(2)(a) ('POCTAA NSW'); *Animal Protection Act 2018* (NT) s 30 ('APA NT'); *Animal Care and Protection Act 2001* (Qld) s 18(2)(e) ('ACPA'); *Animal Welfare Act 1985* (SA) s 15 ('AWA SA'); *Animal Welfare Act 1993* (Tas) s 8(2)(i) ('AWA Tas'); *Prevention of Cruelty to Animals Regulations 2019* (Vic) s 14(1) ('POCTAR'); *Animal Welfare Act 2002* (WA) s 19(2)(b) ('AWA WA'). Use on horses in the racing industry is not exempted in any jurisdiction: see Part III(F) for a detailed discussion.
 - 3 Those involved received disqualifications of varying lengths, with five years being the longest disqualification: see Vincene Overs, 'Stewards Disqualify Birdsville Three in Jigger Case', *Queensland Racing Integrity Commission* (Web Page, 8 March 2023) <<https://qric.qld.gov.au/news/stewards-disqualify-birdsville-three-in-jigger-case>> ('Stewards Disqualify Birdsville Three').
 - 4 The level of enforcement has increased since the introduction of video recording: see Paul McGreevy and Robert Boakes, 'The Shocking Use of "Jiggers" in Horse Racing', *The Conversation* (online, 5 February 2019) <<https://theconversation.com/the-shocking-use-of-jiggers-in-horse-racing-111176>>. It is also clear that the industry is motivated to enforce the prohibition given the potential reputational impact: see, eg, Matt Welsh, 'Thompson: We Acted Swiftly, Decisively', *Racing.com* (Web Page, 5 February 2019) <<https://www.racing.com/news/2019-02-05/news-thompson-we-acted-swiftly-decisively>>.
 - 5 And potentially Tasmania, subject to the discussion in Part III.
 - 6 Jay M Weiss et al, 'Effects of Chronic Exposure to Stressors on Avoidance-Escape Behavior and on Brain Norepinephrine' (1975) 37(6) *Psychosomatic Medicine* 522, 524–6 <<https://doi.org/10.1097/00006842-197511000-00006>>; Martin EP Seligman and Steven F Maier, 'Failure to Escape Traumatic Shock' (1967) 74(1) *Journal of Experimental Psychology* 1, 2 <<https://doi.org/10.1037/h0024514>>.
 - 7 D Grumett and A Butterworth, 'Electric Shock Control of Farmed Animals: Welfare Review and Ethical Critique' (2022) 31(3) *Animal Welfare* 373, 375 <<https://doi.org/10.7120/09627286.31.4.006>>.
 - 8 Christian Spies and Richard G Trohman, 'Narrative Review: Electrocutation and Life-Threatening Electrical Injuries' (2006) 145(7) *Annals of Internal Medicine* 531, 532–3 <<https://doi.org/10.7326/0003-4819-145-7-200610030-00011>>; Terry L Whiting, 'Pain in Human and Non-human Animals Caused by Electricity' (2016) 57(8) *Canadian Veterinary Journal* 883, 883.

high resistance of the skin compared to their internal physiology.⁹ Importantly, the greater the duration of exposure, the greater the amount of damage.¹⁰

The focus of this article is on electric prod use on horses in rodeos, given the very clear risk of negative physical and mental impacts associated with their use and because the use of prodders on horses has been a topic of controversy.¹¹ Although bulls are used in bucking events at rodeos, it is impossible to conduct a detailed analysis for both horses and bulls within a single journal article. Further, instances of electric prod use in relation to horses in racing appear on the face of it to have been met with greater industry response when compared with horses in rodeos. For this reason, electric prod use on horses in the racing industry is considered for comparative purposes.

This article considers the current regulatory schemes to identify potential variations in protection for horses that may arise depending on the sports/entertainment industry or jurisdiction in which they are used. It considers industry responses to high profile incidents of electric prod use in the racing industry and finds a pattern of prompt investigation followed by disciplinary action, such as suspension.¹² In light of the apparently strong enforcement within the horse racing industry,¹³ it also examines complaints regarding electric prod use in rodeos to determine whether comparable levels of enforcement are evident within that industry. This analysis provides the basis for the broad contention of this article that legal reform is required to strengthen protection for horses in rodeos.¹⁴

To undertake this analysis, this article commences by setting out the impact of electric shock on animals in general to demonstrate why these devices pose

9 Barry Lunt, 'Safety with Electricity', *The Technology Interface* (Web Page, 1999) <https://tiiij.org/issues/issues/3_3/3_3h.html>.

10 C Schulze et al, 'Electrical Injuries in Animals: Causes, Pathogenesis, and Morphological Findings' (2016) 53(5) *Veterinary Pathology* 1018, 1020 <<https://doi.org/10.1177/0300985816643371>>.

11 For instance, a report by the Australian Broadcasting Corporation's 7.30 program on racehorses sent to the slaughterhouse exposed (amongst other acts of cruelty) the use of electric prodders on horses. This led to an inquiry into cruelty committed against retired racehorses in Queensland, which in turn led to the prohibition on the use of electric prodders on horses in Queensland: see Terry Martin and Peter Reid, *Inquiry into Animal Cruelty in the Management of Retired Thoroughbred and Standardbred Racehorses in Queensland* (Final Report, 14 January 2020) ('*Martin Inquiry Report*'). See also ABC News In-depth, 'The Dark Side of Australia's Horse Racing Industry | 7.30' (YouTube, 18 October 2019) <<https://www.youtube.com/watch?v=Zp-ALoBRW20>>.

12 The prompt action from the racing industry is likely motivated by a desire to maintain the industry's social licence and continue to self-regulate. For instance, Ray Murrighy (the then outgoing chief steward in NSW) said in 2016, '[i]f we don't pay due regard to welfare matters, it will be at our peril. If we don't do it ourselves, the next time we'll be sitting in the back seat, not the driver's seat': Paul McGreevy and Phil McManus, 'Why Horse-Racing in Australia Needs a Social Licence to Operate', *The Conversation* (online, 3 November 2017) <<https://theconversation.com/why-horse-racing-in-australia-needs-a-social-licence-to-operate-79492>>.

13 The high level of enforcement is also supported by the industry's self-implemented prohibition on the use of electric prods, in addition to the prohibitions at state and territory level. See, eg, Racing Australia, 'Australian Rules of Racing' (Rulebook, 1 February 2023) 96–7 AR231.

14 This analysis and argument are situated within the animal welfare legislative paradigm. While animal rights would likely provide improved legal protection for horses currently used in rodeos and other animals beyond what welfare provisions can provide, such as by prohibiting their use in rodeos, their consideration is outside the scope of this article.

a particularly strong welfare concern. The next Part outlines the regulatory frameworks governing the use of electric shock devices on rodeo horses, including state and territory animal welfare legislation, regulations, and codes of practice. Prosecutions for use or possession of electric prodders, as well as the responses to complaints (or lack thereof) from enforcement bodies are then analysed, such that the entire landscape of electric prodder use in relation to rodeo horses is observable. This article ends with recommendations for reform and some concluding comments.

II WELFARE RISKS

It is widely recognised by the scientific community that vertebrate animals are sentient, perceptive, and cognitive.¹⁵ In other words, they have the capacity to experience positive and negative emotions, to be aware of their surroundings and to learn from experiences.¹⁶ Good animal welfare arises when animals are provided with choice and agency to allow them to avoid aversive experiences and seek positive experiences.¹⁷

The recognition of sentience is increasingly being identified as important for assessing animal welfare.¹⁸ The Five Domains Model ('Model') builds on this by providing a framework for assessing risks and impacts related to animal welfare.¹⁹ A strength of this Model is the recognition of the importance of considering affective or mental states in assessing animal welfare.²⁰ Over the past decade, this Model

-
- 15 Heather Browning and Walter Veit, 'The Sentience Shift in Animal Research' (2022) 28(4) *New Bioethics* 299 <<https://doi.org/10.1080/20502877.2022.2077681>>.
- 16 Donald M Broom, 'Considering Animals' Feelings: Précis of Sentience and Animal Welfare' (2016) 1 *Animal Sentience* 5:1–13 <<https://doi.org/10.51291/2377-7478.1015>> ('Considering Animals' Feelings'); Alain Boissy et al, 'Assessment of Positive Emotions in Animals to Improve Their Welfare' (2007) 92(3) *Physiology and Behavior* 375 <<https://doi.org/10.1016/j.physbeh.2007.02.003>>.
- 17 Jean-Loup Rault et al, 'The Power of a Positive Human–Animal Relationship for Animal Welfare' (2020) 7 *Frontiers in Veterinary Science* 590867:1–13, 6 <<https://doi.org/10.3389/fvets.2020.590867>>; Franklin D McMillan, 'The Mental Health and Well-Being Benefits of Personal Control in Animals' in Franklin D McMillan (ed), *Mental Health and Well-Being in Animals* (CAB International, 2nd ed, 2020) 67 <<https://doi.org/10.1079/9781786393401.0067>>; JW Yeates and DCJ Main, 'Assessment of Positive Welfare: A Review' (2008) 175(3) *Veterinary Journal* 293 <<https://doi.org/10.1016/j.tvjl.2007.05.009>>; M Špinka, 'Animal Agency, Animal Awareness and Animal Welfare' (2019) 28(1) *Animal Welfare* 11, 14–15 <<https://doi.org/10.7120/09627286.28.1.011>>.
- 18 Ian JH Duncan, 'The Changing Concept of Animal Sentience' (2006) 100(1–2) *Applied Animal Behaviour Science* 11, 13–14 <<https://doi.org/10.1016/j.applanim.2006.04.011>>; Broom, 'Considering Animals' Feelings' (n 16); Jane Kotzmann, 'Recognising the Sentience of Animals in Law: A Justification and Framework for Australian States and Territories' (2020) 42(3) *Sydney Law Review* 281.
- 19 DJ Mellor and CSW Reid, 'Concepts of Animal Well-Being and Predicting the Impact of Procedures on Experimental Animals' in RM Baker, G Jenkin and DJ Mellor (eds), *Improving the Well-Being of Animals in the Research Environment: Proceedings of the Conference Held at the Marriott Hotel, Sydney, October, 1993* (ANZCCART, 1994) 3, 7–11; David J Mellor et al, 'The 2020 Five Domains Model: Including Human–Animal Interactions in Assessments of Animal Welfare' (2020) 10(10) *Animals* 1870:1–24 <<https://doi.org/10.3390/ani10101870>>.
- 20 Donald M Broom, 'Cognitive Ability and Awareness in Domestic Animals and Decisions about Obligations to Animals' (2010) 126(1–2) *Applied Animal Behaviour Science* 1 <<https://doi.org/10.1016/j.applanim.2010.05.001>>; David J Mellor, 'Welfare-Aligned Sentience: Enhanced Capacities to Experience, Interact, Anticipate, Choose and Survive' (2019) 9(7) *Animals* 440:1–16 <<https://doi.org/>>

has been refined and updated to reflect advancements in animal welfare science, a deeper understanding of emotions in animals and the significant influence of human behaviour on the affective state in animals.²¹ The quality of an animal's nutrition, environment, health and behavioural interactions account for the animal's affective mental state and together, these determine overall welfare.²² In the context of electric prodders, it must be considered that the perception of electric shock is outside the horse's evolved adaptations to its environment, health and behavioural interactions and therefore poses a significant risk. The following sections detail how electric shock affects animal welfare associated with the health, behavioural interactions, and mental domains.

In terms of the precise pain perceptual abilities in mammals, electrical pain manifests as a disruption of the entire neuroaxis by directly stimulating both afferent and efferent nociceptive and mechanoreceptive axons.²³ Put simply, the nerve cells which detect and communicate noxious stimuli (eg, pain, mechanical pressure) to the brain are activated. Because of this generalised effect on neural circuitry, individual and species-specific perceptions of pain are unlikely to be significantly variable. For this reason, this section considers the welfare impacts of electrical pain on mammals in general, rather than specifically in relation to horses.

The use of electric shock is aversive and is likely to cause mammals varying degrees of pain, fear, and anxiety.²⁴ The International Association for the Study of Pain defines pain as '[a]n unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage'.²⁵ Typically, electric shock induces some degree of panic and high arousal activating the flight response.²⁶ Therefore, immediately following the application of the

10.3390/ani9070440>; Paul McGreevy et al, 'Using the Five Domains Model to Assess the Adverse Impacts of Husbandry, Veterinary, and Equitation Interventions on Horse Welfare' (2018) 8(3) *Animals* 41:1–27 <<https://doi.org/10.3390/ani8030041>>.

21 Mellor et al (n 19).

22 See David J Mellor, 'Operational Details of the Five Domains Model and Its Key Applications to the Assessment and Management of Animal Welfare' (2017) 7(8) *Animals* 60:1–20, 3–6 <<https://doi.org/10.3390/ani7080060>>.

23 Whiting (n 8) 883–4.

24 Grumett and Butterworth (n 7). See generally DS Beggs et al, 'A Survey of Australian Dairy Farmers to Investigate Animal Welfare Risks Associated with Increasing Scale of Production' (2015) 98(8) *Journal of Dairy Science* 5330 <<https://doi.org/10.3168/jds.2014-9239>>; RD Warner et al, 'Acute Stress Induced by the Preslaughter Use of Electric Prodders Causes Tougher Beef Meat' (2007) 47(7) *Australian Journal of Experimental Agriculture* 782 <<https://doi.org/10.1071/EA05155>>; Temple Grandin, 'Cattle Vocalizations Are Associated with Handling and Equipment Problems at Beef Slaughter Plants' (2001) 71(3) *Applied Animal Behaviour Science* 191 <[https://doi.org/10.1016/S0168-1591\(00\)00179-9](https://doi.org/10.1016/S0168-1591(00)00179-9)> ('Cattle Vocalizations'); Jonathan J Cooper et al, 'The Welfare Consequences and Efficacy of Training Pet Dogs with Remote Electronic Training Collars in Comparison to Reward Based Training' (2014) 9(9) *PLoS ONE* e102722:1–12 <<https://doi.org/10.1371/journal.pone.0102722>>; Matthijs BH Schilder and Joanne AM van der Borg, 'Training Dogs with Help of the Shock Collar: Short and Long Term Behavioural Effects' (2004) 85(3–4) *Applied Animal Behaviour Science* 319 <<https://doi.org/10.1016/j.applanim.2003.10.004>>.

25 U Lindblom et al, 'Pain Terms: A Current List with Definitions and Notes on Usage' (1986) 24(suppl1) *Pain* S215, S217 <[https://doi.org/10.1016/0304-3959\(86\)90113-2](https://doi.org/10.1016/0304-3959(86)90113-2)>.

26 Brianna Chu et al, 'Physiology, Stress Reaction', *StatPearls* (Web Page, 7 May 2024) <<https://www.statpearls.com/point-of-care/41471>>; Grumett and Butterworth (n 7) 378–9; Andrew N McLean

electric shock, the animal is likely to display hyperreactive ‘panic’ behaviours typically manifesting as acceleration.²⁷ Behaviours associated with short duration electric shocks include avoidance, escape from or aggression towards the noxious stimulus.²⁸

Where electric shock is experienced by animals as inescapable, it may lead to behaviour indicative of indifference to shock. For example, in the early studies of Martin Seligman and Steven Maier and Jay Weiss et al on dogs and rats, they found that even when electric shock is escapable, if it is preceded by even short experiences of inescapable shock, most dogs showed mental welfare impacts and became apathetic and seemingly oblivious to electric pain.²⁹ As the experiments continued, some of these apathetic animals eventually died.³⁰

This is a particular concern for horses used in rodeo because inescapable shock may occur in the chute if horses are unwilling to leave it owing to past experience after the rider mounts the horse and the chute gate opens. In the latter situation, if a horse ‘freezes’ due to a fear stress response and will not move, they are likely to be subjected to electric shock. The cumulative risk here is that learned helplessness or indifference to shock may mean that rodeo horses are subjected to repeated shocks until they comply with the desired action, such as leaving the chute.

From the cognitive and learning perspective, unlike other learned responses, fear and pain responses are impossible to erase without pharmacological intervention. This unique characteristic of fear and pain was a landmark discovery by American neuroscientist Joseph LeDoux.³¹ Accordingly, any conditioned association with imminent shock may elicit a full-blown panic response.³² Thus, the use of electric shock on horses in rodeos risks inducing grave negative affective states and poses a particular challenge to the mental domain of a horse’s welfare.³³

For animals used in rodeo bucking events, the cumulative stressors associated with pain or fear begin with being forced into holding pens and then entering and tolerating the loading chute. In relation to the behavioural interaction domain, this is especially the case when the animal is in close proximity to people, including those who apply and tighten the flank strap and restrain the head. Christy Goldhawk,

and Janne Winther Christensen, ‘The Application of Learning Theory in Horse Training’ (2017) 190 *Applied Animal Behaviour Science* 18, 20 <<https://doi.org/10.1016/j.applanim.2017.02.020>>.

27 Richard L Solomon, ‘Punishment’ (1964) 19(4) *American Psychologist* 239 <<https://doi.org/10.1037/h0042493>>; McLean and Christensen (n 26) 25–6.

28 Daniel Le Bars, Manuela Gozariu and Samuel W Cadden, ‘Animal Models of Nociception’ (2001) 53(4) *Pharmacological Reviews* 597, 599–600.

29 Seligman and Maier (n 6) 4; Weiss et al (n 6).

30 Weiss et al (n 6) 526; Seligman and Maier (n 6) 2, 4. While no cause of death is provided in these studies, it is clear that some animals died during the shock treatment, with a potential cause being cardiac abnormalities.

31 Joseph E LeDoux, ‘Emotion, Memory and the Brain’ (1994) 270(6) *Scientific American* 50 <<https://doi.org/10.1038/scientificamerican0694-50>>.

32 Ibid 57.

33 See, eg, DJ Mellor and M Burns, ‘Using the Five Domains Model to Develop Welfare Assessment Guidelines for Thoroughbred Horses in New Zealand’ (2020) 68(3) *New Zealand Veterinary Journal* 150, 153 <<https://doi.org/10.1080/00480169.2020.1715900>>. Mellor and Burns list fear and panic as negative affective states that can arise from human interaction: at 152.

Temple Grandin and Ed Pajor reported that 71.5% of horses baulked (refused to move, reared, or turned away) during loading into the bucking chute, with more than one-third of the horses baulking more than once.³⁴ These authors concluded that human activity was associated with an increased frequency of reactive behaviours (including pawing at the ground, lip-chewing, kicking and head-tossing) in horses used for bucking events. An earlier study involving bucking bulls showed that 75% of animals baulked during loading into the chute and this was commonly associated with close proximity to humans.³⁵ These interactions can therefore impact the behavioural and mental welfare domains, generating cumulative negative affective states in rodeo horses that any electric shock could build upon.

Stress-induced hyperalgesia or pain hypersensitivity due to enhanced nociceptive responses has been described using animal models.³⁶ Some studies have shown that repeated restraint produces hyperalgesia.³⁷ The use of electric prodders on animals restrained in chutes may contribute further to the stressors already imposed on these animals, with the suggestion that such ‘stacking up’ may increase some animals’ sensitivity to pain.³⁸ Thus, for rodeo horses, repeated restraint in chutes may increase their sensitivity to pain due to the ‘stacking’ of stressors, thereby increasing the welfare risks associated with electric shock.

Livestock industries in Australia and internationally recognise that minimising the use of electric prodders can avoid animal stress associated with transportation and handling, particularly at abattoirs.³⁹ To meet United States animal welfare standards for slaughter plants, audits require minimal use of electric prodders such

-
- 34 Christy Goldhawk, Temple Grandin and Ed Pajor, ‘Effect of an Animal’s Experience and Rodeo Procedures on Behaviour of Bucking Horses at a Large Commercial Rodeo in Canada’ (2021) 234 *Applied Animal Behaviour Science* 105199:1–7, 4 <<https://doi.org/10.1016/j.applanim.2020.105199>>.
- 35 Christy Goldhawk et al, ‘Behaviour of Bucking Bulls Prior to Rodeo Performances and Relation to Rodeo and Human Activities’ (2016) 181 *Applied Animal Behaviour Science* 63, 67 <<https://doi.org/10.1016/j.applanim.2016.05.015>>.
- 36 Hiroki Imbe, Yasutomo Iwai-Liao and Emiko Senba, ‘Stress-Induced Hyperalgesia: Animal Models and Putative Mechanisms’ (2006) 11 *Frontiers in Bioscience-Landmark* 2179 <<https://doi.org/10.2741/1960>>.
- 37 Catherine Vidal and Joseph Jacob, ‘Hyperalgesia Induced by Emotional Stress in the Rat: An Experimental Animal Model of Human Anxiogenic Hyperalgesia’ (1986) 467(1) *Annals of the New York Academy of Sciences* 73 <<https://doi.org/10.1111/j.1749-6632.1986.tb14619.x>>; GD Gamaro et al, ‘The Effects of Acute and Repeated Restraint Stress on the Nociceptive Response in Rats’ (1998) 63(4) *Physiology and Behavior* 693 <[https://doi.org/10.1016/S0031-9384\(97\)00520-9](https://doi.org/10.1016/S0031-9384(97)00520-9)>.
- 38 ‘Stacking up’ refers to when aversive events are ‘[a]dditive ... with only partial recovery between events’: Animal Procedures Committee, *Review of the Assessment of Cumulative Severity and Lifetime Experience in Non-human Primates Used in Neuroscience Research* (Report, November 2013) 32.
- 39 T Grandin, ‘Assessment of Stress during Handling and Transport’ (1997) 75(1) *Journal of Animal Science* 249 <<https://doi.org/10.2527/1997.751249x>>; Karen S Schwartzkopf-Genswein et al, ‘An Education and Training Programme for Livestock Transporters in Canada’ (2008) 44(1) *Veterinaria Italiana* 273; Grandin, ‘Cattle Vocalizations’ (n 24); Temple Grandin, ‘Progress and Challenges in Animal Handling and Slaughter in the US’ (2006) 100(1–2) *Applied Animal Behaviour Science* 129 <<https://doi.org/10.1016/j.applanim.2006.04.016>> (‘Progress and Challenges’); Jan Hultgren et al, ‘Cattle Behaviours and Stockperson Actions Related to Impaired Animal Welfare at Swedish Slaughter Plants’ (2014) 152 *Applied Animal Behaviour Science* 23 <<https://doi.org/10.1016/j.applanim.2013.12.005>>; Grumett and Butterworth (n 7).

that at least 75% of cattle and pigs do not receive an electric prod.⁴⁰ Similarly, the Australian Meat Industry Council's animal welfare standards emphasise strict and minimal use of electric goads.⁴¹ The World Organisation for Animal Health recommendations for the transport of animals by land stipulate that electric prodders should be used only in extreme cases, should avoid sensitive areas, and should not be used on horses, sheep and goats of any age, or on calves or piglets.⁴² In Australia, under the land transport standards, electric prodders must not be used on horses.⁴³ The potentially aversive experience associated with electric prodders on horses is therefore recognised both internationally and domestically, demonstrating the welfare risks electric shock poses to rodeo horses.

There is a paucity of scientific literature on the use of electric devices on horses as opposed to animals more generally. One study that has been done, however, reveals that the thickness of the superficial pain-sensitive epidermal layer of horse skin is similar to that of human skin and that horses are able to detect cutaneous pain in the same way that humans do.⁴⁴ This suggests that the pain pathway associated with an electric prod applied to the skin could be similar in horses to that of humans.

Clearly, the use of electric prodders on horses impacts the health, behavioural interactions and mental domains of animal welfare due to the negative physical and mental impacts they cause.⁴⁵ Welfare concerns arise because electric prodders are likely to produce significant pain, especially in sensitive body parts, which inherently compromises animal welfare. The risk is such that, as will be outlined below, some jurisdictions prohibit the use of electric prodders on horses with no exception for rodeos. For instance, Queensland prohibits the use of electric prodders on horses, finding that they 'cause horses *unnecessary* pain and distress'.⁴⁶ While some Australian jurisdictions have determined that use of prodders causes

-
- 40 Grandin, 'Progress and Challenges' (n 39) 132. See also Temple Grandin, 'The Feasibility of Using Vocalization Scoring as an Indicator of Poor Welfare during Cattle Slaughter' (1998) 56(2-4) *Applied Animal Behaviour Science* 121 <[https://doi.org/10.1016/S0168-1591\(97\)00102-0](https://doi.org/10.1016/S0168-1591(97)00102-0)>; T Grandin, 'Livestock-Handling Assessments to Improve the Welfare of Cattle, Pigs and Sheep' (2018) 58(3) *Animal Production Science* 403 <<https://doi.org/10.1071/AN16800>>.
- 41 Australian Meat Industry Council, 'Industry Animal Welfare Standard for Livestock Processing Establishments Preparing Meat for Human Consumption' (Industry Standards, 1 January 2022) 15-16 cls 6.2.1(d), 6.2.3.
- 42 World Organisation for Animal Health, 'Terrestrial Animal Health Code' (Industry Standards, 2019) 358 arts 7.3.8(3)(a)-(b). It is unclear what scientific evidence, if any, is used to categorise the use of electric prodders on (adult) cattle as acceptable.
- 43 Animal Health Australia, 'Australian Animal Welfare Standards and Guidelines: Land Transport of Livestock' (Guideline No 1.1, 21 September 2012) 84 SB8.11 <<https://animalwelfarestandards.net.au/wp-content/uploads/2023/08/Land-transport-of-livestock-Standards-and-Guidelines-Version-1.-1-21-September-2012.pdf>> ('Australian Animal Welfare Standards').
- 44 Lydia Tong et al, 'A Comparative Neuro-histological Assessment of Gluteal Skin Thickness and Cutaneous Nociceptor Distribution in Horses and Humans' (2020) 10(11) *Animals* 2094:1-15 <<https://doi.org/10.3390/ani10112094>>.
- 45 Welfare concerns arise given that electric prodders cause aversive states which, by their nature, pose a challenge to animal welfare. See 'Ban on the Use of Electric Prodders on Horses', *Business Queensland* (Web Page, 10 February 2023) <<https://www.business.qld.gov.au/industries/farms-fishing-forestry/agriculture/animal/industries/horses/prodders>>.
- 46 See *ibid* (emphasis added).

avoidable suffering with no welfare benefit and are therefore unnecessary,⁴⁷ this article does not undertake a proportionality assessment of its own to determine whether electric prodders cause *unnecessary* harm. This is because the focus of this article is on the consistency of protection offered to horses, both across industries and jurisdictions. This article instead refers to the potential for negative physical and mental impacts, as well as the complete prohibition in some Australian jurisdictions, to demonstrate that electric prodders pose a welfare concern for horses that requires effective and consistent regulation. The following Part analyses the regulation of these devices accordingly.

III STATE AND TERRITORY REGULATORY FRAMEWORKS

A Introduction

There is no federal legislation in Australia governing animal protection.⁴⁸ As a result, animal welfare regulation differs between states and territories. While animal welfare laws are *generally* consistent across Australia,⁴⁹ there are notable exceptions. In particular, the use of electric prodders on horses demonstrates a significant shortcoming in terms of regulatory consistency. These inconsistencies are evident at each level of regulation, from whether the practice is in fact permissible to what conditions must be met upon use. For instance, some states prohibit the use of electric prodders on horses entirely, while in other states electric prodders cannot be used in the horse racing industry but are permitted to be used on horses in rodeos in certain circumstances. The lack of a consistent, nationwide regulatory framework requires that the regulation concerning prodder use be analysed at the state and territory level.

To undertake this analysis, this article has selected five key subject areas to assist in identifying the commonalities and differences across Australian jurisdictions. The five key areas have been selected because they represent the primary regulatory aspects of electric prodder use. They begin at the base level of what conduct towards animals is considered cruel and extend to specific allowances regarding the use of prodders, therefore capturing the central elements of the entire regulatory regime. The goal in selecting these areas was to bring to light potential areas of harmonisation as well as inconsistency across the entire regulatory framework. As such, this article draws from the regulatory regime concerning electric prodders in its entirety to inform the five key areas, including animal protection legislation, regulations, and codes of practice. The following sections will discuss this regulatory regime, looking specifically at what constitutes cruelty, how electrical devices are regulated, whether rodeos are subject to specific regulation, any prohibitions on use or possession of electric prodders, and exemptions for use.

47 Grumett and Butterworth (n 7) 378–9.

48 This is a residual power that falls to the states and territories: *Australian Constitution* s 51.

49 Rochelle Morton et al, ‘Assessing the Uniformity in Australian Animal Protection Law: A Statutory Comparison’ (2021) 11(1) *Animals* 35:1–36 <<https://doi.org/10.3390/ani11010035>>.

B Definition of Cruelty

Cruelty towards animals is prohibited in the animal protection legislation of each Australian jurisdiction.⁵⁰ What constitutes cruelty typically involves causing distress, injury, or death to an animal.⁵¹ However, the general prohibition against animal cruelty is consistently qualified across states and territories by terms such as unreasonable, unjustifiable, or unnecessary, which permit actions towards animals that would otherwise be considered cruelty, if not for circumstances that make that action ‘reasonable’ or ‘necessary’.⁵² Exemptions from the general prohibition against cruelty are also made for certain practices deemed necessary by the legislature, such as animal agriculture.⁵³ Exactly what constitutes ‘necessary’ circumstances has been the subject of criticism, both in Australia and internationally.⁵⁴

Across all jurisdictions, animal protection legislation contains examples of actions that would cause distress or injury to animals and therefore constitute a cruelty offence.⁵⁵ For instance, in NSW, exposing an animal to excessive heat or cold would be considered an act of cruelty.⁵⁶ Looking specifically to the regulation of electric prodders, three jurisdictions specifically include the use of prescribed electrical devices as an example of an act that would constitute cruelty. In Queensland’s *Animal Care and Protection Act 2001* (Qld) (*ACPA*), ‘a person is taken to be cruel to an animal’ if they use ‘on the animal an electrical device prescribed under a regulation’.⁵⁷ Under the *Animal Welfare Act 1993* (Tas) (*AWA Tas*) in Tasmania, a person will be guilty of a cruelty offence if that person, ‘in the course of any sport or public performance or in the training for any sport or public

50 See *AWA ACT* (n 2) s 7; *POCTAA NSW* (n 2) s 5; *APA NT* (n 2) s 24; *ACPA* (n 2) s 18; *AWA SA* (n 2) s 13; *AWA Tas* (n 2) s 8; *Prevention of Cruelty to Animals Act 1986* (Vic) s 9 (*‘POCTAA Vic’*); *AWA WA* (n 2) s 19.

51 Morton et al (n 49) 7.

52 *AWA ACT* (n 2) s 6A (definition of ‘cruelty’ para (a)); *POCTAA NSW* (n 2) s 4(2); *APA NT* (n 2) s 24(1)(c); *ACPA* (n 2) s 18(2)(a); *AWA SA* (n 2) s 13(3)(a); *AWA Tas* (n 2) s 8(1); *POCTAA Vic* (n 50) s 9(1)(c); *AWA WA* (n 2) s 19(2)(e).

53 Permissible conduct associated with these practices are set out in the Australian Standards and Guidelines or Model Codes of Practice. See, eg, Animal Health Australia, ‘Australian Animal Welfare Standards and Guidelines for Cattle’ (Guideline No 1, January 2016) <https://animalwelfarestandards.net.au/wp-content/uploads/2023/08/Cattle-Standards-and-Guidelines-Endorsed-Jan-2016-061017_.pdf>. These practices can also be set out within state and territory regulations. See, eg, *Animal Care and Protection Regulation 2023* (Qld) sch 1 (*‘ACPR Qld’*). These practices are typically legislatively exempted because conduct carried out in accordance with a code of practice is not considered an offence under the *Act*: see, eg, *ACPA* (n 2) s 40.

54 See, eg, Elizabeth Ellis, *Australian Animal Law: Context and Critique* (Sydney University Press, 2022) 13–18; Gary L Francione, *Animals, Property, and the Law* (Temple University Press, 1995) ch 1; Saskia Stucki, ‘Beyond Animal Warfare Law: Humanizing the “War on Animals” and the Need for Complementary Animal Rights’ (MPIL Research Paper Series No 2021-10, Max Planck Institute, 12 April 2021) 21–4.

55 In the Australian Capital Territory and New South Wales, these are included within the definitions section: *AWA ACT* (n 2) s 6A; *POCTAA NSW* (n 2) s 4(2). In all other jurisdictions, these are contained within the general cruelty provision: *APA NT* (n 2) s 24; *ACPA* (n 2) s 18(2); *AWA SA* (n 2) s 13(3); *AWA Tas* (n 2) s 8(2); *POCTAA Vic* (n 50) s 9; *AWA WA* (n 2) ss 19(2)–(3).

56 *POCTAA NSW* (n 2) s 4(2)(c).

57 *ACPA* (n 2) s 18(2)(e).

performance, applies or exposes an electronic device to an animal'.⁵⁸ Finally, in Western Australia it is an offence under section 19 of the *Animal Welfare Act 2002* (WA) ('*AWA WA*') to use 'a prescribed inhumane device on the animal'.⁵⁹

C Regulation of Electrical Devices

Other Australian jurisdictions also regulate the use of electric prodders, despite the use of an electrical device not being listed as an explicit example of cruelty. In the Australian Capital Territory, section 13 of the *Animal Welfare Act 1992* (ACT) ('*AWA ACT*') makes it an offence for a person to '[administer] an electric shock to an animal ... using an electrical device that is not prescribed by regulation'.⁶⁰ Section 16 of the *Prevention of Cruelty to Animals Act 1979* (NSW) prohibits a person from using a prescribed 'electrical device upon an animal' and having in their 'possession or custody any [prescribed] electrical device'. Electric prodders are included as a prescribed device in schedule 3 to the *Prevention of Cruelty to Animals Regulation 2012* (NSW). In Victoria, section 14(1) of the *Prevention of Cruelty to Animals Regulations 2019* (Vic) ('*POCTAR*') states that '[a] person must not use or place on any animal a device that is capable of imparting or is designed to impart an electric current or shock to the animal, whether or not the device is working'. The South Australian *Animal Welfare Act 1985* (SA) prohibits a person from using 'an electrical device in contravention of the regulations' and the *Animal Welfare Regulations 2012* (SA) provide that this includes the application of 'an electrical prod or goad to an animal'.⁶¹ In the Northern Territory, it is an offence against section 30 of the *Animal Protection Act 2018* (NT) ('*APA NT*') to 'intentionally [use] a device on an animal' if 'the device is an electrical device'. Further, section 5(a) of the *Animal Protection Regulations 2022* (NT) makes 'using an electrical device ... against the face, udders or genitals of an animal' an act of cruelty under the general cruelty provisions.

Therefore, while all Australian states and territories regulate the use of electric prodders, there are variations in the way this regulation is approached. In Queensland, Tasmania, and Western Australia, the regulation on the use of electric prodders is explicitly captured as part of the general cruelty provisions within animal welfare legislation. In the Australian Capital Territory, NSW, South Australia, and the Northern Territory, electric prodders are regulated within the animal welfare statute in the respective states and territories, but outside of the general cruelty prohibition. In Victoria, electric prodders are regulated via legislation subordinate to the state's animal welfare statute.

58 *AWA Tas* (n 2) s 8(2)(i). Note however that Tasmania's regulatory regime is significantly more complex than this provision portrays. See the discussion in Part III(F) below.

59 *AWA WA* (n 2) s 19(2)(b).

60 *AWA ACT* (n 2) ss 13(1)(a)–(b).

61 *AWA SA* (n 2) s 15; *Animal Welfare Regulations 2012* (SA) s 8(1)(b) ('*AWR SA*').

D Prohibition on Use for Horses

The previous two sections have focused on the use of electric prodders generally. This section will detail the impact of those sections on the use of electric prodders on horses, while section F will discuss exemptions and defences.

Queensland's prohibition on the use of electric prodders under section 18 of the *ACPA* is supplemented by the *Animal Care and Protection Regulation 2023* (Qld). These regulations prescribe an electrical prodder as a prohibited electrical device when it is used on horses.⁶² Queensland is therefore explicit in its prohibition of the use of electric prodders for horses. In Victoria, horses are included within section 14 of the *POCTAR*, which prevent the use or possession of an electric prodder.⁶³ While section 18 details a range of circumstances in which an electric prodder may be used (including on cattle, goats, and sheep), horses are not listed within this section. Section 18 also permits the use of electric prodders at rodeos, but only for cattle in certain circumstances.⁶⁴ The use of electric prodders on horses is therefore prohibited in Victoria.⁶⁵ Horses are also clearly included within the Australian Capital Territory's prohibition on the use of electrical devices.⁶⁶ While the section does allow for the use of devices as prescribed in the regulation, there is no such allowance for use on horses.

As will be discussed in section F, the regulation of electric prodders in other jurisdictions is subject to exemptions or defences. However, all jurisdictions still prohibit the use of prodders on horses in the first instance. In the Northern Territory, for example, the use of electric prodders on animals (including horses) is clearly prohibited by section 30(1) of the *APA NT*. As such, for any use to be legally permissible, the relevant regulations must exclude that use from the operation of section 30. In South Australia, use in contravention of the regulations is prohibited.⁶⁷ According to the relevant regulations, a prodder can be used where 'the animal is a prescribed animal', and the regulations do not make horses a prescribed animal.⁶⁸ The regulations do however permit the use of an electric prodder on an animal used in a rodeo event in certain circumstances, including where an animal fails to leave the chute immediately.⁶⁹ The regulations state that only horses and cattle can be used in rodeo events and thus the previous regulation includes horses as an animal on whom an electric prodder can be used in a rodeo

62 *ACPR Qld* (n 53) s 10.

63 *POCTAR* (n 2) s 14(1).

64 *Ibid* s 18(2).

65 However, the situation is different for horses in saleyards. Unlike the Commonwealth standards and guidelines for the land transport of livestock, the Victorian Code of Practice for the Welfare of Animals at Saleyards does not state that electric prods cannot be used on horses during loading and unloading: 'Code of Practice for the Welfare of Animals at Saleyards', *Animal Welfare Victoria* (Web Page, 5 February 2024) <<https://agriculture.vic.gov.au/livestock-and-animals/animal-welfare-victoria/pocta-act-1986/victorian-codes-of-practice-for-animal-welfare/code-of-practice-for-the-welfare-of-animals-at-saleyards>>. See also 'Australian Animal Welfare Standards' (n 43).

66 *AWA ACT* (n 2) s 13(1).

67 *AWA SA* (n 2) s 15.

68 *AWR SA* (n 61) ss 8(2)(c)–(3).

69 *Ibid* ss 8(2)(a), 21(2)(d)(i).

event in certain circumstances.⁷⁰ South Australia's regulation of electrical devices therefore prohibits the use of prodders on horses, except for where horses are used in rodeos.

E Regulation Specific to Rodeos

In addition to the regulatory frameworks discussed so far, which have consisted of statutory animal welfare Acts and regulations, all jurisdictions except the Australian Capital Territory have regulatory instruments relating to rodeos specifically. These instruments cover rodeo events as a whole and, in some jurisdictions, they impact the regulation of electric prodders.

The Australian Capital Territory is the only jurisdiction without rodeo-specific regulation because rodeos are prohibited by section 18(1) of the *AWA ACT*. Tasmania and the Northern Territory have incorporated the Standards for the Care and Treatment of Rodeo Livestock developed by the National Consultative Committee on Animal Welfare ('NCCAW Standards') as a code of practice in their regulatory regime.⁷¹ These standards set minimum welfare requirements for animals used in rodeos.⁷² Queensland, NSW, Victoria, South Australia, and Western Australia all have a specific code of practice developed for the conduct of rodeos or have a specific part of the relevant regulations dedicated to rodeos.⁷³ The code of practice in Western Australia is based on the NCCAW Standards.

The standards and guidelines for the transport of livestock are also relevant to holding a rodeo event. Those standards and guidelines prohibit the use of an electric prodder on a horse during the transport process,⁷⁴ which includes the assembling, loading, transport and unloading of livestock.⁷⁵

F Codified Exemptions/Allowances for Use

As discussed in section D, Queensland, Victoria, and the Australian Capital Territory prohibit the *use* of electric prodders on horses. In each of those jurisdictions, there are no exemptions for certain uses on horses and, as a result, it is an offence to use an electric prodder on horses in rodeos. In Victoria and the Australian Capital Territory (but not Queensland) *possession* near a horse is also prohibited. In the Australian Capital Territory, section 13 makes it an offence for a person to place a

70 Ibid s 15.

71 *AWA Tas* (n 2) s 11A; 'Animal Welfare Act' in Northern Territory, *Northern Territory Government Gazette*, No G23, 6 June 2007, 4.

72 National Consultative Committee on Animal Welfare, 'Standards for the Care and Treatment of Rodeo Livestock' (Position Statement, 10 June 2006) ('NCCAW Standards').

73 *Animal Care and Protection (Code of Practice about Rodeos) Amendment Regulation 2021* (Qld); 'NSW Code of Practice for Animals Used in Rodeo Events', *Department of Primary Industries* (Web Page, 30 April 1988) <<https://web.archive.org/web/20221116110847/https://www.dpi.nsw.gov.au/animals-and-livestock/animal-welfare/animal-care-and-welfare/livestock/livestock-files/nsw-code-of-practice-for-animals-used-in-rodeo-events>>; *POCTAR* (n 2) pt 4; *AWR SA* (n 61) pt 4; Department of Local Government and Regional Development (WA), 'Code of Practice for the Conduct of Rodeos in Western Australia' (Code of Practice, March 2003).

74 'Australian Animal Welfare Standards' (n 43) 84 SB8.11.

75 Ibid 4, 114.

device on an animal that ‘is able to administer an electric shock’.⁷⁶ In Victoria, the prohibition applies ‘whether or not the device is working’.⁷⁷ As a result, actual use is not required to be established in both of these jurisdictions, given that perceived use (regardless of whether the device is turned on) is considered an offence.

Allowances for certain use operate differently across jurisdictions, with some defining the use of an electrical device so as not to include permitted uses and others creating defences for such use. In NSW, schedule 3 to the regulations makes the use of an electric stock prodder permissible when ‘[c]ontrolling horses being used in a rodeo, but only for the purpose of getting a horse that has stalled in the chute to exit the chute’.⁷⁸ It does so by stating that an electric stock prodder is not an electrical device for the purposes of section 16 in such an instance.⁷⁹ The Northern Territory regulations also exclude an electric stock prodder where it is used to control horses at a rodeo.⁸⁰ The regulatory regime in Western Australia has a similar effect, although through the operation of a defence. Section 7(2) of the *Animal Welfare (General) Regulations 2003* (WA) state that it is a defence to a charge under section 19(1) of the *AWA WA* if a person uses an electric stock prodder for the purpose of controlling a horse (or cattle) at a rodeo, so long as it is not ‘applied to the face, udder or genital organs of an animal’. As noted in section D, South Australia’s regulations allow an electrical prodder to be used in a rodeo ‘if the animal fails to leave the chute immediately’, ‘goes down on a knee in the chute’, or ‘is leaning on the side of the chute or the chute gate’.⁸¹ As is the case in Western Australia, the electric prodder must not be applied ‘to the face, udders, anus or genitals of an animal that is to be used ... in a rodeo event’.⁸²

The operation of Tasmania’s allowance for use is less clear. While applying or exposing an electric prodder to an animal in a public performance (such as rodeos) is clearly prohibited by section 8 of the *AWA Tas*, section 11A of the *Act* requires that rodeos are conducted in accordance with the NCCAW Standards. The NCCAW Standards allow an electric prodder to be used in a rodeo where it is ‘applied only to those parts of the animal covered by hair’ and ‘for loading and handling livestock (including to encourage an animal that is down and leaning heavily against the chute to re-position)’.⁸³ It can also be used ‘to turn out a chute-stalling animal’, but in such a case may only be used on ‘the animal’s shoulder or hindquarters’.⁸⁴ While section 11A of the *Act* incorporates the NCCAW Standards as a code of practice and makes compliance with them compulsory,⁸⁵ it does not

76 *AWA ACT* (n 2) s 13(2).

77 *POCTAR* (n 2) s 14(1).

78 *Prevention of Cruelty to Animals Regulation 2012* (NSW) sch 3.

79 *Ibid* s 35.

80 *Animal Protection Regulations 2022* (NT) ss 5(b), 9, sch 2.

81 *AWR SA* (n 61) ss 21(2)(d)(i)–(ii), (iv).

82 *Ibid* s 21(1).

83 NCCAW Standards (n 72) pt 4.

84 *Ibid*.

85 Jackson Walkden-Brown, ‘Animals and Entertainment’ in Peter Sankoff, Steven White, and Celeste Black (eds), *Animal Law in Australasia: Continuing the Dialogue* (Federation Press, 2nd ed, 2013) 129, 132.

explicitly state that compliance with the code creates an exemption or defence to section 8 of the *Act* (or other provisions).

Typically, compliance with prescribed regulations or codes of practice does operate to allow certain behaviour that would otherwise be considered an offence under animal welfare legislation.⁸⁶ This would indicate that the NCCAW Standards exempt the use of electric prodders on horses in rodeos from the application of section 8 of the *AWA Tas*. However, given that section 8 specifically prevents the use of an electric prodder ‘in the course of any sport or public performance’ – which the legislation in other jurisdictions does not – there appears to be clear legislative intent for this section to apply to events such as rodeos.⁸⁷ Further, section 4 of the *AWA Tas* details the situations in which certain provisions do not apply. For instance, it states that section 8 does not apply to recreational or commercial fishing and does not apply to research carried out ‘in accordance with a Code of Practice relating to animal research’.⁸⁸ The lack of a similar provision in relation to rodeos indicates that section 8 *does* apply, such that it is an offence to use an electric prodder on rodeo animals in Tasmania. However, given the tendency across Australian jurisdictions for a code of practice adopted under animal welfare legislation to act as a defence or exemption to non-compliance with animal welfare legislation, it is not clear whether compliance with the NCCAW Standards would be a defence to a charge under section 8. As Arnja Dale and Steven White state, ‘[i]n Tasmania, the legal status of codes is unclear’.⁸⁹

G Summary

The analysis undertaken above demonstrates that there is significant variation in the regulatory regimes governing the use of electric prodders on horses across Australian jurisdictions. In the specific context of prodder use on horses in rodeos, the Australian Capital Territory’s complete ban on rodeos means it has by far the strongest and most restrictive regulation. Victoria’s complete prohibition on the use *and possession* of electric prodders for horses presents a similarly strong and restrictive regulatory regime.

Queensland’s prohibition of prodder use on horses (but not on possession) is also relatively strong, particularly when compared to its regulatory regime prior to 2020. The Queensland regulation was amended in 2020 in response to a recommendation from the Inquiry into Animal Cruelty in the Management of Retired Thoroughbred and Standardbred Horses in Queensland (the ‘Martin Inquiry’).⁹⁰ The Martin Inquiry recommended that the Queensland Department of Agriculture and Fisheries ‘takes steps to amend the *ACPA* to make the use of

86 See Alex Bruce, *Animal Law in Australia: An Integrated Approach* (LexisNexis Butterworths, 2nd ed, 2018) 184.

87 *AWA Tas* (n 2) s 8(2)(i).

88 *Ibid* ss 4(2)(a), (c), (3)(c).

89 Arnja Dale and Steven White, ‘Codifying Animal Welfare Standards: Foundations for Better Animal Protection or Merely a Façade?’ in Peter Sankoff, Steven White, and Celeste Black (eds), *Animal Law in Australasia: Continuing the Dialogue* (Federation Press, 2nd ed, 2013) 151, 156.

90 *Martin Inquiry Report* (n 11) 1; Explanatory Note, Animal Care and Protection (Use of Electrical Device on Horses) Amendment Regulation 2020 (Qld) 1–2 (‘Animal Care Explanatory Note’).

an electric prodder on a horse an act of cruelty'.⁹¹ The Martin Inquiry itself was prompted by a report from the Australian Broadcasting Corporation's program '7.30', which aired a story on the treatment of retired racehorses in a Queensland abattoir.⁹² Prior to the 2020 amendment, electric prodder use on horses was permissible in Queensland, making it the only Australian jurisdiction at that time that did not prohibit the use of electric prodders on horses in the first instance.⁹³

An important common thread amongst those jurisdictions that prohibit the use of electric prodders on horses in the first instance, but create exemptions for certain use, is that all such uses are confined to rodeos. In NSW, the Northern Territory, Western Australia, and South Australia, the exemptions or defences specifically relate to *use at a rodeo*.⁹⁴ The exemptions are not generalised to sporting events or public performances, which could then include the horse racing industry, but rather are explicit in the singular application to rodeos. This means that electric prodders are prohibited in the horse racing industry but permitted to be used on horses in certain circumstances in rodeos.⁹⁵ It is interesting to note that while the Martin Inquiry related to horses used in the racing industry, Queensland accepted the recommendation that the use of electric prodders on horses *generally* be made an offence.⁹⁶ In the Explanatory Notes to the relevant Queensland amendment, it is noted that '[r]egardless whether an electric prod is used during transportation, rodeos or in any other circumstances, the impact of such a device on any horse is considered similar'.⁹⁷ The purpose for the distinction between rodeos and other public performances involving horses in NSW, the Northern Territory, Western Australia, and South Australia is unclear.

This Part has provided an overview of the regulatory regime concerning electric prodders for horses used in rodeos. The goal here has been to illuminate the forms of use and possession of electric prodders that are *legal*. The next Part of this article turns to forms of *illegal* use or possession. Outlining instances or complaints of illegality will enable this article to assess whether the regulatory regime as examined is adequate to respond to the actual state of the use of electric prodders in rodeos.

91 *Martin Inquiry Report* (n 11) 21.

92 *Ibid* 1; ABC News In-depth (n 11).

93 *Martin Inquiry Report* (n 11) 94.

94 As outlined in Part III(F), the status of Tasmania's code is less clear.

95 The Australian Professional Rodeo Association ('APRA') updated their competition rules during the drafting of this article to ban the use of 'hot shots' (electric prodders) on horses. However, the legislative exemptions still permit the use of electric prodders in rodeos hosted by other organisations that do not prohibit their use on horses, such as the Australian Bushmen Campdraft and Rodeo Association. The legislative exemptions also mean there is no state and territory oversight of the APRA prohibition in the relevant jurisdictions. For the relevant APRA rule, see Australian Professional Rodeo Association, 'By-laws and Competition Rules' (Rule Book, December 2022) [33.25] <<https://prorodeo.com.au/wp-content/uploads/2024/04/RULE-BOOK-June-2023.pdf>>.

96 Queensland Government, *The Queensland Government's Response to Recommendations from the Independent 'Inquiry into Animal Cruelty in the Management of Retired Thoroughbreds and Standardbred Horses in Queensland' (Martin Inquiry)* (Report, February 2020) 15.

97 Animal Care Explanatory Note (n 90) 2.

IV USE OF ELECTRIC PRODDERS IN RODEOS

In recent years, there has been significant controversy surrounding the use of electric prodders on horses in the horse racing industry. There is a similar level of controversy surrounding the use of electric prodders on horses used in rodeos but, as this Part will outline, the controversy surrounding rodeos has seen considerably less response. This Part provides an overview of instances where there has been perceived use or possession of electric prodders in contravention of the relevant animal welfare legislation. Instances surrounding the use of prodders in both horse racing and rodeos are analysed. This is because both industries take a similar form – they involve the use of horses for human sport and entertainment and therefore produce similar benefits and pose similar welfare risks – but are not regulated consistently in regard to electric prodders. To reiterate, the use of electric prodders on horses in horse racing is prohibited in each Australian state and territory, which is supplemented by industry rules prohibiting the possession of certain electrical devices.⁹⁸ Any use on horses in horse racing is therefore in contravention of animal welfare legislation in the relevant jurisdiction. This section also analyses instances of use on horses at rodeos in Victoria and Queensland, where such use is in contravention of the relevant animal welfare legislation.

The incidents relating to horse racing have been selected here because they are the most recently publicised incidents and therefore provide the most accurate picture of the current regulatory response of the racing industry. The incidents relating to rodeos have been selected because each relate to a complaint of cruelty made by AnimalKIND (formerly known as Animal Liberation Queensland) to the relevant enforcement body.⁹⁹ These incidents have been further limited to those that involve a horse, are associated with video footage, and are recent. Each incident also relates to the potential use of an electric prodder in a jurisdiction where use is prohibited.¹⁰⁰ The limitation in selecting these incidents is that they relate to complaints that have not led to successful prosecutions. Unlike the horse racing incidents, where photo and video footage of illegal prodder use was investigated and which resulted in convictions, there are no publicised incidents of prodder use in rodeos that have led to convictions. This may imply that there is no illegal use of electric prodders in rodeos, that the prohibition is not effectively enforced, and/or that cooperative, educational compliance responses are preferred by the regulator. Therefore, the goal in analysing these incidents is to demonstrate areas of parity or disparity between the racing and rodeo industries in relation to electric prodders, and to highlight any potential areas that may require reform to ensure that animal welfare legislation is enforced.

98 See Racing Australia (n 13) 96–7 AR231.

99 AnimalKIND provided these complaints in personal correspondence to the authors. However, footage relating to each of these complaints (and others) can be accessed via AnimalKIND's Vimeo: 'AnimalKIND', *Vimeo* (Web Page) <<https://vimeo.com/animallibqld>>.

100 Incidents relating to use in jurisdictions that allow electric prodders in certain circumstances are not analysed, because this would involve determining issues such as whether a horse had stalled when leaving the chute, thus allowing the use of an electric prodder to clear them from the chute. Interpretative issues such as these are avoided in preference of incidents that involve alleged use where use is prohibited.

In 2019 in Victoria, Melbourne Cup-winning trainer Darren Weir was found to have committed an act of cruelty towards a horse for using a jigger on three horses while they ran on a treadmill.¹⁰¹ Weir received a fine of \$36,000, with no convictions recorded.¹⁰² Additionally, Weir received a four-year disqualification from Racing Victoria for possessing an electrical device.¹⁰³ Weir's jigger use received a significant level of media attention¹⁰⁴ and the response from both Racing Victoria and Victoria Police was prompt. Assisting this response was CCTV footage which showed Weir (along with his co-accused) using electric prodders on the animals in training.¹⁰⁵

-
- 101 Damien Ractliffe, 'Weir Found Guilty of Animal Cruelty, Avoids Conviction with Hopes to Return to Racing', *The Sydney Morning Herald* (online, 14 December 2022) <<https://www.smh.com.au/sport/racing/weir-to-plead-guilty-to-abuse-of-horses-not-torture-as-charges-reworded-20221214-p5c664.html>>; Lexie Jeuniewicz, 'Racehorse Trainer Darren Weir Fined \$36k after Pleading Guilty to Animal Abuse Charges', *ABC News* (online, 15 December 2022) <<https://www.abc.net.au/news/2022-12-14/darren-weir-pleads-guilty-to-animal-abuse-charges/101771274>>.
- 102 Jeuniewicz (n 101).
- 103 Ibid; Racing Australia (n 13) 96–7 AR231.
- 104 McGreevy and Boakes (n 4); Damien Ractliffe and Chip Le Grand, "'Jigger" Video Links Darren Weir Scandal to Melbourne Cup', *The Age* (online, 10 October 2019) <<https://www.theage.com.au/sport/racing/jigger-video-links-darren-weir-scandal-to-melbourne-cup-20191010-p52zm5.html>> ('"Jigger" Video'); Daniel Miles, 'Darren Weir's Allegedly "Jiggered" Horses Could Not Show Pain while on Treadmill, Animal Expert Says', *ABC News* (online, 8 September 2020) <<https://www.abc.net.au/news/2020-09-08/darren-weir-trial-day-one/12642052>>; Michael Lynch and Peter Ryan, 'Where Does the Shadow of the Weir Jiggers Scandal End?', *The Sydney Morning Herald* (online, 9 February 2019) <<https://www.smh.com.au/sport/racing/where-does-the-shadow-of-the-weir-jiggers-scandal-end-20190208-p50wg7.html>>; Greg Wood, 'Darren Weir Banned for Four Years after Discovery of "Jiggers"', *The Guardian* (online, 6 February 2019) <<https://www.theguardian.com/sport/2019/feb/06/darren-weir-banned-for-four-years>>; Guardian Sport and Agencies, 'Darren Weir Will Not Contest "Jigger" Charges and Faces Four-Year Ban from Horse Racing', *The Guardian* (online, 5 February 2019) <<https://www.theguardian.com/sport/2019/feb/05/darren-weir-will-not-contest-jigger-charges-and-faces-four-year-ban-from-horse-racing>>; Australian Associated Press, 'Melbourne Cup-Winning Trainer Darren Weir Pleads GUILTY to Animal Cruelty for Using an Electric Cattle Prod on Three Horses for 30 Minutes', *Daily Mail Australia* (online, 14 December 2022) <<https://www.dailymail.co.uk/sport/racing/article-11536591/Melbourne-Cup-winning-trainer-Darren-Weir-pleads-GUILTY-animal-cruelty.html>>; Liam O'Loughlin, 'Darren Weir Pleads Guilty, Escapes Conviction over Animal Cruelty Charges', *The Sporting News* (online, 14 December 2022) <<https://www.sportingnews.com/au/horse-racing/news/melbourne-cup-winning-trainer-darren-weir-pleads-guilty-animal-cruelty-charges/mgfohlq15y176hrmwplk120d9>>; Australian Associated Press, 'Champion Trainer Darren Weir Charged over Jiggers, Given Show Cause Notice by Racing Victoria', *Fox Sports* (online, 1 February 2019) <<https://www.foxsports.com.au/horse-racing/champion-trainer-darren-weir-charged-over-jiggers-given-show-cause-notice-by-racing-victoria/news-story/58a6885d2be428fab887b466d37fc381>>; Damien Ractliffe and Chip Le Grand, 'Distressing Footage Emerges of Melbourne Cup Horse Being Jabbed with Electric Prod', *Stuff* (online, 11 October 2019) <<https://www.stuff.co.nz/sport/racing/116490231/distressing-footage-emerges-of-melbourne-cup-horse-being-jabbed-with-electric-prod>>; Nick Mulvenney, 'Horse Racing-"Jiggers" Earn Australian Trainer Weir a Four-Year Ban', *SBS News* (online, 6 February 2019) <<https://www.sbs.com.au/news/article/horse-racing-jiggers-earn-australian-trainer-weir-a-four-year-ban/u7m5g9ajw>>; Liam Beatty, 'Melbourne Cup Winner Darren Weir Pleads Guilty to Abusing Racehorses', *News.com.au* (online, 14 December 2022) <<https://www.news.com.au/sport/superracing/melbourne-cup-winner-darren-weir-to-plead-guilty-to-animal-abuse/news-story/2e0a5f3279832f6522d19d7ab0cde8f5>>; 9News Staff, 'Melbourne Cup Winning Trainer Darren Weir to Stand Trial over Animal Abuse, Conspiracy Charges', *9News* (online, 19 October 2020) <<https://www.9news.com.au/national/melbourne-cup-winning-trainer-darren-weir-to-stand-trial-over-charges/7ddec23-fd33-41dd-8f83-e5fc01e19c6e>>.
- 105 Jeuniewicz (n 101).

In contrast, in 2022 at the Australian Professional Rodeo Association ('APRA') National Rodeo Finals in Chiltern, Victoria, the recording of apparent use of electrical devices on horses failed to garner media attention or a response from APRA or the Victorian Department of Agriculture, the latter of which is tasked with regulating the Victorian anti-cruelty legislation. The apparent use of electrical devices was captured in the official APRA video of the event and analysed by AnimalKIND.¹⁰⁶ Each of the videos show a rodeo participant using what appears to be an electrical device on multiple horses despite possession and use being prohibited in Victoria.¹⁰⁷ For instance, in one such video, the participant can be seen reaching into his pocket and retrieving what appears to be an electrical device.¹⁰⁸ In another video, where a horse stalls in the chute, the participant is seen removing his hat, and the horse suddenly rears up. What appears to be an electrical device can then be partially seen behind the participant's hat.¹⁰⁹

Given that in Victoria, there are no exemptions pertaining to the use of an electrical device on rodeo horses, the rules regarding both possession and use do not differ between the racing and rodeo industries. However, there is clearly some disparity in terms of media attention and response from the relevant enforcement bodies. In the case of thoroughbred racehorse trainer Darren Weir, a raid conducted by Victoria Police based on cruelty allegations found four electric jiggers, which prompted Weir's disqualification.¹¹⁰ As noted above, the CCTV footage provided further evidence of use inside Weir's stables.¹¹¹ In the case of the Chiltern rodeo, relevant evidence is largely limited to the video footage detailed above. The available evidence may offer a partial explanation for the different responses.

As outlined in Part I, Ric McMahon was photographed holding a jigger while riding a horse during training at the Birdsville racetrack in 2022.¹¹² McMahon was convicted of possessing a prohibited item under the *Racing Integrity Act 2016* (Qld) and was disqualified by QRIC.¹¹³ The response from QRIC was prompt, with McMahon suspended days before the 2022 Birdsville Cup Races.¹¹⁴ Unlike the Victorian response to Darren Weir, there was no charge under Queensland's *ACPA*.

106 This video has since been removed from the APRA YouTube channel but has been uploaded in parts by AnimalKIND.

107 AnimalKIND, 'APRA National Saddle Bronc Finals Held in Chiltern, Vic, January 2022. Gambling Girl' (Vimeo, 30 April 2022) <<https://vimeo.com/704826025/ec14952427>> ('Gambling Girl'); AnimalKIND, 'APRA National Saddle Bronc Finals Held in Chiltern, Vic, January 2022. Cajun Lady' (Vimeo, 30 April 2022) <<https://vimeo.com/704802412/73ad307190>> ('Cajun Lady'); AnimalKIND, 'Miss Showgirl' (Vimeo, 29 April 2022) <<https://vimeo.com/704423165/105b83e300>>.

108 AnimalKIND, 'Gambling Girl' (n 107) 00:00:38–00:00:42.

109 AnimalKIND, 'Cajun Lady' (n 107) 00:00:17–00:00:24.

110 Paul Sakkal et al, 'Police Seize Electric Shock "Jiggers" and "Cocaine" in Raid on Melbourne Cup-Winning Trainer Darren Weir', *The Age* (online, 30 January 2019) <<https://www.theage.com.au/sport/racing/police-seize-electric-shock-jiggers-in-raid-on-melbourne-cup-winning-trainer-darren-weir-20190130-p50uk5.html>>.

111 Ractliffe and Le Grand, "'Jigger" Video' (n 104).

112 Larissa Waterson and Julia André, 'Jockey Ric McMahon Sentenced over Possession of Jigger at Birdsville Race Club', *ABC News* (online, 21 November 2022) <<https://www.abc.net.au/news/2022-11-21/brisbane-jockey-sentenced-over-jigger-offence/101677090>>.

113 Overs, 'Stewards Disqualify Birdsville Three' (n 3).

114 Prosser and O'Neal (n 1).

One possible reason for this is that possession is not an offence under the *Act* and the photograph of McMahon shows him holding, rather than applying, the jigger.

In relation to the use of electric prodders on horses in rodeos in Queensland, there are a significant number of cruelty allegations raised by AnimalKIND. While possession of an electric prodder is not an offence in Queensland, its use on horses (including in rodeos) is an offence. As outlined in relation to Victoria, AnimalKIND has analysed several videos originally published by rodeo organisers or recorded by AnimalKIND volunteers which appear to show rodeo participants in Queensland using an electrical device on horses. For instance, in one such video a rodeo participant can be seen applying what appears to be an electrical device to a horse during the Mount Isa Rodeo in 2021.¹¹⁵ In a further video, in footage taken by AnimalKIND at the 2021 Roma Rodeo, what appears to be an electrical device can be seen reaching towards a horse.¹¹⁶ There is further footage of what appears to be another incident involving the application of an electrical device to a horse at the same rodeo.¹¹⁷ At the 2022 APRA Rodeo in Moranbah, a rodeo participant can again be seen holding what appears to be an electrical device while standing at the chute.¹¹⁸ Despite video footage depicting various instances of what appear to be contraventions of the Queensland *ACPA*, no prosecutions have occurred and the incidents have received no media attention.

While the regulator, Biosecurity Queensland, has stated that ‘regulatory outcomes were applied in some instances’,¹¹⁹ there appears to be a significant difference in the severity and transparency of both regulatory and industry responses when comparing the horse racing and rodeo industries. This may be because Biosecurity Queensland takes an educational, rather than punitive, approach, which is typical for animal-use industries.¹²⁰ As Jed Goodfellow has identified, this gives rise to a high-risk regulatory environment because of the vulnerability

115 AnimalKIND, ‘2021 Mt Isa Rodeo: Electric Prod Visible. Horse “Double Time”’ (Vimeo, 28 April 2022) <<https://vimeo.com/704044406/d23c327e26>>.

116 AnimalKIND, ‘2021 Roma Rodeo. Cattle Prod Visible. Raw Footage’ (Vimeo, 7 April 2021) 00:01:33–00:01:35 <<https://vimeo.com/534253544/ea1e3202bb>>.

117 AnimalKIND, ‘2021 Roma Rodeo. Jigger Visible. Raw Footage’ (Vimeo, 7 April 2021) <<https://vimeo.com/534257498/b9ee3d9bc1>>.

118 AnimalKIND, ‘“Jigger” Visible. Horse “Double Time”. Incident 1: Moranbah Rodeo 28 May 2022’ (Vimeo, 7 June 2022) <<https://vimeo.com/717753290/71a6a3b111>>; AnimalKIND, ‘“Jigger” Visible. Incident 2: Moranbah Rodeo 28 May 2022’ (Vimeo, 7 June 2022) <<https://vimeo.com/717767279/087e3d9b5e>>.

119 Aston Brown, ‘Bucking Broncos and Roping Calves: The Campaign to Improve Animal Welfare at Australian Rodeos’, *The Guardian* (online, 11 November 2023) <<https://www.theguardian.com/australia-news/2023/nov/11/bucking-broncos-and-roping-calves-the-campaign-to-improve-animal-welfare-at-australian-rodeos>>.

120 See the response of Biosecurity Queensland to the Martin Inquiry for a full discussion of their compliance approach as it relates to animal welfare: Biosecurity Queensland, Submission to Queensland Racing Integrity Commission, *Inquiry into Animal Cruelty in the Management of Retired Thoroughbred and Standardbred Horses in Queensland* (3 December 2019) <<https://www.publications.qld.gov.au/dataset/management-of-retired-thoroughbred-and-standardbred-horses-submissions/resource/f81e9c98-867e-49ba-b51e-628bc144ce26>>. Biosecurity Queensland states that ‘[i]nspectors generally take an educational approach in the first instance and escalate the response if this is unsuccessful’: at 2.

of animals and the environment of use within which they exist.¹²¹ In particular, the approach taken by Biosecurity Queensland (and the enforcement agencies of other states and territories) ‘is premised upon an assumption of industry commitment to animal welfare’.¹²² This article suggests that the numerous incidents of apparent non-compliance detailed above demonstrate that this assumption may be too strong. However, a detailed discussion of the merits of the regulatory response is outside the scope of this article. What is relevant for the purposes of this article is the *comparative* lack of a strong regulatory and/or industry response in the case of rodeos.

The above examples suggest that where incidents of illegal prodder use relate to horses used in racing there is a consistently prompt response from the racing industry and prosecutions occur. In contrast, illegal prodder use in relation to horses in rodeos fails to lead to prosecutions or any apparent action from the rodeo industry. Evidentiary issues may go some way to explaining the disparity between industries. However, given evidence appears at first blush to be similar in relation to the prosecution of McMahon and the various recorded allegations of use by AnimalKIND in Queensland, a more likely reason may be that horses in the racing industry are better protected by industry-specific regulation than the *ACPA* itself.¹²³ This leaves horses used in rodeos with a comparative lack of protection in Queensland.

V RECOMMENDATIONS AND CONCLUDING COMMENTS

The infliction of electric shock on horses poses a significant risk to their welfare. This is clear from the available scientific evidence but is also evidenced by the regulatory regimes in the Australian Capital Territory, Victoria, and Queensland, where using an electric prodder on a horse is prohibited regardless of what industry that horse is used in. The prohibition of electric prodder use signals a clear intent to protect horses from the aversive impact of electric shock, regardless of the benefit that use may offer to humans. Moreover, the regulatory regimes in all Australian states and territories implicitly acknowledge the use of electric prod ders as a welfare concern given such use is restricted in some form.

It is therefore unclear how NSW, the Northern Territory, Western Australia, and South Australia justify permitting the use of electric prod ders on horses in rodeos,¹²⁴ despite the same exemptions not existing in relation to horse racing. One possible explanation for horse racing not being the subject of legislative exemptions for use is that the legislature in these jurisdictions considered such a risk to be disproportionate to, or unnecessary considering, the aims of the horse

121 Jed Goodfellow, ‘Animal Welfare Regulation in the Australian Agricultural Sector: A Legitimacy Maximising Analysis’ (PhD Thesis, Macquarie University, September 2015) 261.

122 Ibid.

123 See, eg, *Racing Integrity Act 2016* (Qld).

124 And potentially, Tasmania, subject to the discussion in Part III above.

racing industry.¹²⁵ Given the similar form of these industries, in that both use horses to provide human sport and entertainment, the justification for the disparity is unclear. Accordingly, this article recommends that these jurisdictions *remove the legislative exemptions* concerning electric prodders for horses used in rodeos. This will bring these jurisdictions into line with the Australian Capital Territory, Victoria, and Queensland, achieving greater national consistency, and will ensure that horses are subject to the same level of protection whether they are used in horse racing or rodeo events. The latter is necessary given that these animals clearly face the same welfare risks in relation to electric prodder use, but only rodeo horses are legislatively exposed to this risk.

More broadly, the inconsistent regulation across the rodeo and horse racing industries demonstrates inequality in the treatment of equally sentient animals. The inequality in treatment here is particularly apparent because of the similar form of the industries, which suggests that there is not a justification based on the differing industry purposes or aims. The inconsistent regulation of electric prodders for rodeos and horse racing therefore appears to be an overt manifestation of what Siobhan O'Sullivan, who was at the forefront of the political turn in animal ethics, has identified as the internal inconsistency in animal regulation.¹²⁶ The internal inconsistency refers to the inconsistent treatment of animals when compared to the treatment of other animals (as opposed to an inconsistency in the treatment of animals when compared to humans).¹²⁷ As O'Sullivan explains, these inconsistencies mean that 'animal welfare laws are discriminatory towards different categories of animals, even when the animals are of the same species'.¹²⁸ In the present case, NSW, the Northern Territory, Western Australia, and South Australia commit an internal inconsistency in the different regulation of the same species of animal, which is heightened by the similar forms of use in the horse racing and rodeo industries. This internal inconsistency suggests discriminatory treatment of horses depending on the industry in which they are used.

There is also an internal inconsistency operating across jurisdictions given that rodeo horses in the Australian Capital Territory, Victoria, and Queensland are provided with greater protection than rodeo horses in NSW, the Northern Territory, Western Australia, and South Australia. This jurisdictional internal inconsistency is also evident when considering rodeos more generally. As mentioned, the Australian Capital Territory has prohibited rodeos, therefore making it an offence to conduct or take part in a rodeo event.¹²⁹ This includes those rodeo events involving horses, such as bareback horse riding, as well as events involving cattle,

125 An alternate explanation here is that the legislature considers thoroughbreds more worthy of protection than horses used in rodeos. This explanation would raise the same disparity concerns because of the similar form of the industries. There would also be a clear concern for the unequal treatment of equally sentient animals.

126 See generally Siobhan O'Sullivan, *Animals, Equality and Democracy* (Palgrave Macmillan, 1st ed, 2011).

127 Ibid 31.

128 Ibid 35.

129 It should also be noted that the Australian Capital Territory has not prohibited horse racing, suggesting an internal inconsistency within that jurisdiction.

such as calf roping.¹³⁰ The consequence is that the permissible treatment of horses and cattle is vastly different depending on whether the animal is in the Australian Capital Territory or any other Australian jurisdiction. The jurisdictional internal inconsistency is a problem of unequal treatment arising from a lack of national consistency in laws that concern animals. This article therefore recommends that *rodeo animals be treated equally across jurisdictions* to achieve national consistency in animal welfare regulation and to rectify the internal inconsistency. However, the transition from inconsistent to consistent treatment must increase the protection of those animals exposed to greater welfare risks, rather than diminish the protection of those who are most protected from those risks.¹³¹

As Part IV made clear, those jurisdictions that have prohibited the use of electric prodders on horses in rodeos and horse racing, and who therefore do not commit the internal inconsistency, still fail to adequately protect horses used in rodeos from these devices. It was seen in the two instances analysed in Part IV that the regulatory regime in relation to electric prodders in horse racing appears to be subject to relatively strong (and at times, industry-led) enforcement. However, complaints in relation to alleged electric prodder use on horses in rodeos have not been met with prosecutions or any apparent enforcement response from industry. There is clearly a myriad of potential reasons for this enforcement gap.¹³² However, in Queensland, where complaints of electric prodder use arise from video footage, it appears that a key factor preventing prosecutions may be the inability for regulatory bodies to determine whether the electric prodder is turned on. For instance, the photograph of McMahon holding a jigger at Birdsville racetrack does not establish that he *used* that jigger – the photograph was merely sufficient to show he possessed a prohibited item for the purposes of QRIC's determination. It is therefore unlikely that McMahon could be prosecuted under the Queensland *ACPA*. Likewise, if the video footage collected by AnimalKIND shows a rodeo participant holding an electric prodder near a horse, and extending it towards that horse, it may still be insufficient to establish that the electrical device was turned on.¹³³ The evidentiary burden may therefore be too high, particularly when considering the context of these offences, in that they are often observed at distance and likely carried out in an intentionally inconspicuous manner.

130 *AWA ACT* (n 2) s 18.

131 This requirement follows John Rawls's difference principle, which states that inequalities can only be justified if they benefit the least advantaged members of society. Applied to the animal case, this means that any effort to rectify the inequalities arising from the internal inconsistency must increase the position of those animals who are the worst off in the context of their legal protection. See generally John Rawls, *A Theory of Justice* (Belknap Press, rev ed, 1999) 266.

132 See, eg, Jed Goodfellow, 'Animal Welfare Law Enforcement: To Punish or Persuade?' in Peter Sankoff, Steven White and Celeste Black (eds), *Animal Law in Australasia: Continuing the Dialogue* (Federation Press, 2nd ed, 2013) 183, 197–8.

133 In circumstances of suspected electric prodder use, veterinarians engaged by the relevant enforcement body may discern use based on the behaviour of the horse and proximity of the electrical device. However, it may be difficult to differentiate between behaviours associated with prodder use and behaviours associated with routine rodeo procedures.

If establishing ‘use’ is a key factor preventing suspected use from being prosecuted, then it appears that the *ACPA* may be unable to effectively enforce its regulation of the use of electric prodders on horses in rodeos.

Relevantly, this concern regarding the enforcement ability of the *ACPA* was raised in parliamentary question time to the Queensland Minister for Agriculture.¹³⁴ Member of Parliament Michael Berkman asked:

Given that the department has acknowledged difficulties prosecuting offenders for the use of electric prods or jiggers at rodeos due to the requirement to prove that [the device] made contact or was turned on, has the government considered reforms to improve enforcement and better protect rodeo animals?¹³⁵

The Minister for Agriculture responded that ‘[i]t is not uncommon for stock contractors to be in possession of an electrical prod to assist in moving cattle’, indicating that the fact that rodeos include both cattle and horse events may prevent a legislative prohibition of possession.¹³⁶ Given that Victoria, which hosts rodeo events, was legislatively successful in prohibiting possession without impacting the ability for rodeos to hold both cattle and horse events, it is unclear why the use of both horses and cattle at rodeo events would prevent a similar legislative provision being enacted in Queensland. This article therefore recommends that Queensland (and all remaining Australian jurisdictions) follow the Australian Capital Territory and Victoria in *making possession of an electric prodder an offence, such that possessing an electrical device while in the vicinity of a chute with a horse is a prosecutable offence, regardless of whether that device is in fact turned on or working*. While the Minister for Agriculture stated that ‘[i]t is incumbent upon rodeo organisers, rodeo officials, stock contractors and competitors to be aware of and comply with the relevant requirements’,¹³⁷ it is also incumbent upon the government to ensure that where a regulation prohibits conduct it is legally capable of enforcement.

Finally, it is important to acknowledge that much of the disparity between industries likely arises because the horse racing industry has attempted to build a strong culture of self-regulation.¹³⁸ There appears to be a cultural difference between the two industries, where a history of scrutiny and regulation has led the horse racing industry to guard against the loss of self-regulation by helping to ensure the continuation of its social licence to operate.¹³⁹ For instance, in response to the charges against Darren Weir, then Racing Victoria CEO Giles Thompson stated, ‘[t]here’s no doubt that this is bruising for the reputation of the industry and we need to be aware of that ... we need to deal with that and address those

134 Queensland, *Questions on Notice and Answers*, Legislative Assembly, 29 March 2023 (Michael Berkman) <<https://documents.parliament.qld.gov.au/tableoffice/questionsanswers/2023/319-2023.pdf>>.

135 Ibid.

136 Ibid.

137 Ibid.

138 ‘What Are the Animal Welfare Issues with Thoroughbred Horse Racing?’, *RSPCA Knowledgebase* (Web Page, 22 January 2024) <<https://kb.rspca.org.au/knowledge-base/what-are-the-animal-welfare-issues-with-thoroughbred-horse-racing>>.

139 See Janet Douglas, Roly Owers and Madeleine LH Campbell, ‘Social Licence to Operate: What Can Equestrian Sports Learn from Other Industries?’ (2022) 12(15) *Animals* 1987:1–14 <<https://doi.org/10.3390/ani12151987>>.

issues as soon as we can'.¹⁴⁰ There is clearly an industry motivation to maintain their reputation and demonstrate their commitment to upholding animal welfare standards, which produces swift and strong responses to incidents of non-compliance. While a cooperative form of regulation also exists within the rodeo industry, it has not demonstrated its competence or commitment to self-regulate and therefore appears to lack a strong culture of self-regulation. This is particularly clear given that the industry maintains a welfare standard that falls below the legislative standard in many jurisdictions.¹⁴¹ The apparent lack of response to complaints regarding the use of electric prodders on rodeo horses also gives rise to doubts about the industry's ability and commitment to self-regulate. This is concerning because the lack of strong external enforcement in relation to the rodeo industry, due to the cooperative regulatory approach, is not supplemented by industry-led enforcement as seen in the horse racing industry. This leaves horses used in rodeos in most Australian jurisdictions with a lower level of protection and an apparent enforcement gap. While self-regulation itself poses various issues, it is particularly clear in the case of rodeos that the industry has not demonstrated competence to self-regulate. This article therefore suggests that *increased self-regulation in the rodeo industry is not an appropriate solution to the issues raised above*. Rather, this article recommends a closer relationship between the regulator and the rodeo industry to ensure compliance with welfare standards. In this respect, a strong regulatory regime and effective enforcement is needed.

This article has analysed the regulatory regime in relation to the use of electric prodders on rodeo horses, finding significant discrepancies across jurisdictions and sporting/entertainment industries. These discrepancies mean that horses are subject to different legal protections depending on which jurisdiction they are used in, and whether they are used in the rodeo or horse racing industry. This article has also outlined various complaints relating to electric prodder use, both in the rodeo and racing industries, which showed further discrepancies across industries in relation to enforcement. As a result, this article has recommended that the legislative exemptions or defences that allow electric prodders to be used on rodeo horses in some jurisdictions be removed, and that possession of an electric prodder in the vicinity of a horse be made an offence in all Australian jurisdictions. These reforms are necessary to correct the concerning variations in protection for horses, who are capable of experiencing the same level of pain whether they are used in rodeos or horse racing.

140 Welsh (n 4).

141 In particular, the Australian Capital Territory and Victoria: see Part III above. Further, the animal welfare code of the Australian Bushmen Campdraft and Rodeo Association does not acknowledge that rodeo organisers in jurisdictions where prodder use on horses is prohibited under animal welfare legislation must not permit the use of electric prodders on horses. Thus, for some rodeos, the animal welfare standards also fall below the legislative standard in Queensland. See Australian Bushmen Campdraft and Rodeo Association, 'ABCRA Animal Welfare Code: Rodeo' (Code of Practice) <<https://abcra.com.au/wp-content/uploads/2023/08/AWC-Rodeo.pdf>>.