

## NSW HORSE CODE OF PRACTICE

### SUBMISSION BY EQUESTRIAN AUSTRALIA

#### The Role of Equestrian Australia (EA)

EA is a not for profit National representative body. Its participant shareholders are its six State Branches: Equestrian New South Wales, Equestrian Victoria, Equestrian Queensland, Equestrian South Australia, Equestrian Tasmania and Equestrian Western Australia. Membership includes all those who participate in the in the sports of Dressage, Para-Equestrian, Jumping, Eventing, Carriage Driving, Vaulting and Show Horse.

These sports have boomed in popularity since the Second World War, particularly in the West and are increasing in popularity.

However, EA does not, for example, regulate the Thoroughbred Industry or the Australian Stock Horse Society. This withstanding, many participants in other equine activities belong to EA as they also participate in EA sanctioned events and/or because they wish to have the benefit of EA's insurance umbrella.

EA also has many members who do not participate in formal EA regulated events but get other membership benefits and ride with the benefit of EA's insurance cover – pleasure riders.

EA carries out its role in the belief that it is in the wide public interest that as many people as possible participate in the healthy and satisfying (usually) outdoor physical competitive activities which it oversees.

The prime motives for participants in EA sanctioned events are the various satisfactions which come from competence, not financial reward from prize money or betting.

The conduct and sanction of competitions in the various disciplines from beginner level to Olympic and World Championship level is at the heart of EA's activities.

The purpose of EA competitions is to ascertain which rider/handler and horse combination is the most competent in exercises which are designed to fairly test that competence. This is sport, whether participants are paid or not, engaged full-time or otherwise or whether it is otherwise categorised for other purposes.

The competitions are controlled by performance rules, which have been developed over many decades by experts and modified by long experience. All the many years of practice by competitors in these events is driven by the need for compliance with these rules.

It is not possible for participants to successfully comply with the rules without constant emphasis on safety and the welfare of the horse.

### Good horsemanship.

Good horsemanship inextricably includes safe horsemanship.

EA has therefore always striven to ensure that in any equestrian activity over which it has influence, the safety of riders and the welfare of the horses involved are of paramount importance.

Rules for competitions are comprehensive and must of course, not be, or become, inconsistent with the rules of the various International Governing Bodies.

EA constantly considers the need to modify its rules, practices, and particularly its education initiatives to foster greater safe equestrian competence.

EA is about to appoint an expert full time paid safety officer to enhance and continue this process.

Although as comprehensive as is practical, EA rules are quite straightforward in one sense. Participants are under constant expert supervision and breach of the rules results in specified penalty points or disqualification.

No further participation has proved to be an extremely potent incentive to practice good horsemanship.

Any other penalty usually leads to unsatisfactory subjective arguments about what was the best way of applying principles of good horsemanship to particular circumstances.

It should not be overlooked that EA has a financial interest in the safe behavior of its members as the cost of the 24/7 injury insurance cover it gives its members is best contained by minimizing the need for claims.

### Fostering the Safety Component of Good Horsemanship by the State.

Is the Draft Code of Practice (1 June 2016) likely to realistically enhance equine safety given the nature of Codes and the many layered complexity of this particular Draft?

Would a Safety Alert or, perhaps, Fact Sheets, be a more effective approach? (refer attachment one for draft Safety alert).

EA's experience is that away from the direct expert control of horse handling at events, the key to fostering safety in horse interactions is to educate or guide training of horse handlers and thus horses to behave in ways that are most conducive to human and horse safety whilst getting the interaction done.

Attempted absentee coercion is usually counter-productive.

In other words people must be assisted in a way they understand, to want to handle horses in the safest way. It is an incremental process. There is no one-off instant solution.

### Codes of Practice for work in Mines, Factories, warehouses, offices, etc., compared to Horses Handling.

#### Machines are logical

Machines and work processes with machines are designed by people to be operated/conducted logically and therefore safely by people.

It is relatively straightforward, therefore, to write a step by step manual for the safe maintenance and operation of particular machines and processes. Moreover, it is the designer of the machine or process that writes the manual. Common sense and learnt safe work practice dictate that operators of machines do as the step by step manual tells them. If injury occurs and this safe work practice has not been followed, it is logical to punish people who are responsible, so they and others are encouraged to follow the logical safe pathway in future.

However, even in the case of machinery, safety manuals have their limitations. For example. A driver of a motor vehicle on a public road may be confronted by the sudden appearance of a dog or person in their path of travel. The one thing they do not do is reach for the check list of what to do when suddenly confronted by a dog or child. The driver, if vigilant, is instantly aware of risk. In that same instant the competent handler of the machine decides if he/she can eliminate the risk by swerving and not hitting the dog/person (oncoming and parked vehicles permitting) or whether to manage the risk by attempting to stop before the vehicle hits the dog/person. In doing this the driver assumes the vehicle will behave logically i.e. go where he steers it or brake as he expects it.

If the driver makes a reasonable effort to do these things, and is otherwise complying with the rules of the road, safety is not enhanced by prosecuting the driver for not writing and/or having a check list with them – no matter what the injury might be or whatever the drivers employment status may be. What matters is the instant application of learnt good driving skills involving, as they always do, risk management.

#### Horses are unpredictable

In critical contrast, horse interactions are of a quite different character to man made and controlled industries/activities because of the inherent unpredictable nature of the horse.

Horses are not motivated by human logic, as they do not reason as humans do. Horses act according to their instinct as modified by their training and experience (all experience is training in this context) at the time of the response.

Horses have evolved over the millennia as, and still are, flight animals. They have evolved towards and survived by their speed in outrunning predators - things that will hurt them. When a horse perceives danger – risk of hurt - it flees. Shies (low risk) or shies and runs (higher risk).

Often it enhances its fleeing speed by attempting to or getting rid of its rider.

Horses are trained by repeated and gradual non-harm exposure to be insensitive to various instinctively perceived dangers.

For example, A horses DNA (instinct) tells it that it is/was always at its most vulnerable when it is drinking at the waterhole. A horse can't quickly flee from danger with front legs splayed and head down.

The lions and tigers learnt this too so they waited in low branches at the edge of the waterhole. Dropped onto the drinking horses' back, clawed the horses throat out and thus fed itself and its dependents.

That is why horses need to be carefully prepared and skillfully trained to allow man to lower his/her body weight onto the horses back for the purpose of riding.

Allowing a person on their back or a cart to follow (chase) them is a fundamental modification of their survival instinct.

Different horses respond to different trainers at different rates of acceptance of modifications of their instinct. Each competent trainer has their own detailed way of training different horses which evolves with the horses' progress.

Even so, horses will shy at some, but not all things, moving towards them all their lives.

Some horses will react more sensitively more often than others and sensitivity changes over time, with weather, with mating cycles and for no, apparent to humans, reason at all.

Because of our completely different DNA is not possible for humans to predict what of the many possibilities will trigger the flight response. It may be a branch moving in the breeze, it may be a bird, but it will not be every branch and it will not be every bird or loose piece of paper blowing in the wind. The horses sensitivity will vary over its life. The handler can only instantly respond with his particular learnt horsemanship to the horses flight and the unpredictable risk of injury that it entails.

For example, a horse that has been trained to be a quiet pleasure hack only calmly doing a limited number of things it has done many times before is at the lowest

end of the scale in unpredictability. High performance horses must have high performance responses to everything, including perceived danger. They are an entirely different level of unpredictability and thus require a highly flexible approach to horsemanship.

Guidelines can and have been written, learnt and followed, but unlike a machine there is no one “correct” step by step process, let alone the practical likelihood of skilled handlers writing it down. Western riders do it differently to Dressage riders and so on. And all horsemanship changes with experience.

All good horseman should also bear in mind that despite the best horsemanship there will tripping and slipping accidents that will sometimes result in serious injury or worse. That knowledge should be used to increase vigilance not induce fatalism.

### Horses cannot be managed like machines

Horse handling is therefore utterly different to the step by step human devised logic of a potentially dangerous machine or process.

The designer’s manual is the one correct way to safely operate a machine.

Horses do not come with a manual. Moreover, one cannot be practically written, not least because of the vast number of potential horse interactions but also because of the fundamental matters touched on above.

The Draft Code of Practice wisely does not attempt the task yet obliges people bound by the code to write a step by step manual of horse handling, and write it correctly and follow it upon pain of sanction including possible criminal prosecution. For some unknown reason the Draft Code requires a list of hazards that may arise. How can that possibly be done when every horse interaction is potentially hazardous? What possible benefit could an attempt at such an endless list be?

Things like that lead to contempt for the Code and probably everything in it. That will not advance horse safety.

### The discredited method of Training (Education) by Fear

Traditionally horses were trained by fear of pain (punishment) to do what was required by their handlers.

Training horses by fear of punishment, whatever its apparent results, is seen to lead to resentment in the horse which sooner or later leads to dangerous rebellion.

It is unhelpful to teach employees (or any horse handlers) not to use fear training while at the same time telling them the State will severely punish horse handlers if



an undefined, until after the event, but mandatory step by step process is not followed. It is equally unhelpful if the codes punishments lead horse handlers to think if punishment is the correct way of training people, it must be correct for horses.

Horse handlers who happen to be employers already carry a very burden under existing Work Health and Safety legislation.

### State Imposed Penalties for Horse Handlers

State imposed penalties for not handling horses in a particular detailed way are a superficially attractive tool for encouraging safe horsemanship.

However, it is not possible with horse handling to define the one correct way of doing things in a sufficiently objective way to ground a prosecution.

A punishable obligation to “act safely” with horses typically leads to a subjective argument after the event about what, in the particular circumstances, were the precise steps that should have been taken and were not. That is fault finding which is not conducive to good horsemanship as there is unlikely to be universal agreement on one correct method.

It does not foster safety to convict and fine someone because risk avoidance was seen retrospectively to be the solution not an informed attempt at risk management.

Nobody interested in horse handling should ignore the truism that horse riding and handling is dangerous in the sense that the potential for injury always exists and accidents will happen even in the best management circumstances.

This reality does not detract from the obligation of employers and others who conduct a business or undertaking, to provide a safe place of work on pain of criminal conviction. Conscientious attempts to implement guidelines for good horsemanship are the safest approach. Punishing people for not adhering to contentious step by step lists is not.

### A Safety Alert

EA believes this Code of Practice, which is an unhappy marriage of threats of criminal sanctions and vague and questionable hints for horse handling is confusing rather than helpful.

Equally however EA believes horse safety would be fostered by a Safety Alert in the form attached to this submission.

Whether or not SafeWork adopts the Safety Alert approach, EA will post this Safety Alert on its website and will oblige all renewing members to click “ I have read and understood the Safety Alert” before renewal will take place.

### A more detailed review of the June 2016 Draft Code of Practice

Any Code will be largely ineffective if it is not easily understood by those it is meant to assist. It will not be practical in the horse world.

It will be even less effective if it is seen by fair-minded horse handlers to impose unfair, unnecessary or improbable burdens. Particularly if those burdens are not consistent with day to day practical good horsemanship.

No amount of criminal or other penalty will make such burdens generate good horsemanship.

EA has members who have ready access to expert legal and professional safety advice. On the other hand, it has a large body of members who, although highly responsible and skilled horse handlers, have little skill or interest in document interpretation, let alone creating written manuals of horsemanship. Nor do they have the resources to get others to do it for them.

It would be particularly confusing and thus regrettable if a Code created different legal or other obligations depending on whether the horse interaction took place at a sporting event or at home or at a workplace.

Even worse if the Code created the impression that there are different standards of safety depending on where a horse interaction takes place.

### To whom is the Code meant to apply?

“Scope and Application.

This code of practice provides practical guidance to persons conducting a business or undertaking (PCBU) on how to manage the risks likely to be faced by new or inexperienced workers and others when interacting with horses” (Draft p2)

The definition of PCBU (Glossary Draft p24) is not limited to horse activities for gain so one is, on the plain English, apparently carrying out an undertaking simply by owning a horse. Owning, leasing or licensing a horse is an undertaking.

The code is to apply to “others” (as well as (new) workers) when “interacting with horses”

If the Scope and Application means that the Code is to apply to anyone and everyone who controls a horse and permits any one else to “interact with it” then that should be stated in terms. Our members need to know where they stand in plain simple English.

A first time spectator (a “new” “other”) on an eventing course (a workplace for some) is going to interact with horses. Is it intended a full assessment be made of each of them and an induction given? Such an obligation is not clear in the draft, but probably implied. Surely it is not proposed that a highly qualified trainer flown in from overseas to give a clinic must be given an induction in safe horsemanship.

Apparently, there is a “Policy” that SafeWork regulation has no role at sporting events. If that is true, the Code should expressly exclude its application at sporting events. “Policies” have a habit of changing, but at least what is current should be clear and contained in this Code.

If a person takes a horse to a public place and somebody else wants to pat it, does that mean “a full assessment must be carried out” and then an “induction”? If the intention is yes, then that also should be made clear.

EA believes the four step risk assessment process should be constantly carried out by everybody involved in every horse interaction but undertaken in an informal and flexible manner and not prescribed by the completion of paper work.

Is the Code just a vehicle for easy prosecution?

These considerations are particularly important as the “Forward” (Draft p2) at least implies that failure to comply with whatever the Code requires will be the subject of proceedings for criminal conviction. If so, that should be clearly and expressly stated. If not and it is “a practical guide” (Draftp2) only, why mention legal proceedings?

If it is not just a practical guide and you “comply” in the horse interaction but you are only likely to avoid criminal conviction and penalty if you keep a written record of your compliance, then that also should be clearly stated – not implied.

It worth repeating that a large part of the target audience for this Code are people of incomplete administrative skills. The empathetic aptitudes that make good horse handlers are quite often in people who have little skill or interest in record keeping.

Furthermore, as non-compliance with the Code may lead to legal proceedings, the consequences or penalties (apart from large legal fees) for particular specific non-compliances should, in fairness, be made clear in this Code, not by reference to some other obligations elsewhere.

The Draft is long and complex (26 closely written pages), some parts seem inconsistent with others. It reads like an opaque lawyers document. In its June 2016 form the Code will not be easily understood by a very large number of competent horse handlers.



It would be an opportunity to foster safety missed if the Code were largely ignored because it is too daunting for many of the people it is meant to assist.

## Particular Provisions of the Draft

### 1.1 Introduction (Draft p3)

The statistics about hospital admissions for horse related injury support the well known proposition that horses pose a safety risk whether in the workplace or not.

One hospitalization a day for the many thousands of daily horse interactions throughout Australia may be a large number when compared to other relative rates of admission, or it may not but the real point is what caused those injuries and what should be done about minimizing them.

EAs experience is that activities that involve galloping and/or jumping – (Thoroughbred racing, Eventing, enthusiastic pleasure riding), involve a far higher likelihood of falls and injuries than, say, Dressage, where the risk of a fall is so limited that at the top levels helmets are not compulsory. A mainly cardboard top hat may be worn without realistic risk. However, the same rider would not get on a young green horse without a protective helmet.

This tells us that different responses are best for different circumstances of risk of injury. It is very difficult to be proscriptive.

That is why guidelines are so often used, and attempted proscription backed by fear of penalty is not.

Risk management is enhanced by recognizing that even with the best risk management there is, horse handling will result in some accidents, injuries and hospitalizations.

Horses slip and trip and fall over - just ask an Olympic rider how often he/she has come off and hurt himself/herself. This recognition should be used to emphasise that these accidents should be the only ones, and some inevitable accidents is not an excuse for not trying to minimize injuries.

Risk management principles must be constantly applied with the aim of eliminating all preventable injuries.

### 1.1, 1.2 Use and Responsibility

Unless the purpose of this Code is for use in a criminal prosecution, but instead is meant as a powerful education tool, why is a Code such as that not useful for everybody who interacts with horses?

Surely the Code should have at its core and make clear that every body who interacts with horses should continuously assess and manage risk. It would be regrettable if anybody were to think “They don’t want me to do that safety stuff in the Code – there is no new person round here.”

EA is of the strong view that risk management is not some separate overlay to good horsemanship only sometimes applicable.

Assessing and managing risk is always at the heart of good horsemanship.

Why have legally unsophisticated people pause to consider whether they have a “duty of care” before they apply the principals in Ss 19 and 27 of WHS Act. Relevant PCBUs and officers are bound by WHS Act whether there is Code or not. The Code should let anybody and everybody who interacts with a horse know they have a duty to act carefully.

Even the examples on p4 of the Draft are said to be not alone sufficient to fulfill a duty of care. Does this mean that following the Code is no defence in legal proceedings or does it mean there may be other better ways of meeting a “duty of care”?

### 2.3 Step1 – Identify hazards.

To “make a list” of “situations that could become hazards” is to write an encyclopedia of horse handling, because every human interaction with a horse involves risk of some injury. Why impose/suggest a written task that is not practically achievable by all but a very few, if any, horse handlers?

The aim of the Code should be that every horse handler should understand that every human interaction with a horse involves risk, from the moment the handler catches the horse in the paddock or stable to the time it is released. This is so whether the handler has a “duty of care” or not, and whether the Code only applies at the workplace or not.

The safest handler is the one who constantly, then and there, identifies and manages the risk to horse and handler that is in each interaction.

The new or inexperienced handler should be trained in the necessity to see risk management as inseparable from everything they do with horses and to learn and constantly apply the risk management techniques in all of these interactions.

The importance of this attitude cannot be over-emphasised, so a couple of examples may help.

In the case of catching the horse:- How will this horse respond to being haltered, is it likely to throw its head in a way that might injure me because it is agitated, or it gets an unexpected fright? Is it likely to move its feet in a way that may hurt me? Is

it likely to bump me? Is it in the vicinity of other horses which may cause this horse to hurt me by pulling the lead rope through my hand? Etc., etc. (level 1 – fig 2 p8)

The handler then controls those risks by deciding not to catch the horse (level 2 – fig 2 p8) or haltering in a way that minimizes the possibility of those risks resulting in injury - how the handler gentles the horse, where he or she stands, what is looked at or for, how the halter is actually put on etc. (level 3 – fig2, p8)

The handler then reviews those controls by deciding whether to modify the controls (do it differently) in future (level 4 – fig 2. P8)

The safe handler then commences to manage the risk in the next interaction– leading the horse to wherever it is to go.

A horse and rider/handler come to an obstruction. Assess it, (level 1) Avoid it (level 2) or walk or jump over it or through it (level 3).

And so on for the, usually many, successive interactions until the horse is released.

The risk process management wheel on p 6 of the draft never stops turning.

Of course, risk to the horse does not stop when released and a risk management process continues – are the fences/stable sound, is there adequate feed and water, what inspections are appropriate? Is there a risk of falling timber and so on.

Handlers should by all means make records to “demonstrate potential compliance with WHS Act and WHS Regulations” but protecting handlers and others from punishment should not obscure or delay the need for constant and continuous risk management whilst ever there is interaction.

Reminder or procedure lists of how to handle and maintain infrastructure, plant and equipment are very valuable. However, it should be emphasized that making lists of things to do or records of things done, do not make horse handling safer. It is the physical and mental (unwritten) actions at the time of the interaction that do or do not enhance safety.

### Conclusion

EA considers the Draft suffers from a serious lack of clarity as to whom, how and where it is to be applicable. This is because, apart from the drafting of many of the provisions themselves, the Code is apparently trying to be both a prescriptive code with penalties for non-compliance and have the same provisions look like helpful suggestions of possible safety steps. EA submits that these two approaches are incompatible.

The very nature of horse behaviour militates against prescriptive obligations, ordinary fairness requires that people who are subject to prescriptive obligations know what exactly they are bound to do.

It is just as unfair if particular behaviour is to be subsequently subjectively determined to be in breach of generalized safety obligations, whether by a government authorized official or a Court.

It is contrary to the nature of good horsemanship.

Horse handlers should apply the risk management process of the Code as part of their overall horse management without fear that somebody is going to decide subsequently that they could or should have applied the risk management process differently.

### Consultation

If SafeWork determines, against EA's submissions, to issue a Code of Practice breach of which may lead to criminal penalties without express detail of what is a breach, and/or the Code requires employers to compose documents which are in practice beyond the skill of most horse handlers, then EA asks the following be added to that Code:-

“During the preparation of this Code SafeWork consulted with industry stakeholders including Equestrian Australia. EA has made it clear it actively supports compliance with the Australian Standard and the continuous application of the 4 step risk management process in that Standard. However EA does not support this Code for the reasons it gave during the consultation.”