



## Horse Riding and The Law

### Horse SA Webinar November 2018

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## Introduction

This document outlines the legal implications associated with riding horses on South Australian roads. It discusses horse riders' rights and responsibilities and how the Australian Road Rules apply to horse riders.

This document was created by Julia Arena, a Solicitor in Andersons personal injury team, in conjunction with the firm's Senior Partner, Dion McCaffrie.

## Typical incidents with horses on the roads

When riders and their horses interact with other motorists on the road, their vulnerability to injury increases tenfold. Riders, unlike motorists, are unrestrained and largely unprotected. And horses, as all animals, can be unpredictable.

Typical incidents with horses on the road include:

- Roads with speed zones of 70km and hour an above.
- Outer suburbs or rural areas.
- A vehicle hitting the horse from behind
- A vehicle failing to provide enough room and side swiping a horse while overtaking.
- A horse being spooked by another vehicle or bolting and instances where
- A horse has strayed from a paddock or enclosure.

## Is a horse considered a vehicle?

Yes, for the purpose of the Australian Road Rules, a vehicle includes an animal drawn vehicle or an animal that is being ridden as a vehicle.

All references to "drivers" under these rules include "riders" and all references to driving will include "riding" unless specifically stated.

## Are horse riders subject to the same laws as drivers of motor vehicles?

Yes, it follows that if horses are considered vehicles, then riders will be subject to the same laws as all other motorists.

This includes:

- Riding on the left-hand side of the road with the flow of traffic;
- Using clear signals – by hand for horse riders;
- Refraining from using a mobile phone while driving;
- Refraining from riding while under the influence.

## Horse riding and mobile phone use

There are various rules surrounding riding a horse and using a mobile phone, which are as follows:

- If a person wishes to make or receive a call, including dialling a number, and needs to touch any part of the phone to do so, the phone must be mounted – in a mounting commercially designed and manufactured for that purpose.
- If the phone is being used via a headset or earphones without touching, holding or resting the phone on their body, the phone may be located anywhere, including the driver's pocket or pouch they are wearing.
- It is an offence to create, send or look at a text, video message or email on a mobile phone.
- This does not affect the driver's freedom to hold the phone to make or receive calls, or use any other function of the phone, if the vehicle is parked (but not stationary in a traffic queue or at lights).

## Queensland woman charged riding horse four times over the limit

ABC News story: [www.abc.net.au/news/2018-06-05/woman-charged-riding-horse-four-times-over-legal-limit/9837188](http://www.abc.net.au/news/2018-06-05/woman-charged-riding-horse-four-times-over-legal-limit/9837188)

In June 2018, a Queensland woman was charged with allegedly riding her horse to a bottle shop while she was more than four times over the legal alcohol limit. The rider pleaded guilty to the charge and claimed she wasn't aware she could be charged with drink driving while riding a horse. So, was she subject to the same penalty as any other motorist?

## Are horse riders subject to the same penalties as all other drivers?

Yes, horse riders are subject to the same penalties for road traffic offences as all other drivers. The Queensland horse rider's lack of familiarity with the road rules did not stop her

from being sentenced to 18 months' probation and having a conviction placed on her record.

## Are there specific additional road rules relating to horses?

Despite horse riders being subject to the same road rules as other motorists, there are some Australian Road Rules that relate to horse riders alone, these include:

- Horse riders are permitted to ride two abreast with another rider – but this can be no more than 1.5 metres apart in order to allow other road users to overtake safely.
- Horse riders are permitted on footpaths and nature strips.
- But riders are required to give way to any pedestrian on a footpath or nature strip.

## Insurance

It is always prudent to have an insurance policy that will cover you for any damage caused by your horse, whether damage to property or personal injury.

## Frightening the Horse

Whether motorists are obliged to pass horse riders at a specific distance and speed is a common question among horse riders. The answer in South Australia however, is, surprisingly, no.

No such road rule exists in South Australia but you'd be forgiven for thinking it may because this road rule does exist in Queensland.

In Queensland, a motorist must give way to a "restive horse." The rule obliges a motorist to pull over to the left side of the road and turn off their vehicle's engine if signalled by a rider until the horse has calmed down or travelled far away enough not to be aggravated.

Though this rule does not exist in South Australia, these acts may be considered negligent driving in the circumstances, and, where they result in harm, may lead to a successful claim against the other motorist in negligence.

## What is negligence?

Negligence is the failure to take reasonable care to avoid causing injury or loss to another person. In order to be successful in a claim for negligence, a plaintiff must satisfy the following components:

### 1. Duty

The rider must prove that the motorist owed the rider a duty to take care on the roads. As a general rule, motorists and road users owe a duty to others on or near the road.

### 2. Breach

The Defendant must have fallen short of the standard of reasonable care. This is referred to as a breach of the duty. Determining whether someone has fallen short of this standard is a question of fact.

You must be able to prove that the other driver failed to take precautions that a reasonable person in their position would have taken at the time in response to a reasonably foreseeable and not insignificant risk of harm. This might include an assessment of:

- The probability that the harm would occur if care was not taken;
- The likely seriousness of the harm which may result;
- The burden of taking precautions to avoid the risk of harm; and
- The usefulness of the risk creating activity.

### 3. Causation

The other driver's negligence must have caused you, or your horse, to suffer actual harm of a recognised kind, which is not too remote.

## Negligent driving scenario

Joanne is riding her horse on the road in the Adelaide Hills. Peter drives past at 100km/h and spooks the horse who then gallops off road, throwing Joanne off the horse violently. Joanne is left with extensive head injuries, and a number of broken bones.

In this instance, it is clear that Peter owed Joanne a duty of care as a motorist. It's arguable that Peter breached that duty of care as it may be considered reasonably foreseeable

that Joanne's horse would have been spooked by Peter's speeding vehicle. Further, the risk of harm to Joanne, it may be argued, was not insignificant.

## Claim

Joanne would likely have a claim for personal injury. She may be able to claim under the four heads of damages for personal injury claims:

### 1. Non-Economic Loss

An assessment of your injuries will be made once they have reached "maximum medical improvement." That is, when you reach a point where it is unlikely you will see any further improvement in your condition.

### 2. Economic Loss

Economic loss can be claimed for past and for future. Past economic loss represents wages lost by you as a result of the injuries you sustained in the accident, while future economic loss represents your entitlement to claim for injuries that are likely to affect your future capacity to earn an income.

### 3. Medical Expenses

As a general rule, insurance companies will meet the costs of medical treatment that is reasonably incurred as a result of your accident and subsequent injuries.

### 4. Gratuitous Care

You may also be able to claim for past or future care that may be provided by a spouse or nominated person under the legislation provides personal care, home help and domestic assistance that you are unable to carry out because of your injuries.

## What 'rights' do horse riders have if an accident occurs?

If a rider is involved in an accident or collision that causes an injury to the rider, or an injury to a horse, the rider is entitled to bring an insurance claim against the driver of the motor vehicle.

For personal injuries caused to the rider, the rider can bring a claim with the motorist's Compulsory Third Party (CTP) insurer. All registered motor vehicles in South Australia are automatically allocated a CTP insurer which will cover motorists from claims for compensation for injuries or

deaths arising out of the use of the motor vehicle where the driver was negligent.

The negligent driver will also be responsible for the injuries or death of a horse. If the driver is comprehensively insured, this would cover the loss. If the driver does not have comprehensive insurance, the loss would be payable by the driver.

## Conclusion

We hope we've covered any questions or concerns you may have about riding horses on South Australian roads and the legal implications that come along with it.

If you have any further questions, please feel free to send us an email at [marketing@andersons.com.au](mailto:marketing@andersons.com.au) or call through to our offices on 8238 6666.

## About Andersons Solicitors

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