

# **RACING APPEALS TRIBUNAL**

**NSW**

**Mr D B Armati**

**4 June 2018**

**Reserved Decision**

**Appeal by Racing NSW against Mr Dennis Mitchell  
in respect of a finding of the Appeal Panel of no  
jurisdiction relating to AR175A**

**Decision on Jurisdiction**

## **ISSUES:**

- 1. Stewards' powers to investigate, charge and penalise particularised conduct under AR175A**

## **DECISION:**

- 1. Appeal upheld**
- 2. Jurisdiction in the stewards found**
- 3. Directions for future conduct issued**

## **ISSUE**

1. Do the stewards of Racing NSW (“RN”) have the power to inquire into the circumstances outlined in particulars b to d and i to p of charge 3?
2. Do the stewards of Racing NSW have power to charge and penalise the respondent under AR175A in respect of the circumstances outlined in particulars b to d and i to p of charge 3?

## **THE FUNCTION OF THE TRIBUNAL**

3. The Racing Appeals Tribunal Act 1983 provides for this type of appeal as follows:

“17 Determination of appeals relating to thoroughbred racing

(1) The Tribunal may do any of the following in respect of an appeal under section 15:

(a) dismiss the appeal,

(b) confirm the decision appealed against or vary the decision by substituting any decision that could have been made by the Appeal Panel, the racing association or Racing NSW (as the case requires),

(c) refer any matter relating to the decision appealed against to the Appeal Panel, the racing association or Racing NSW for rehearing (in accordance with directions given by the Tribunal),

(d) make such other order in relation to the disposal of the appeal as the Tribunal thinks fit.

(2) The decision of the Tribunal is final and is taken (except for the purposes of an appeal against the decision under this Act or the Thoroughbred Racing Act 1996) to be the decision of the Appeal Panel, the racing association or Racing NSW (as the case requires).”

## **CHARGE**

4. Attached to this decision is the charge sheet issued by the stewards against the respondent.
5. The relevant charge is charge 3 in part.

6. To briefly summarise the relevant parts of the charge for this decision it is that the stewards say the respondent engaged in conduct prejudicial to the image and /or interests and /or welfare of racing.

7. That conduct is said to arise because of the respondent's responsibility for the Mounted Security Division ("MSD") of the Australian Turf Club ("ATC") relating to the condition of stables and failing to provide veterinary treatment for injuries sustained by two horses at music festivals.

## **FACTS**

8. Attached to this decision is an agreed statement of facts.

9. That statement of facts appears to end with events up to 4 July 2017. The additional facts relate to the appeal to the Appeal Panel and to this Tribunal. For present purposes it can be stated that the facts dealt with by the Appeal Panel comprised the facts dealt with by the stewards.

10. On 22 August 27 the Appeal Panel determined that the stewards did not have jurisdiction to conduct the inquiry that led to the charges under AR175(o)(iii) under charges 1 and 2 nor to particulars b to d and i to p in charge 3.

11. On 20 October 2017 the appellant appealed against that decision in respect of charge 3.

12. On 30 November 2017 the Appeal Panel found that the respondent did not breach charge 3 for particulars e to h.

13. On 19 January 2018 the appellant appealed against that decision of 30 November 2017.

14. The respondent has indicated a cross-appeal is intended, if required, in respect of the finding of the Appel Panel that he was an official for the purposes of that part of charge 3.

15. The Tribunal has noted that that cross appeal issue is one of the issues to be decided in this appeal as it relates to the application of the facts as to whether the respondent is an official.

16. The agreed statement of facts and this brief summary of matters is a sufficient explanation of the history of the appeal to date.

## **THE LEGISLATION AND RULES IN ISSUE**

17. The following need to be analysed in this decision:

The Thoroughbred Racing Act 1996 (NSW) (“TRA”)

The Racing Appeals Tribunal Regulation 2015 (“RATR”)

The Australian Rules of Racing (“RR”)

The Local Rules of Racing (“LR”)

## **The Thoroughbred Racing Act**

18. This act establishes the appellant as Racing NSW and specifies its method of operation, functions and powers. It is necessary to quote sections in detail having regard to the arguments.

“Long Title

An Act to make provision for the establishment, management and functions of Racing New South Wales as the representative body to control thoroughbred horse racing in the State; and for other purposes.

### 3 Definitions

(1) In this Act:

Australian Rules of Racing means the Australian Rules of Racing as adopted by the Australian Conference of Principal Racing Clubs.

function includes power, authority or duty.

race club includes any body or other association of persons, whether incorporated or unincorporated, that promotes, conducts or controls, or that is formed for promoting, conducting or controlling, a horse racing meeting or meetings

Rules of Racing means the rules for the time being governing and relating to horse racing under the control of Racing NSW (being an amalgamation of the Australian Rules of Racing and the local rules of racing of Racing NSW, together with the regulations made under those rules).

### 13 Functions of Racing NSW

(1) Racing NSW has the following functions:

(a) all the functions of the principal club for New South Wales and committee of the principal club for New South Wales under the Australian Rules of Racing,

(b) to control, supervise and regulate horse racing in the State,

(b1) such functions in relation to the business, economic development and strategic development of the horse racing industry in the State as are conferred or imposed by this Act,

(c) to initiate, develop and implement policies considered conducive to the promotion, strategic development and welfare of the horse racing industry in the State and the protection of the public interest as it relates to the horse racing industry,

(d) functions with respect to the insuring of participants in the horse racing industry, being functions of the kind exercised by the AJC on the commencement of this section, and such other functions with respect to insurance in the horse racing industry as may be prescribed by the regulations,

(e) such functions as may be conferred or imposed on Racing NSW by or under the Australian Rules of Racing or any other Act,

(f) such functions with respect to horse racing in New South Wales as may be prescribed by the regulations.

(2) The functions of Racing NSW are not limited by the Australian Rules of Racing and are to be exercised independently of Racing Australia Limited.

(3) The AJC ceases to have the functions that are solely the functions of the principal club for New South Wales or committee of the principal club for New South Wales under the Australian Rules of Racing.

(4) In this section:

AJC means the club known as the Australian Jockey Club as referred to in the Australian Jockey Club Act 1873 on the commencement of this section.

#### 14 Powers of Racing NSW

(1) Racing NSW has power to do all things that may be necessary or convenient to be done for or in connection with the exercise of its functions.

(2) Without limiting subsection (1), Racing NSW has power to do the following:

(a) investigate and report on proposals for the construction of new racecourses, and inspect new racecourses or alterations or renovations to existing racecourses,

- (b) register or licence, or refuse to register or licence, or cancel or suspend the registration or licence of, a race club, or an owner, trainer, jockey, stablehand, bookmaker, bookmaker's clerk or another person associated with racing, or disqualify or suspend any of those persons permanently or for a specified period,
- (c) supervise the activities of race clubs, persons licensed by Racing NSW and all other persons engaged in or associated with racing,
- (d) inquire into and deal with any matter relating to racing and to refer any such matter to stewards or others for investigation and report and, without limiting the generality of this power, to inquire at any time into the running of any horse on any course or courses, whether or not a report concerning the matter has been made or decision arrived at by any stewards,
- (e) allocate to registered race clubs the dates on which they may conduct race meetings,
- (f) direct and supervise the dissolution of a race club that ceases to be registered by Racing NSW,
- (g) appoint an administrator to conduct the affairs of a race club,
- (h) register and identify galloping horses,
- (i) disqualify a horse from participating in a race,
- (j) exclude from participating in a race a horse not registered under the Rules of Racing,
- (k) prohibit a person from attending at or taking part in a race meeting,
- (l) impose a penalty on a person licensed by it or on an owner of a horse for a contravention of the Rules of Racing,
- (m) impose fees for registration of a person or horse,
- (n) require registered race clubs to pay to it such fees and charges (including fees for registration of a race club) as are required for the proper performance of its functions, calculated on the basis of criteria notified to race clubs by Racing NSW,
- (o) consult, join, affiliate and maintain liaison with other associations or bodies, whether in the State or elsewhere, concerned with the breeding or racing of galloping horses,

- (p) enter into contracts,
- (q) acquire, hold, take or lease and dispose of real and personal property whether in its own right or as trustee,
- (r) borrow money,
- (s) order an audit of the books and accounts of a race club by an auditor who is a registered company auditor nominated by Racing NSW,
- (t) scrutinise the constitutions of race clubs to ensure they conform to any applicable Act and the Rules of Racing and that they clearly and concisely express the needs and desires of the clubs concerned and of racing generally,
- (u) publish material, including periodical publications, to inform and keep informed the public concerning matters relating to racing, whether in the State or elsewhere,
- (v) undertake research and investigation into all aspects of the breeding of horses and of racing generally,
- (w) take such steps and do such acts and things as are incidental or conducive to the exercise of its powers and the performance of its functions.

## Schedule 1 Savings and transitional provisions

### Part 4 Miscellaneous

#### 14 Rules of Racing

The continuity of the Rules of Racing is not affected by this Act. The local rules of racing made by the AJC (as in force immediately before the AJC ceases to exercise the function of making and amending local rules of racing) are taken to have been made by the AJCPC (once the AJCPC has assumed the function of making and amending those rules).”

19. The Act also provides for the setting of conditions, standards and the giving of directions for races, racing broadcast arrangements, totaliser distribution arrangements, appeals and review, Racing Industry Consultation Group, the establishment and functions of the Appeal Panel, some general powers and numerous savings and transitional provisions. These need not be examined.

20. No Regulation has been made under the Act.

## **The Racing Appeals Tribunal Regulation**

“3 Definitions

(1) In this Regulation:

the rules means:

(a) in respect of an appeal relating to thoroughbred racing—the Rules of Racing under the Thoroughbred Racing Act 1996

Division 2 Appeals relating to thoroughbred racing

5 Decisions from which an appeal lies to Tribunal

(1) An appeal may be made to the Tribunal under section 15 (1) (a), (b) or (c) of the Act only in respect of a decision:

(4) Expressions used in this clause have the meanings given to them in the rules.”

## **The Rules of Racing (“RR”)**

21. The facing page to the Racing NSW book of rules is informative and it is, relevantly:

“Rules of Racing of Racing NSW

as amended 1 October 2017

In this Rule Book –

The Australian Rules of Racing

appear first,  
and are preceded by the letters “AR”

The Local Rules of Racing

follow the Australian Rules,  
and are preceded by the letters “LR”

The Australian Rules of Racing and the Local Rules (including the Rules of Betting), Are to be read, interpreted and construed together, and as so combined shall be and be known as “The Rules of Racing NSW”.

Any person who takes part in any matter coming within the Rules in this book contained thereby agrees with Racing NSW to be bound by them. “



## Australian Rules of Racing

“AR.1. In the interpretation of these Rules, (and of any programme of a race meeting held thereunder), the following words unless the context otherwise requires, shall have or include meanings as follows:-

“Eligible Horse” means a horse which is eligible to be registered under these Rules but has not yet been registered under these Rules.

“Horse handler” means any licensed person who handles any horse at any meetings, trial, jump out or in training and includes but is not limited to stable hands, trainers, veterinarians, farriers and barrier attendants.

"Licensed" A person is licensed if he has the requisite licence required by the Rules.

“Participant in racing” includes:

- (a) a trainer
- (b) any person employed by a trainer in connection with the training or care of horses
- (c) a nominator
- (d) a rider
- (e) a riders agent
- (f) any person who provides a service or services connected with the keeping, training or racing of a horse.”

"Person" includes any Syndicate, Company, combination of persons, firm, or Stud owning or racing a horse or horses.

AR.2. Any person who takes part in any matter coming within these Rules thereby agrees with the Australian Racing Board and each and every Principal Racing Authority to be bound by them

AR.6. (1) These Rules apply to all races held under the management or control of a Principal Racing Authority, and shall, together with such Rules (not being repugnant to or inconsistent with these Rules) as may from time to time be made by the Principal Racing Authority in its territory, be read and construed as the rules of the Principal Racing Authority in such territory and, subject to the provisions of A.R. 35, shall apply to all races held under the management of a Principal Racing Authority or any registered Club and to all meetings registered by a Principal Racing Authority.

(2) Unless the Principal Racing Authority otherwise determines, if any race or race meeting is not held under these

(a) any horse taking part shall ipso facto be disqualified;

(b) any person taking part therein shall be ineligible to enter a horse for any race, or to hold or continue to hold any licence or registration under these Rules;

(c) any person who acts in connection therewith as promoter, organiser, president, chairman, secretary, treasurer, committee member, or in any advisory or official capacity, shall be debarred from acting in any official capacity at any race meeting, and any horse in which he has an interest shall be ineligible to race at any registered meeting.

(3) Paragraphs (b) and (c) of subrule (2) shall not apply to any race or race meeting in which thoroughbreds do not take part and which is or are held under the management or regulation of an organisation formally recognised by the Government of the State or Territory in which the race meeting is conducted.

(4) Any question not provided for by these Rules shall be determined by the Principal Racing Authority concerned.

AR.7. A Principal Racing Authority shall,

(i) not have reserved to it the right to make new Rules (other than Local Rules) or to rescind or alter these Rules, and a Principal Racing Authority which does not comply with this requirement shall ipso facto cease to be a Principal Racing Authority;

(ii) have the control and general supervision of racing within its territory;

(iii) in furtherance and not in limitation of all powers conferred on it or implied by these Rules, have power, in its discretion:-

(a) To hear and decide appeals as provided for in its Rules or by law.

(b) To license jockeys, trainers and others on such terms and conditions as it shall think fit, and at any time to suspend, vary or revoke any such licence without giving any reason therefor.

(c) To inquire into and deal with any matter relating to racing and to refer and/or delegate any such matter to stewards or others for investigation and report

and/or for hearing and determination and, without prejudice to the generality of the foregoing power, to inquire at any time into the running of any horse upon any course or courses, whether a report concerning the same has been made or decision arrived at by any Stewards or not.

(d) To penalise:

(i) any person contravening the Rules or disobeying any proper direction of any official, or

(ii) any licensed person or official whose conduct or negligence in the performance of his duties has led, or could have led, to a breach of the Rules.

(e) At any time to exercise any power conferred on Stewards by the Rules.

(f) To confirm, adopt or enforce any penalty imposed upon any person by the Committee or Stewards of any Club in the Commonwealth.

(g) To make reciprocal arrangements with any Club for the recognition or enforcement of each other's penalties.

(h) To confirm, adopt or enforce, in accordance with the provisions of Rule 179A, any suspension, disqualification, ban, or other similar penalty imposed by an Overseas Racing Authority upon any person.

(i) To annul or mitigate any penalty incurred within its territory.

(j) To publish in the Racing Calendar or in any newspaper or otherwise any penalty imposed or any decision made by itself or the Stewards or by any Club or Association or any other Racing Body within its territory.

(k) To recognise any Association of Registered Clubs or Race Meetings, or other Racing Body approved by it, and approve of its rules, articles or constitution.

(l) To register clubs, race meetings, owners, bookmakers, horses, jockeys and other riders, trainers and the employees of them or any of them and any other persons.

(m) To allot dates on which race meetings may be held within its territory. To prescribe the forms to be used under the Rules.

(n) To prescribe the forms to be used under the Rules.

(o) To delegate to the Committee of an Association or, with the consent of the Australian Racing Board, to a registered racing club, all or any of its powers under these Rules.

(p) To appoint a Subcommittee or Subcommittees of its Members and to delegate to any Subcommittee so appointed all or any of its powers under these Rules.

(q) To appoint such persons as the Principal Racing Authority thinks fit for the purpose of hearing and deciding appeals and applications as provided for in its Rules or by law, and for that purpose to delegate to such persons any of the Principal Racing Authority's powers under these Rules.

(r) Notwithstanding the provisions of AR.10 and AR.10A, to appoint such person or persons as the Principal Racing Authority thinks fit to hear and adjudicate upon any matter or charge brought by the Stewards relating to a breach of such of the Rules as may be specified by the Principal Racing Authority; and to delegate to any appointee or appointees so much of its Principal Racing Authority powers as would enable them to discharge the responsibilities of their appointment.

(s) To investigate alleged breaches of a Code of Practice published by the Australian Racing Board and to warn-off or penalise any person it finds to have committed a breach of such a Code of Practice.”

(t) To appoint or to approve the appointment by any Club of any official any deputy or assistant official. For the purposes of this provision the term “official” means a person appointed to carry out official duties at a race meeting, but does not include the Club Secretary;

(u) If in the opinion of a Principal Racing Authority a thoroughbred horse selling agent or organisation has in place satisfactory arrangements (including as between a buyer and seller of a horse) for taking samples from horses at horse sales for the purpose of testing for anabolic androgenic steroids, to officially approve as a “Principal Racing Authority approved vet” (which approval can be withdrawn at the discretion of a Principal Racing Authority) a veterinary surgeon employed, engaged or authorised by a selling agent, to take a sample from a horse for that purpose;

(v) To declare either before or after a sample is taken by a PRA approved vet pursuant to AR.7(u) that the sample is to be treated as a sample for the purpose of these Rules.

AR.8. To assist in the control of racing, Stewards shall be appointed according to the Rules of the respective Principal Racing Authorities, with the following powers:-

- (a) To make, alter, or vary all or any of the arrangements for the conduct of any race meeting under their control.
- (b) To require and obtain production and take possession of any mobile phones, computers, electronic devices, books, documents and records, including any telephone or financial records relating to any meeting or inquiry.
- (c) To enter upon and control all lands, booths, buildings, stands, enclosures, and other places used for the purposes of the meeting, and to expel or exclude any person from the same.
- (d) To regulate and control, inquire into and adjudicate upon the conduct of all officials and licensed persons, persons attendant on or connected with a horse and all other persons attending a racecourse
- (e) To penalise any person committing a breach of the Rules.
- (f) to (z) not set out

AR.10. The Stewards may at any time inquire into, adjudicate upon and deal with any matter in connection with any race meeting or any matter or incident related to racing.

AR.14. No horse if in Australia shall be entered for and no horse shall run in any race or official trial unless it has been registered with the Registrar of Racehorses, provided that the Principal Racing Authority or Stewards, after conferring with the Registrar, may allow a horse registered abroad to start upon such conditions as they see fit; further provided that an unregistered yearling may be entered for a race if the conditions so provide.

AR.64JA. (1) Where a decision has been made to retire, or not commence racing an Eligible Horse, the Manager, or his or her Authorised Agent, of the horse at the time of that decision must, within one month of that decision, notify the Registrar by updating the Stable Return or lodging the relevant Retirement form prescribed by Racing Australia

AR.175. The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise; . (a) Any person who, in their opinion, has been guilty of any dishonest, corrupt, fraudulent, improper or dishonourable action or practice in connection with racing.

AR.175A. Any person bound by these Rules who either within a racecourse or elsewhere in the opinion of the Principal Racing Authority (or the Stewards exercising powers delegated to them) has been guilty of conduct prejudicial to the image, or interests, or welfare of racing may be penalised.”

## **The Local Rules of Racing NSW**

“LR 1. The Local Rules of the NSW Thoroughbred Racing Board (inclusive of the Rules of Betting) for the time being and the Australian Rules of Racing for the time being must be read, interpreted, and construed together, and as so combined will be and be known as The Rules of Racing of the NSW Thoroughbred Racing Board and such rules apply to the administration, supervision and control of racing throughout New South Wales and the Australian Capital Territory.

LR 3. Any person who takes part in any matter coming within the Rules of Racing, or to which the said rules apply, thereby agrees to be bound by them.

LR 5. In the interpretation of the Local Rules (and of any programme of a race meeting or conditions of a race to which they apply), unless the context otherwise requires, words defined in Australian Rule 1 have or include the meanings as set out therein and the following words have or include the following meanings:

"Official" includes a Committeeman, Director, Board Member or any person employed, engaged or appointed by the Board, or by a Club, Association or Registration Board, for the purpose of conducting its race meetings, tracks, training tracks, offices, business and affairs and all matters incidental thereto.

## **THE ISSUES IN CONTEXT**

22. The appellant seeks to establish that the stewards could inquire into, charge in relation to and penalise for matters that involved the respondent. The respondent says that there is no power to do so.

23. The respondent was the General Manager Security of the MSD for the ATC. He was employed by the ATC. He was not a licensed person under the RR or LR. The relevant activities referred to in the breach allegations occurred at the stables of the MSD at Centennial Park and at a music festival at Byron Bay. The activities, relevant to the jurisdiction issue in this matter, did not occur at a racecourse and did not occur at a race meeting or any associated racing activity.

24. The appellant says the respondent was an official under the LR because he was an employee of a club and the activities involved the business and/or the affairs of the club, that is the ATC. The respondent says he therefore agreed to be

and was bound by the RR. The respondent says further that he was therefore within the requirements of AR175A. Those obligations are said to flow by reason of the fact that the TRA enables RN to exercise a function given to it under the RR and also that gives a power to the stewards to inquire, charge and penalise for those activities.

25. The respondent says that he was not an official and that the functions and powers of RN are limited to race or racing activities. He was therefore not bound by the RR. It is further said that there is no power in the stewards to penalise him for this conduct. Other issues are raised.

## **SUBMISSIONS**

### **The Appellant's Written Submission**

26. The appellant sets out the background to this appeal including the facts. These are sufficiently summarised above.

27. The appellant seeks comfort from the following provisions of the TRA and the RR.

28. In addition to the function to control, supervise and regulate horse racing in the state (s13 (1) (b) of the TRA, reliance is placed upon s13(1)(e) which states:

“(e) such functions as may be conferred or imposed on Racing NSW by or under the Australian Rules of Racing or any other Act,”

29. It is therefore submitted that this provision gives statutory force to the RR. Reference is made to a previous Appeal Panel decision of Roberts in 1988 and a Tribunal decision of Watt on 1 May 2015. The contents of the decisions were otherwise not referred to in any detail. The Tribunal accepts that in Watt it made such a finding.

30. That s14(2)(c) of the TRA gives a power to supervise the activities of race clubs:

“(c) supervise the activities of race clubs, persons licensed by Racing NSW and all other persons engaged in or associated with racing,”

31. No issue has been taken that the ATC is a race club within the meaning of the TRA, generally and within the definition in s3, and the RR.

32. The submission continues that the respondent is an official within LR5 because he is “employed”, “by a club”, “for the purpose of conducting”, “its business and affairs and all matters incidental thereto”.

33. Further it is submitted he is within LR3 because he is "any person" who "takes part in any matter coming within these Rules" and therefore without more "agrees with the Principal Racing Authority" (ieRN), to be " bound by them" that is the RR.

34. Accordingly it is submitted that it follows that he falls within AR175A because he is "any person bound by these rules" and "in the opinion of the stewards" is liable to penalty if he engages "elsewhere" in "conduct prejudicial to the image, or interest, or welfare of racing".

35. It is submitted that the stewards have power to deal with him because of AR8. That provides for the appointment of stewards " to assist in the control of racing". The rule empowers the stewards to "regulate and control, inquire into and adjudicate upon the conduct of all officials." It is said he is an official because LR5 makes him such.

36. It is also submitted that he is an official because of this role he played with the ATC and also because he was required to and did attend formal training at the ATC in respect of the application of the RR. The fact he attended such training is not in dispute.

37. The appellant then draws out the breadth of the rules beyond a mere association with racing events. This arises because of the difference in AR175A and AR175(a). Each sensibly deals with types of conduct which are not acceptable and only the latter requires a "connection with racing". In addition it is submitted that AR175A covers conduct "elsewhere" and not just in association with racing events.

38. Further reliance is placed upon the breadth of conduct captured by other sporting codes. Five examples are given in rugby union, AFL and NRL. This is said to demonstrate that wrongful conduct in a sporting code can extend to private conduct of persons bound by rules. Such a submission is reinforced by AR2 capturing any person within its rules because they agreed to be so captured. Regardless of that, it is said that the conduct here by the respondent does not extend to private conduct because his conduct was associated with the ATC which was inextricably linked to thoroughbred racing. That is said to flow for five reasons.

39. Firstly, security and ceremonial duties on race days at the ATC and a community engagement role of raising public awareness of racing generally and in particular because the functions were associated with ex-racehorses. Secondly, that the horses used were retired thoroughbred horses. Thirdly, the horses and riders carried significant branding of the ATC. Fourthly, that the public disclosure of these facts led to a belief of association with thoroughbred racing. Fifthly similarity to the football conduct in a matter of Walsh, a rugby treasurer who made out



cheques to his own name and his conduct was found to relate directly to the administration of the game.

40. The submission continues that there should be a broad application of the stewards' powers so that "to assist in the control of racing" gives proper effect to the purpose of the RR and that "control of racing" clearly extends to the protection of the image, interests and welfare of racing.

41. Next it is submitted a purposive interpretation should be given which would be consistent with previous determinations of the Tribunal. A purposive approach here would mean that under AR175A stewards would be able to inquire in to conduct at a racecourse or elsewhere.

42. The next submission calls in aid the social licence enjoyed by the racing industry in its codes to address expectations of the public in relation to welfare and accordingly such conduct should, under that social licence, be properly investigated. Any failure to do so would lead to a public outcry and this could not possibly be a proper outcome if there was cruelty to horses at the largest race club in Australia and that was not properly investigated.

### **The Respondents Written Submission**

43. The submission opens on the scope of the appeal and a summary of the issues identified above.

44. Reference is made to the establishment of RN under the TRA and the functions in s13 and the powers in s14. The submission points out that s13 deals with horse racing in (1)(b) and (c) because they deal with regulation, development and policies. It continues that the powers are for the exercise of registration, supervision, penalising and investigation, to select a few of the powers, but all to do with racing. The precise terminology is set out above.

45. Next it is submitted that the definition section expands some of the terms used to capture racing matters such as horse racing and racing officials.

46. Therefore it is submitted that the TRA is concerned with horse racing and the functions and powers are limited by that purposive consideration.

47. Rules of statutory construction are advanced. These are not in issue and can be summarised so the cases advanced in support need not be examined. They require: a purposive approach; purpose identified by text and structure of the legislation; the avoidance of absurd, unjust or unreasonable constructions; the reading down of general words to be more limited and ambulatory.

48. These rules mean the TRA is limited to racing of horses and related purposes.

49. The submission then addresses the RR on the basis they are confined because of the limits on the functions and powers in the TRA.

50. This is said to arise because the the TRA is not a vehicle to create new functions in the RR or to extend functions and powers that extend beyond the TRA. Therefore RN cannot develop policies beyond those conferred by the TRA.

51. Further the powers to deal with “any matter relating to racing’ (s14(2)(d) is limited by the statutory purpose and could not extend to these facts.

52. The respondent then addresses the contractual nature of the RR as having statutory effect on the basis that the contract must be consistent with the statutory provisions and these are limited by the scope of the functions and powers referred to.

53. There is then a detailed examination of the RR.

54. It is said AR2 is only available if a person has to take part to be bound. AR6 is limited to races. AR7(ii) it is submitted deals with races. Further (iii)(c) deals with racing and running of horses.

55. Reference is made to AR7(iii)(d) on powers to penalise but this seems to be predicated on the basis it is limited to racing. The Tribunal will return to that.

56. The submission says it will return to AR8 and then deals with AR10 noting it is limited to race meetings and racing.

57. AR14 it is said deals with horses in races or trials.

58. A submission on the retirement horse submission of the appellant is made. As the Tribunal does not accept that the submission of the appellant is of any weight merely notes the response and agrees with it. That is the fact the subject horses were retired race horses does not assist the appellant’s arguments. AR64JA(1) and the definitions of eligible horse, horse handler, licensed, participant in racing and person, set out above, need not be examined. The nexus between the respondent and the issues here does not turn on any fact or perception about the prior history of the horses.

59. In summary on these issues, the respondent says that they confirm the statutory purpose is directed to horse racing and the functions and powers are limited to that.

60. Otherwise it is said absurd examples could follow capturing farmers with Clydesdales ploughing or vets attending any horse.

61. This submission then returns to the issue of the powers of the stewards.

62. The chapeau to AR8 is said to identify an express purpose of assisting in the control of racing and therefore all the powers are directed to horse racing. Having noted that AR8 contains 24 powers the submission limits itself to (d) and (e).

63. In respect of (d) the submission is that it is ambiguous and needs a sensible construction or there will be absurd results for example the farmer and the draft horse. The expression "persons attendant on or connected with a horse" will only be considered if a person is attending a racecourse.

64. It is said that (e) does not provide for any basis for inquiry or investigation but is an ancillary power to be exercised after other powers have been used.

65. The respondent then turns to submissions on the meaning of "official" in (d) and whether the TRA gives a power to penalise an official.

66. It is submitted that there is no such power under the RR and the powers to impose penalties are limited by s14(2) (l) and these are limited to penalties on licensed persons or owners of horses and no other person may be penalised.

67. The private agreement said to introduce a contract is said not to make any difference because there is a limitation imposed on statutory contracts being extended beyond the empowering legislation. Reference is made to *Golden v V'Landys* [2016] NSWCA 300. This is said to flow because a person might be unaware they have become bound by a contract under the RR in particular where no positive step has been taken to require acceptance of terms. An example is given of an office cleaner or receptionist at the ATC being surprised that they are caught by the RR.

68. It is said that s14 (1) is limited by the rules of statutory construction and the TRA's statutory purpose. Accordingly officials are not caught. And there is nothing in s14(2) beyond (l). Therefore s14 is intended to confer very limited powers in respect of penalties and s14(1)(l) gives no broader powers.

69. Next it is submitted that s14(1) is limited in its scope to powers necessary or convenient for or in connection with the exercise of its functions and those are the functions under s13. However even if broadly construed giving a power to penalise officials those powers are limited by AR8 and its chapeau to the control of racing. It is said that those powers cannot extend to the facts here.

70. The final submission is that the definition of official in AR8 cannot be used as the chapeau to LR5 is limited to "In the interpretation of the Local Rules". Therefore the definition of official in the LR is limited in its use to matters falling under the LR. Therefore the word official cannot be used in considering the RR.

71. The conclusion is said to be that the TRA and the RR do not extend to cover the respondent and he did not submit to or enter any contract to make him subject to the rules.

### **The appellant's written submission in reply**

72. The case for the appellant is that the respondent agreed to be bound by the RR because of his employment as a result of the operation of AR2 and that he took part in matters coming within the rules therefore was bound by them and this is evidenced by the requirement for him to attend training in respect of the RR.

73. It is submitted that he attended the stewards' inquiry and therefore submitted to their jurisdiction.

74. It is said that the TRA s13(1)(e) invests RN with comprehensive functions being those in the RR. Those functions should not be sought to be restricted. It is submitted that a plain reading of s14 cannot lead to a limitation of the broad function power. Reliance is placed upon s14(1) and s14(2)(w) and it is noted that the latter empowers doing things incidental or conducive to the exercise of its powers and performance of its functions. That being in addition to the broad power to do all things necessary etc in exercise of its functions (1) .

75. This submission returns to the statutory recognition given to the RR by the Savings and Transitional Provision in the TRA, namely, clause 14, Part 4, schedule 1-set out above, and clause 5(4) of the Racing Appeals Tribunal Regulation-set out above. The rules under the RATR, by definition in it, are those under s3(1) of the TRA that is the RR.

76. It is said that the superior courts have not given a restrictive interpretation to the RR. Reliance is placed upon Zucal and anor v Harper [2005] WASCA 76 at 48 to 55 ("Zucal"). The case dealt with the powers of the stewards of harness racing in WA to inquire into an assault by a licenced person at that person's licensed premises upon an unlicensed person and whether that conduct might be detrimental to the industry. The need for the maintenance of public confidence in the industry should mean avoidance of a narrow construction of rules. In conclusion it is said that Zucal supports the rules applying to the respondent.

77. The case is that the respondent was a senior member of the management of the largest thoroughbred race club in Australia, and the only metropolitan race club in NSW, and was in charge of a division that engaged in conduct that was made public and would have caused people to lose confidence in the standard of thoroughbred racing and those entrusted with the administration of thoroughbred racing. The respondent therefore should have been one of the persons looking to enforce compliance with the RR within his organisation.

## **Oral submissions at the hearing**

78. On 25 May 2018 a hearing of the appeal took place and each party supplemented their written submissions.

### **Appellant's oral submissions**

79. The appellant acknowledged two possible "camps". The first being licensed persons and race club administrators whose activities fall on a day-to-day basis within the RR. The second being people not bound in their day-to-day activities, for example, those attending a race course and for them not every activity would fall within the RR. However it is submitted that each category could bring racing into disrepute.

80. Again Zucal was called in aid as well as the earlier examples about footballers breaching codes of conduct and therefore engaging in conduct prejudicial to the image of the sport.

81. It is said that Zucal applies to these facts even though it was dealing with a licensed person.

82. Therefore it is said that AR175A extends to private conduct. Is further submitted that if the respondent did not attend the stewards' inquiry he could have been warned off but it was not necessary for the stewards to consider the exercise of that power.

### **Respondent's oral submissions**

83. It is submitted that the decision of the Appeal Panel means that this appeal cannot proceed.

84. That is said to flow because for charges 1 and 2 the same particulars were used as for charge 3. The Appeal Panel found no jurisdiction on the AR175(o) matters in charges 1 and 2. It is said that it is the same subject matter in the AR175A charge in 3.

85. As RN has not appealed against the findings of the Appeal Panel in charges 1 and 2 therefore it is bound by those findings and cannot proceed with this appeal.

86. The next submission is that it is necessary to construe the TRA before the RR, that is, you do not use a rule to interpret an act. Therefore you do not look at AR175A before analysing the TRA sections 13 and 14. Reliance is placed upon Paice v Hill [2009] NSWCA 156, Allsop P, at 2 ("Paice"):

“The generally accepted rule in Australia is that delegated legislation should not be taken into account for the purpose of the interpretation of the Act itself.”

87. In response to the appellant's written submission upon decisions in other codes the respondent says that those examples are of no assistance because the precise rules and facts in relation to each matter are not known.

88. In response to the appellant's written submissions this case does not turn up on other sport decisions but upon the private conduct of the respondent because of his employment position, the respondent deals with the five points made.

89. It is pointed out that the MSD uses horses in three different ways, namely, at the races, for ceremonial purposes and for private contracts. The respondent's conduct would not therefore be caught for all of those activities. Evidential challenges are made in respect of the branding submission and the use of newspapers to establish impugning conduct.

90. In supplementation to the respondent's written submissions, and the Tribunal does not repeat where there is duplication, a number of points are made.

91. It is submitted that if the s13(1)(e) function is to be used there needs to be an express conferral of powers to go out and investigate others and it would have to be within the purview of racing.

92. It is said that the RR only contains two irrelevant references to functions and they are in LR15 and LR51. Assuming that submission to be correct and the Tribunal has not been taken to other references, it agrees that those two local rules are irrelevant. They are not set out.

93. It is said that the chapeau to s14 defines the powers flowing from the functions and they are limited to racing. Reliance is placed upon *Racing New South Wales v Sydney Turf Club and ors* [2005] NSWSC 426, Bergin J, (“RN V STC”). That case dealt with the powers of RN in relation to totalisator betting and RN's ability to issue directions and other matters. In a series of findings relating to powers to make policies Her Honour said:

“92 In addition to the control, supervision and regulation of the galloping of horses, the plaintiff has what might be described as an overarching function as a policy maker. That function is no doubt an extremely important one which requires the plaintiff to “initiate, develop and implement policies” that are “considered conducive to the promotion, strategic development and welfare of the horse racing industry in the State and the protection of the public interest as it relates to the horse racing industry” (s 13(1)(c)). The term “horse racing industry” is not defined within the Act, however the content and

context of the Act and the Rules together with commercial common sense dictate that the term includes the commercial and other operations integral to and dependent upon the galloping of horses under the Rules. That includes persons, both individual and corporate, who work within the industry such as the racing clubs, the breeders and trainers, the jockeys and apprentices and other riders. It includes the commercial operations of on-course and off-course betting from which the plaintiff and the Clubs obtain much of their revenue.

93 The policy making function will impact upon not only the industry but also upon the broader constituency, the “public interest as it relates to” the industry. The development of those policies are limited to those that will contribute to or help the promotion, strategic development and welfare of the horse racing industry. The “public interest” is not defined but is to be understood in the context in which an integral element of the industry’s success is wagering, or placing of bets, by the members of the public on the outcome of the races. The industry cannot survive without the public’s involvement in this regard. Those members of the public who “invest” their money on a race have an interest in knowing that the horses running in the race are run on their merits and that the wagering system that is provided is one that is open and honest. The public has an interest in the industry operating openly, fairly and commercially successfully.

95 The plaintiff’s powers to be used in carrying out its functions under the Act are quite broad. It is able to “do all things that may be necessary or convenient to be done for or in connection with the exercise of its functions” (s 14(1)). It has the power to “supervise the activities of race clubs, persons licensed by [it] and all other persons engaged in or associated with racing” (s 14(2)(c)). This is a very broad range of persons and it is therefore very important to ensure that the plaintiff only exercises that supervisory power “for or in connection with the exercise of its functions”. It is able to: “appoint an administrator to conduct the affairs of a race club” (s 14(2)(g); disqualify a horse from participating in a race (s 14(2)(i); prohibit a person from attending at or taking part in a race meeting (s 14(2)(k); and impose a penalty on a person licensed by it or an owner of a horse for a contravention of the Rules of Racing (s14(2)(l)). The exercise of the plaintiff’s powers may have serious professional, commercial and financial impact upon those in respect of whom the power is exercised. These are public powers and should therefore be exercised impartially, fairly and reasonably.

it is said therefore that RN can only exercise its powers connected with its functions and they are only and in respect of racing. That he is the appellant cannot just do anything it wants to.”

94. It is said that the powers contained in the RR are different to the functions and are not interchangeable. It is repeated that the chapeau to AR8 limits matters to the control of racing and are not at large. Again emphasis is placed upon the fact that there must not be a reverse engineering to look to the AR175A breadth because that is limited by AR8.

95. It is then submitted that any ambiguities should be read down as they are in the criminal law and reliance is placed upon *Beckwith v The Queen* 135 CLR 569 at:

“576. The rule formerly accepted, that statute creating offences are to be strictly construed, has lost much of its importance in modern times. In determining the meaning of a penal statute the ordinary rules of construction must be applied, but if the language of the statute remains ambiguous or doubtful the ambiguity or doubt may be resolved in favour of the subject by refusing to extend the category of criminal offences.”

96. Reliance is placed upon *Clements v Racing Victoria Ltd* [2010] VCAT 1144 (“Clements”) at:

“69. It seems to us that the principle of legality applies with equal force to the interpretation of rules of domestic tribunals. Just as domestic tribunals are subject to the rules of natural justice-an aspect of the rule of law-so too should the rules be construed by reference to the principle of legality. Any doubt in interpretation should be resolved in favour of the person said to be subject to the rules.”

97. The Tribunal will return to Clements.

98. Submissions are made as to why Zucal should be distinguished, particularly having regard to the number of obiter remarks. It is said that the rules in question here are different to the rule there. It is said that the various examples of other adverse findings to which reference was made can be distinguished.

99. A brief submission was made seeking to distinguish well-known people in the racing industry from this respondent and the weight to be given to newspaper articles.

100. Next it was submitted that the attendance by the respondent at the stewards’ inquiry was not a submission to jurisdiction.

101. Submissions were then made on the meaning and use of the word "official".



102. Again the chapeau to LR5 was called in aid as limiting the definition to the contents of the LR.

103. Examples were given of the use of the word "official" in the AR. At the suggestion of the respondent a supplementary list of the contents of the AR containing that word was provided after the hearing concluded. The appellant elected not to respond to that list. The list is very long and contains 51 references. A reading does not seem to support that each of those listed contains that word e.g., AR6. AR7(iii)(t) which deals with matters in furtherance and not limitations of powers and deals with the appointment of officials at race meetings. Further references are not set out as it is apparent that they are addressed to matters associated with races and race day activities.

### **The appellant's oral submissions in reply**

104. It is submitted that the charge relating to AR175A deals with a course of conduct and not some isolated event which would invoke jurisdiction. It is further said that that rule is wider than others in the RR.

105. It is submitted that s13(1)(e) expressly confers on RN the functions contained in the RR and nothing limits the conferral of those functions. That does not mean that RN can act at large.

106. The s14(1)(d) provisions are specific powers to assist and do not limit the functions of the RR.

107. Therefore RN can supervise the activities of race clubs and their employees and therefore can conduct inquiries into them.

108. It is submitted that AR7(iii)(t) does not demonstrate a limit on powers as it is an important power to appoint officials for the purposes of racing but it is one that is over and above the general powers because it allows the appointment to official duties.

109. It is said that paragraph 95 in RN V STC did not deal with the identification of a specific power therefore s14 of the TRA provides the power found in AR8 to inquire and adjudicate and AR175A is in broad terms.

110. It is finally submitted that Zucal should not be distinguished as the rule under consideration is sufficiently similar to the rule under consideration here.

## DISCUSSION

### Rules of Construction

111. There are many rules of statutory interpretation that could be considered but the Tribunal will focus on those advanced by the parties.

112. The primary rule is to construe purposefully by looking at the text and context of the legislation. A construction which gives a rule no operation at all is necessarily inconsistent with its purpose (Leeming JA at 77 in *Day v Harness Racing New South Wales* [2014] NSWCA 423) (“Day”).

113. The Tribunal agrees with the respondent's submission that the rules here require: a purposive approach; purpose identified by text and structure of the legislation; the avoidance of absurd, unjust or unreasonable constructions; the reading down of general words to be more limited and ambulatory. The appellant also relies upon the need for a purposive interpretation.

114. The Tribunal agrees with the respondent's submission that it is necessary to construe the TRA before the RR as you do not use a rule to interpret an act.

115. The Tribunal agrees that any ambiguities or doubts on interpretation should be resolved in favour of the respondent by reason of the fact that there are consequences of a punishment nature available. However the reliance upon criminal law precedents is rejected. The Tribunal has expressed on many occasions that these are civil disciplinary proceedings and not criminal proceedings. It recently said in *Kavanagh v RN*, 23 May 2018, at 72:

“72. It is appropriate for the Tribunal to restate its mantra that these are civil disciplinary proceedings in which a civil penalty is a possible outcome. These are not criminal proceedings and the outcome is not a sentence which is required to be framed on criminal law principles. While a civil disciplinary penalty might embrace similar notions as that which are considered in a criminal law sentence the proper approach to considering an order must be based upon civil law considerations or disciplinary considerations. Punishment is not the aim but any penalty will carry with it an inevitable aspect of punishment. As the Tribunal has expressed this on so many occasions it is not necessary to detail this issue any further’

116. The Tribunal notes that in *Clements* the issue was the local statute and rules of racing which are applied in a civil disciplinary fashion and that doubts in interpretation being resolved in favour of the respondent was adopted.

117. A number of cases have addressed the issue of the interpretation of the rules as a result of the manner in which they are created. In Day at 79 to 81 Leeming JA noted that the rules are not drafted by Parliamentary Counsel and are not subject to the type of scrutiny that a Bill in Parliament would receive and that regulations are often less carefully drafted and less keenly scrutinised than primary legislation. At 81 he referred to *Jacques v Amalgamated Union of Engineering Workers* [1987] 1 All Er 621 at 628:

“the rules of a trade union are not to be construed literally or like a statue, but so as to give them a reasonable interpretation which accords with what in the court’s view they must have been intended to mean, bearing in mind the authorship, their purpose and the readership to which they are addressed.”

118. In *Racing Victoria Limited v Kavanagh and anor* [2017] VCAT 334 at 149, Cavanough AJA said:

“.. the much amended Rules of Racing have many authors and may be likened to a patchwork quilt.”

119. The interpretation rules for the statute are clear and the RR should be interpreted having regard to those notes of caution.

## **The Functions**

### **Functions in the TRA**

120. A reading of s13 in its entirety does not support the respondent's argument that the function detailed in (1)(e) has the limits he advances.

121. It is agreed that some of the provisions in that section solely deal with horse racing. However the TRA does not just deal with the sole issue of the running of horse races.

122. The Long Title to the act provides for the control of thoroughbred horse racing in NSW and "for other purposes".

123. Section 13 provides functions for RN as the principal club, horse racing, the horse racing industry, the protection of the public interest as it relates to that industry and insurance. It provides for functions prescribed by the regulations but there are none.

124. These provisions alone demonstrate that the functions are not limited to the actual conduct of race meetings or the activities of participants at them. The thoroughbred horse racing industry is not just about horse racing.

125. In addition the provisions of s13(1)(e) are not limited by reference to the actual conduct of race meetings or the activities of participants at them. This provision must have some work to do. The section must not be interpreted so that the subsection has no operational role. The subsection is capable of standing alone. It has statutory force.

126. The RR have statutory force because of this provision and this is consistent with prior Appeal Panel and Tribunal decisions.

127. There is no or express or implied limit on the conferral of the functions in the section generally or in the subsection.

128. Accordingly the finding is that the RR confer functions on RN and these are not limited to the issue of the running of horse races

129. It is important to note that by s13(2) the functions of RN are not limited to those in the RR. No examples are given in the submissions on the practical application of this subsection.

### **Functions in the RR**

130. The relevant function is said to flow from the power in AR8(d), that is, the regulation control of and inquire into an adjudicate upon the conduct of officials.

131. The respondent says that that power is limited by the chapeau to AR8 which is "to assist in the control of racing".

132. The word racing is not defined in the RR. That word takes its meaning from the whole of the RR considering the purpose and the text and context in which the word is used.

133. The Tribunal is satisfied that the word racing in the rule is not confined purely to the conduct of actual race meetings and of the activities of those participating at race meetings. Racing has a broader meaning. That is consistent with a reading of AR8 in its entirety and the RR as a whole because they deal with other matters. The argument about limits on interpretation of AR175A will be dealt with later.

134. The functions in the TRA have been given given a broader meaning than that which the respondent says should apply. That is the functions relate to not just race meetings etc. The rules of statutory construction are not infringed if the functions of RN are extended in the RR. The submission that RN cannot develop policies in the RR is not accepted. The Tribunal is satisfied that the scope and purpose of section 13 is to be purposively interpreted to adopt functions provided in the RR but not expressly referred to in the TRA.

135. Comfort in that conclusion is drawn from the remarks of Bergin J in RN v STC. That is the findings in 92 of the overarching function as a policy maker for the horse racing industry in the state and the protection of the public interest relating to that industry. The further finding in 92, whilst dealing with (1)(c), that the term horse racing industry extended to include racing clubs and those who work within the industry. In 93 it was noted the function will impact upon the broader constituency. In 95 it was noted that powers used in carrying out functions are quite broad. A supervisory power was noted and that public powers should be exercised impartially, fairly and reasonably.

136. The Tribunal also finds that the social licence given to RN requires that public expectations on welfare of horses means that a purposive construction will support the functions being extended to those provided for in the rules.

137. The different extent of AR175(a) on wrong conduct connected with racing, (assuming there was a narrower interpretation of racing than set out above), as against AR175A extending to such conduct elsewhere confirms the broader function making power.

138. These remarks make it clear that the functions are more than just those associated with race meetings and are very broad, sufficiently broad to pick up the types of matters argued by the appellant as applicable in AR175A.

139. It is acknowledged that there are limited references to the word "functions" elsewhere in the RR and that AR15 and AR51 are irrelevant.

140. It is also acknowledged that many of the function type matters that are in the rules are limited to race meetings and conduct of those attending such meetings.

141. Such a conclusion does not infringe the principle referred to in Paice, supra, because the finding is that the rules have statutory force and accordingly functions can be created in the rules which might not otherwise be referred to in the act. That is the rule is not being used to interpret the act.

## **Powers**

142. Many of the conclusions drawn in respect of the findings on the functions have similar application to the required findings on the issues of the powers of RN.

## **Powers in the TRA**

143. There is firstly the very broad power making function contained in s14(1).

144. Its words must be given some operation. That is particularly so as s14(2) does not provide a conclusive list of powers but an inclusive range. Therefore if

something is not referred to in subsection (2) then the broad power in subsection (1) can be called in aid but that will require a cross checking that such a power is within the scope and purpose of the TRA.

145. It is noted that it has been determined earlier that the functions are not limited to race meetings and activities associated with race meetings and the powers must also be broadly interpreted, for the same reason, to extend beyond those matters.

146. The extent of that power making right is also confirmed as s14(2)(w) also must have some work to do.

147. Its plain words extend powers beyond those expressly referred to in the remaining subsections of (2) and as long as the power sought to be exercised is incidental or conducive then it can be done.

148. Therefore there are broad powers in RN to use in the exercise of its functions.

149. The express power relied upon in this matter is that in s14(2)(c) that is the supervision of activities of race clubs.

150. The activities of race clubs are not limited to actual racing as found appropriate earlier in the interpretation of the word "racing" so far as it related to functions. The same conclusion is appropriate on consideration of the powers. The fact that the remainder of the subsection deals with licensed people does not limit the breadth of (2)(c).

151. There is also sub-subsection (d) which again is not written down to be limited to race meetings or running of horses at race meetings or racetracks but extends to any matter relating to racing. This then creates a specific inquiry power.

152. The powers in the TRA are therefore very broad and there is no rule of statutory construction to constrain the incorporation in the RR of specific powers relating to those empowerment provisions in s14.

153. Section 14(l) is of no assistance to the appellant as that specific power is limited to the imposition of penalties on licensed peoples and horse owners. Other penalty making powers must be used.

154. The next issue is whether the RR have actually been written so as to give the specific power sought to be exercised here.

### **Powers in the RR**

155. The principle in Paice is again not activated because the specific power making provision, with a recognition of the statutory force of the RR, enables powers not otherwise specifically referred to in the TRA to be created in the RR.

156. The appellant relies on AR8 in particular (d) and (e). AR8 vests specific powers in the stewards to assist in the control of racing.

157. Sub-rule (d) empowers the stewards to regulate and control, inquire into and adjudicate upon the conduct of officials. The sub-rule otherwise deals with licensed persons, those associated with a horse and all other persons attending a racecourse.

158. Sub-rule (e) empowers the stewards to penalise any person committing a breach of the RR. This provides the power not given in s14(2)(l) and that is power in the stewards to deal with the type of conduct alleged against the respondent.

159. The respondent submits that "in the control of racing" is limited on the same arguments advanced in respect of limits on functions. As used here the Tribunal finds that the word racing has the extended meaning it has found and is not limited to the conduct of actual races or those attendant at races.

160. The respondent submits that the sub-rule (d) is ambiguous and needs a sensible construction or absurd results will follow. This is said to be because it must be limited to those attending a racecourse. That is it only relates to an official at a racecourse. The Tribunal agrees it is not well worded and could be interpreted on the basis it is ambiguous. The argument that the sub-rule should be interpreted in that way has force.

161. Regard is given to the cautions which must be exercised in interpreting rules because of how they are created (Day) and (RVL v Kavanagh). It is obvious that many of the sub-rules (a) to (z) deal with actual race day events and activities, not all do. Some can be exercised on days other than race days, both before and after race days.

162. It is necessary to decide whether "officials" can be considered separately to "licensed persons" and "persons attendant on or connected with a horse" and 'all other persons' who are "attending a racecourse" and in addition whether officials, licensed persons and persons attendant on or connected with the horse and all other persons only fall within the sub-rule if they are "attending a racecourse".

163. The interpretation of the sub-rule is guided by the scope and purpose of the functions and powers in the TRA and the RR. That is the regulation of the horse racing industry for racing purposes. There is no doubt there is an intent to capture the ATC because it is supervised. As determined by later reasoning in this decision an official of the ATC is an official for the purposes of this sub-rule. Officials do not only operate at racetracks. Therefore an official in the sub-rule is not limited to those attending at a racecourse otherwise there would be no point in seeking to regulate them etc. The word "and" between official and licensed person is intended

to capture two specific categories. Therefore a licensed person in the sub-rule is not limited to those attending at a racecourse. The expression "all other persons attending a racecourse" is intended to capture members of the public going to the races who do not fall into the prior categories. Therefore the expression "persons attendant on or connected with a horse" must be read as applying to those doing so relevantly to regulated activities. They could be, on specific facts, be also "attending a racecourse" as could the others.

164. This interpretation of the sub-rule removes the ambiguity and absurdity arguments of the respondent. This would require an interpretation that covers the example given of the farmer or the Shetland pony owner being caught by rules which are not intended to apply to them. This is the scope and purpose argument, that is, the functions and powers relate to the thoroughbred horse racing industry so far as they relate to the regulation of racing and not to farmers and horse owners generally.

165. The respondent's argument would mean the application of the Clements principle which would exclude the farmer and the pony owner because they have not contractually agreed to be bound by the RR. It is not necessary to visit this for the above reasoning.

166. The purpose, text and context of the sub-rule therefore can have the broad meaning advanced by the appellant and this is consistent with not just the whole of the rule but its place in the rules and the rules generally.

167. Accordingly the Tribunal is satisfied that the word "official" in (d) can be considered in isolation from the remaining words in the sub-rule.

168. Sub rule (e) was not the subject of specific submissions. If a person falls within the rules and breaches them then they can be penalised.

### **The functions and the powers considered together**

169. When read together s13 and s14, relevantly, incorporate the RR functions into the functions of RN and power is given to supervise the activities of race clubs and generally to deal with matters in connection with racing and to penalise for breaches.

### **Is the respondent subject to the RR?**

170. Having found that the stewards have power to supervise the activities of race clubs and to regulate and control, inquire into and adjudicate upon the conduct of officials and to penalise for a breach of the RR, is the respondent within their purview? In other words is he an official and is he contractually bound by the RR?



## **Official**

171. The appellant says the respondent is an official and contractually bound by the RR.

172. The respondent says he does not fall within the meaning of official in the RR because the word official in the LR is limited to the LR.

173. The appellant relies upon a reading of the RR with their statutory force as a whole. Reliance is placed upon the definition in the s3(1) of the TRA of Rules of Racing that is rules for the time being an amalgamation of the Australian Rules of racing and the local rules of racing of RN. Support is sought from the RATR that the Tribunal uses expressions it deals with as having the same meaning as those in the amalgamated rules. Further support is sought from the savings and transitional provisions in the TRA set out above.

174. The respondent's argument is that the words "in the interpretation of the Local Rules" limits the particular definition of "official" to application in those LR and does not extend to the Australian rules.

175. The Tribunal finds that the definition of official in the LR is by force of the s3(1) definition to be construed as applying to both the Australian rules and the LR. That is in construing the RR the word official as defined in the LR is incorporated in the RR. This arises because the two rules are amalgamated.

176. LR5 adopts definitions in the Australian rule and sets out words with particular meanings. This incorporates the word official.

177. LR5 as relevant says an official includes any person employed, engaged or appointed by a club for the purpose of its business and affairs and all matters incidental thereto.

178. The respondent is a person. As previously set out "a club" includes the ATC. The respondent is employed by the ATC as general manager of the MSD. The MSD is a division of the ATC. The respondent is therefore a person employed by a club. The operation of the MSD for race day security, ceremonial functions and contractual duties encompasses the business and affairs of the club and otherwise is incidental to those business and affair obligations.

179. The respondent is an official within the meaning of LR5. He is an official for the purposes of the RR.

180. He is therefore a person who takes part in any matter coming within the RR and accordingly by LR3 he agrees to be bound by the RR.

181. His taking part provides the agreement to be bound.

182. LR3 does not specify a requirement that a person specifically agree to be bound by the RR or even know that they are bound by the RR.

183. Accordingly an analysis of the law of contract and whether he was contractually bound does not arise.

184. He is not a person that by his actions can say that he has not brought himself within the purview of the rules.

185. Consideration of the principle of legality as referred to in considerable detail in Clements does not arise. A clear and unmistakable and unambiguous intention that he be caught by the rules by reason of his employment at the club is apparent and sufficient.

186. He cannot therefore be equated to members of the public for whom the principle of legality would require a specific agreement to be bound by the rules before they would fall under them.

187. To the extent that there might be a contractual requirement, his employment by the ATC at the MSD and having regard to the relationship of the ATC to the RN by reason of the functions in the TRA and the RR, is sufficient to engage that contractual requirement.

188. Specific knowledge of the existence of his obligations is not required.

189. That finding disposes of the absurdity submission that cleaners or secretaries at the ATC might be surprised to find they are bound by the RR. However it is a question of fact in each case.

190. The fact that he attended training at the ATC in respect of the RR is a further reinforcement. Simple attendance at training on the RR would not be sufficient alone. There must be some other nexus. It is there.

191. The respondent as the general manager of the MSD at the ATC is an official who has taken part in matters coming within the rules and therefore agreed to be bound by the rules.

192. The activities were not private matters.

193. The respondent therefore is a person liable to be penalised by the stewards if he has breached the rules.

194. As previously found the other references to official in the RR do not only deal with race activities. Those other uses do not affect the conclusions just reached on LR5's use of the word.

### **AR175A**

195. On these findings the respondent is "any person bound by these Rules".

196. The respondent is liable to be called before the stewards to deal with the allegation that "elsewhere" to a racecourse he has, in the opinion of the stewards, engaged in conduct prejudicial to the image, or interests, a welfare of racing.

197. The Tribunal has only been asked to deal with that jurisdictional question and not whether the rule has been breached.

### **The application of AR175A to the agreed facts.**

198. The jurisdictional question requires consideration of the arguments that the activities of the respondent do not fall within AR175A and he is therefore not liable to be subject to an inquiry or penalty in relation to the conduct particularised.

199. The particulars in charge 3 in issue relate to veterinary treatment at a music festival at Byron Bay involving horses of the MSD.

200. To summarise the earlier findings it is a function of RN under the TRA to supervise the activities of the ATC.

201. It is also a function of RN under the TRA to implement policies for the welfare of the horse racing industry and the protection of the public interest as it relates to the horse racing industry (s13(1)(c)).

202. A purposive interpretation of welfare of the horse racing industry means that it involves welfare of the horse.

203. RN V STC confirms this duty as a policymaker over and above the control, supervision and regulation of the galloping of horses (at 92). That function extends beyond the industry to the broader constituency because of the public interest (at 93).

204. Zucal at 50 stated "plainly a need for those administering the sport to maintain public confidence in its integrity and standards" but "have a detrimental effect, if only by association on the industry itself".

205. The functions and necessary powers to deal with these issues are not at large but are limited by the scope and purpose of affectation of the horse racing industry and its welfare.

206. If there is a necessary association of conduct with the welfare of the industry, and therefore the welfare of a horse, and it may impact upon public confidence in the integrity of the industry, then there is power deal with it.

207. The conduct does not have to take place at a racecourse but can be elsewhere. Byron Bay is elsewhere.

208. AR175A specifically embraces prejudicial conduct dealing with welfare of racing. Welfare of racing is the welfare of a horse and therefore the welfare of the industry.

209. The Tribunal considers that the respondent is dealing with the conduct and the rule in the wrong order.

210. The respondent seeks to say that the use of an unregistered horse for security duties at a music festival in Byron Bay has no connection with the welfare of the industry.

211. The Tribunal approaches the application of AR175A from a different line of reasoning

212. That is, it is necessary to first look at the function of RN and that is the supervision of the activities of the ATC. The MSD is an activity of the ATC. It is within the function of RN to deal with it under that supervisory power. That supervisory power is within the scope and purpose of the TRA and that includes welfare of the industry therefore welfare of the horse. The MSD in its activities uses horses. The use of those horses is therefore an activity of the MSD and therefore of the ATC and therefore under the supervision of RN. The RR having been engaged as earlier determined further reinforces this conclusion because the activities of the MSD are part of the business and/or affairs of the ATC.

213. The relevant agreed facts for consideration on this issue are that there was a contract between the MSD and the music festival. The contract has not been put in evidence on this jurisdictional matter. It must be implied that it was a contract of the ATC although that is not a critical factual finding as the activity of the MSD is an activity of the ATC.

214. The ATC has amongst its roles and duties the conduct of racing. The Tribunal takes "judicial" notice of the fact that the ATC has other roles and duties such as letting out its rooms for students' examinations and other purposes.

215. It is the link to the conduct of racing by the ATC that captures the welfare of the horse issues.

216. It is that link which brings the activities of the ATC so far as they relate to horses under the supervision of RN.

217. Therefore the fact that the subject horses were not registered does not take them outside their use being an activity of the ATC which also relates relevantly to the welfare of the horse.

218. It is that link of the activity of the ATC that differentiates the welfare of horses generally. RN does not have the function nor the power to deal with horses at large. The welfare of horses outside the thoroughbred racing industry falls to others such as the RSPCA.

219. Additional facts are mere reinforcement of this conclusion. Some are agreed some not. That is: the security and ceremonial functions of the MSD; community engagement; branding of the riders and or horses; public association. The similarity to other sporting codes is not adopted by the Tribunal. Notoriety by newspaper articles does not need resolution on this jurisdictional point.

220. Therefore the activities at Byron Bay were activities of the ATC and subject to the supervision of RN.

221. Therefore the respondent is subject to answer the particulars in charge 3 in issue here.

## **Other matters**

### **Further jurisdictional point**

222. It is submitted that the failure of the appellant to appeal against the Appeal Panel findings on charges 1 and 2 covering the same particulars as charge 3 means there is nothing left to determine.

223. Charges 1 and 2 were in relation to AR175(o)(iii), failure to provide veterinary treatment. Charge 3 was in relation to 175A, conduct prejudicial.

224. The particulars in charges 1 and 2 in relation to the failure to provide veterinary treatment are reproduced in exactly the same terms in charge 3 to support the conduct prejudicial matters. In addition in charge 3 there are particulars to support the saddle sores allegation.

225. No finding of fact was made in respect to charges 1 and 2 nor in respect of charge 3 on the veterinary treatment matters.

226. The Appeal Panel having found it did not have jurisdiction to deal with charges 1 and 2 on veterinary treatment matters and did not have jurisdiction to deal with those same matters in charge 3, did not make any determination of fact. It was

purely a non-jurisdiction determination. The Appeal Panel subsequently found the remaining particulars in charge 3, the saddle sores matters, not established as a question of fact.

227. This issue of jurisdiction is not dealing with the saddle sores finding in relation to charge 3. That is for a later appeal.

228. Because there are different rules said to be breached there is no principle that says that if a trial of fact or law does not proceed in relation to one of those rules that it cannot proceed in respect of the other. And that is whether it was a no jurisdiction finding or a factual finding.

229. The appellant here has the right to elect to proceed on this appeal on a jurisdictional point solely relating to an allegation of a breach of a particular rule. It does not lose that right because in respect of another rule it chose not to appeal.

230. The similarity of the particulars going to support the alleged breaches makes no difference to that principle.

231. This challenge to jurisdiction fails.

### **Other Rules**

232. The respondent has referred to other rules, namely AR6 and AR7.

233. The Tribunal is not assisted by those.

237. AR6 is limited in its application to actual races and not racing as it is broadly considered to mean.

238. AR7 limits and empowers RN. Some issues relate to races, others do not. It is actually the stewards engaged here under delegation and not RN so AR8 is activated not AR7.

239. Official as used in AR7 is limited to actual race meetings because of the terms of AR7(iii)(t).

240. As earlier found the list of uses of 'official' in other parts of the RR does not assist.

### **The submission to the jurisdiction of the stewards**

241. The appellant submits that as the respondent voluntarily appeared before the stewards at their inquiry he has consented to their jurisdiction.

242. This submission is rejected.

243. A stewards' inquiry is not a court hearing, particularly it is not a criminal hearing. Concessions as to jurisdiction that might arise in a court setting are not relevant.

244. The respondent was entitled to change his "plea" to "not guilty" before the Appeal Panel because it was a hearing de novo. He was likewise entitled to dispute jurisdiction before the Appeal Panel. He would be able to do the same thing before this Tribunal even if he had conceded jurisdiction before the Appeal Panel.

245. Other legal principles to support this conclusion need not be examined.

## **CONCLUSION**

### **Finding**

246. The grounds of appeal 1 and 2 are upheld.

247. That is the stewards did have power to inquire in to the circumstances and to charge and penalise the respondent in respect of particulars b to d and i to p in charge 3.

### **Future Conduct**

248. Earlier directions provided that if the jurisdiction decision was set aside and that part of the appeal upheld that the matter would be referred back to the Appeal Panel for hearing.

249. The parties are invited to indicate to the Tribunal how they would prefer to see this matter finalised.

250. The Tribunal notes that the Grounds of Appeal invite factual findings and penalty. These grounds would require a hearing. As an appeal to the Tribunal is de novo and the case is before the Tribunal, then it may be more practical for the factual hearing to take place before the Tribunal. However that would entail the parties possibly losing a right of appeal.

251. Consideration might be given to the recent decision of Garling J in *Vasili v Racing NSW* [2018] NSWSC 451 at 109 to 154.

252. Dealing with the matter before the Tribunal would enable the second appeal of the appellant and the putative cross-appeal of the respondent to be joined here.

**Charge 3** - The details of the charge under AR175A being that you, Mr Dennis Mitchell did commit conduct that was prejudicial to the image and/or interests and/or welfare of racing, by reason of one of, or any combination of two or more of, the general particulars and the following particulars:

- a. As detailed in the general particulars, the ATC Mounted Security Division of the ATC, which is the Sydney metropolitan club, with four metropolitan racecourses. Conduct that reflects poorly upon the ATC Mounted Security Division reflects poorly on the ATC and, as such, is prejudicial to the image and/or interests and/or welfare of racing.

**Condition of stables**

- b. Australian Turf Club as Mounted Security Stable Coordinator Ms Michelle Steele issued directions to casual stablehands working for the ATC Mounted Security Division to not remove wet urine-soaked shavings during their afternoon shifts from the stables of horses utilised by the ATC Mounted Security Division.
- c. Such directions resulting in horses utilised by the ATC Mounted Security Division being housed in stables that were found to be saturated with urine on the following mornings and with inadequate shavings including, but not limited to, on the following dates 20 June 2016, 8 July 2016, 14 July 2016, 16 July 2016, 11 November 2016 and 16 December 2016.
- d. Such directions resulted in horses utilised by the ATC Mounted Security Division being housed in stables that were detrimental to their health and welfare.

**Saddle Sores**

- e. After being utilised by the ATC Mounted Security Division a number of horses, including Manhattan Island, Jabba Star and Turbulent Jet developed saddle sores.
- f. The saddle sores resulted from ill-fitting saddles and/or excessive riding under saddle without the necessary rest or treatment.
- g. On the morning of 14 January 2017, Ms Michelle Steele directed ATC Mounted Security Rider, Ms Andrea Bryce to ride Jabba Star for a 7 to 8 hour shift at Royal Randwick racecourse when the horse was suffering from open saddle sores.



- h. Such direction resulting in Jabba Star being exposed to pain during the course of the day as the horse was not in a proper condition to have a saddle fitted to it and be ridden throughout the said shift.

### **Jabba Star – Splendour On The Grass Festival**

- i. Between 24 and 26 July 2015, you were, together with ATC Mounted Security Stable Coordinator Ms Michelle Steele, one of the persons in charge of the horse Jabba Star when the horse was used as a mounted security horse by the ATC Mounted Security Division at the Splendour On The Grass Festival at Byron Bay, NSW.
- j. At approximately 9pm on 24 July 2015, Jabba Star sustained lacerations and abrasions to its near side foreleg and shoulder, which required veterinary treatment, when it was accidentally ridden into a barbed wire fence whilst being ridden by you.
- k. Rather than obtaining the necessary veterinary treatment for Jabba Star, while in Byron Bay, you:
  - i. In conjunction with Ms Michelle Steele, authorised Jabba Star to complete the remainder of its shift on the evening of 24 July 2015;
  - ii. Allowed Ms Michelle Steele to self-treat Jabba Star by applying basic first aid to some of the injuries that evening, noting that the top of the foreleg and shoulder region were not treated;
  - iii. Allowed Ms Michelle Steele to self-treat the injuries again the following morning;
  - iv. At the conclusion of the Splendour On The Grass you, in conjunction with Ms Michelle Steele, permitted Jabba Star to be travelled back to Sydney in a horse float for approximately 12 hours without removing the horse from the said float to check its condition.

when it was necessary for the horse to obtain veterinary treatment whilst located in Bryon Bay.

- l. At all times following the injuries sustained by Jabba Star as specified in paragraph l. and until 29 July 2015 when the horse returned to Sydney, you did not provide Jabba Star with veterinary treatment when such treatment was necessary.

## **Turbulent Jet – Falls Music Festival**

- m. On 31 December 2016, you were, together with ATC Mounted Security Stable Coordinator Ms Michelle Steele, one of the persons in charge of the horse Turbulent Jet when the horse was used as a mounted security horse by the ATC Mounted Security Division at the Falls Music Festival at Byron Bay, NSW.
- n. At approximately 5pm on 31 December 2016, Turbulent Jet sustained the following injuries, which required veterinary treatment, when it fell as it attempted to cross a ditch at the Falls Music Festival when being ridden by Ms Lucy Doel.
  - i. Severe laceration to its upper lip;
  - ii. Abrasions to both knees;
  - iii. Laceration behind near side elbow;
  - iv. Abrasions to near side of its body.
- o. Rather than obtaining the necessary veterinary treatment for Turbulent Jet you:
  - i. Following Ms Michelle Steele removing a 2cm piece of the upper lip by cutting the lip with a Leatherman knife, allowed Ms Michelle Steele to self-treat Turbulent Jet by applying basic first aid, including the administration of Bute paste, before authorising Turbulent Jet to continue his shift at the Falls Festival;
  - ii. At the conclusion of the Falls Festival, in conjunction with Ms Michelle Steele, permitted Turbulent Jet to be travelled back to Sydney in a horse float for approximately 12 hours without removing the horse from the said float to check its condition,  
  
when it was necessary for the horse to obtain veterinary treatment.
- p. At all times following the injuries sustained by Turbulent Jet as specified in paragraph p. until 18 January 2017, you did not provide Turbulent Jet with veterinary treatment when such treatment was necessary.

Racing Appeals Tribunal  
Jurisdiction Appeal (Mitchell proceedings)

## **STATEMENT OF FACTS - HEARING ON 25 MAY 2018**

### *Dennis Mitchell*

1. Mr Mitchell was not a “Licensed” person under the Australian Racing Rules (**AR**) or Local Racing Rules (together, the **Rules of Racing**).
2. Between February 2015 and June 2017, Mr Mitchell was employed by the Australian Turf Club (**ATC**) as the General Manager of Security, Risk and Investigations.
3. In his role at the ATC, Mr Mitchell was responsible for: (a) security and risk management at ATC venues; and (b) overall management of the ATC’s “Mounted Security Division”.
4. On 2 June 2015, Mr Mitchell executed a written employment contract with the ATC.
5. In November 2015, Mr Mitchell and other ATC employees were required to attend, and attended, a presentation about the Rules of Racing.

### *Mounted Security Division*

6. The Mounted Security Division was established in 2009. It trained ex-racehorses for mounted security work, stabled the horses, and provided mounted security services using the horses.
7. At any one time, the number of horses being trained and stabled by the Mounted Security Division was between five and 10. None was registered.
8. The horses were trained and stabled at a private facility located at Centennial Park, NSW. The facility was not owned by the ATC and was not located on, and did not form part of, a racecourse.
9. The Mounted Security Division provided security and ceremonial services, using the horses, on race days at ATC racecourses.
10. The Mounted Security Division also entered into commercial contracts, in the private security sector, for the provision of mounted security services at events such as music festivals.
11. Jabba Star and Turbulent Jet were horses that formed part of the Mounted Security Division.

### *Splendour on the Grass Festival in Byron Bay*

12. In 2014, the Mounted Security Division entered into a commercial contract for the provision of mounted security services at the “Splendour in the Grass” music festival at Byron Bay, NSW.
13. Pursuant to the contract, in July 2014 the Mounted Security Division provided mounted security services at the Splendour in the Grass music festival.

14. Jabba Star was transported to Byron Bay and used by the Mounted Security Division in providing those mounted security services at the music festival.

*Falls Music Festival in Byron Bay*

15. In 2016, the Mounted Security Division entered into a contract for the provision of mounted security services at the "Falls Festival" music festival at Byron Bay, NSW.
16. Pursuant to the contract, in December 2016 the Mounted Security Division provided mounted security services at the Falls Festival music festival.
17. Turbulent Jet was transported to Byron Bay and used by the Mounted Security Division in providing those mounted security services at the music festival.

*Racing NSW inquiry*

18. On 22 February 2017, the Racing NSW Stewards (**Stewards**) sent a letter to Mr Mitchell requiring him to attend an inquiry, and stating:

[Racing NSW's] powers include supervising the activities of all persons associated with racing.

19. The inquiry included two hearing days, 3 March and 13 April 2017. Mr Mitchell was represented by counsel, arranged and paid for by the ATC.
20. On 28 April 2017, Mr Mitchell's counsel provided written submissions to the Stewards impugning their jurisdiction.
21. On 5 May 2017, the Stewards issued charges against Mr Mitchell, including for breach of AR175A.
22. On 5 June 2017 (in the circumstances addressed in the affidavit of Mr Mitchell affirmed on 4 July 2017), Mr Mitchell pleaded guilty to the charges.
23. On 6 June 2017, the Stewards issued a report finding Mr Mitchell guilty of inter alia breach of AR175A, particularised as follows:

As the manager with the overall responsibility of the Mounted Security Division, a charge of conduct prejudicial to the image and/or Interests and/or Welfare of Racing for a number of offences:

- Ms Michelle Steele directing casual stablehands to not remove wet urine-soaked shavings during afternoon shifts resulting in horses being housed in stables detrimental to their health and wellbeing.
  - Horses developing saddle sores due to ill-fitting saddles and or excessive riding.
  - Failing to provide Jabba Star with veterinary treatment when such treatment was necessary after the gelding sustained injuries to its foreleg and shoulder region after accidentally being ridden through a barbed wire fence falling at the Splendour In The Grass Festival at Byron Bay on 24 July 2015.
  - Failing to provide Turbulent Jet with veterinary treatment when such treatment was necessary after the gelding sustained injuries to its lip, knees, elbow region and body after falling at the Falls Festival at Byron Bay on 31 December 2016.
24. On 16 June 2017, Mr Mitchell filed a Notice of Appeal indicating that the Stewards had acted beyond jurisdiction.

25. The circumstances in which Mr Mitchell decided to appeal the Stewards' decision dated 6 June 2017 are addressed in his affidavit affirmed on 4 July 2017.

*Media reports*

26. On 26 February 2017, The Sun Herald published an article concerning allegations of mistreatment of Mounted Security Division horses. The article mentioned the Falls Festival.
27. On 19 April 2017, The Sydney Morning Herald published an article concerning allegations of mistreatment of Mounted Security Division horses. The article mentioned the Falls Festival.
28. On 23 April 2017, The Sun Herald published an article concerning RSPCA investigation of the allegations of mistreatment of Mounted Security Division horses.
29. The Sydney Morning Herald published two additional articles, in May and June 2017 (after completion of the inquiry and laying of charges), about the allegations made at the inquiry.