

RACING APPEAL PANEL OF NEW SOUTH WALES

IN THE MATTER OF THE APPEAL OF MR JAMES DELANEY

and

IN THE APPEAL OF MR CLIFF BASHFORD

Appeal Panel:	Mr R. Beasley SC – Principal Member, Mr R. Clugston and Mr K. Langby
Date of hearing:	2 February 2017
Date of decision:	10 February 2017
Appearances	Mr Delaney – Ms C. Iwaszkiewicz, Solicitor Mr Bashford – Mr P. O’Sullivan, Solicitor Racing New South Wales – Mr Marc Van Gestel, Chairman of Stewards

REASONS FOR DECISION

Introduction

1. On 22 September 2016 Mr Jim Delaney, a licensed trainer, was found guilty of a charge brought under AR175(n) of committing and/or commissioning an act of cruelty against a racehorse. The Stewards imposed a penalty of a five year disqualification.

2. On the same date, and in respect to the same horse and general circumstances, he was found guilty of a breach of AR175(o)(ii) and (iii) of failing to take reasonable steps to alleviate pain inflicted upon a horse, and failing to provide the necessary veterinary treatment where such treatment was necessary. In relation to this finding of guilt, he was penalised by way of a three year disqualification. Pursuant to AR196(3) the Stewards ordered that both penalties be served concurrently.

3. Also on 22 September 2016, Mr Cliff Bashford, a licensed trainer, was found guilty of a breach of AR175(n) of committing an act of cruelty against a racehorse. The charge flowed from the same general factual circumstances as those involving Mr Delaney. Mr Bashford was penalised by way of a three year disqualification.
4. On the same date, Mr Bashford was found guilty of a breach of AR175(l) for being a “party to” Mr Delaney’s breach of AR175(o). He was penalised by way of a two year disqualification. In relation to the penalties imposed against Mr Bashford, the Stewards also made an order under AR196(3) that the penalties be served concurrently.
5. The particulars in support of the charges brought against Mr Delaney and Mr Bashford are lengthy. They are annexed to these Reasons for Decision and marked “A” and “B” respectively.
6. In their appeals to this Panel, Mr Delaney and Mr Bashford challenge both the findings of guilt made against them, and the severity of the penalties imposed.
7. The appeals were heard together by consent of Mr Van Gestel and the legal representatives of the Appellants. Pursuant to the provisions of the *Thoroughbred Racing Act*, the appeals are by way of a rehearing.

Facts

8. On 17 June 2016 an unnamed horse in the care of Mr Delaney (“the filly”) was euthanised by Dr Adrian Owen, a veterinarian. Dr Owen had examined a severe injury to the horse’s off foreleg on the previous day. Mr D. Smith, the Chairman of Stewards of the Mid North Coast Racing Association, was informed of the circumstances relating to the filly by an anonymous caller. He subsequently spoke to Dr Owen. Interviews were then conducted with Mr Delaney and Mr Bashford and a Stewards inquiry took place. The matters set out below are the essential facts established through those interviews and inquiry.
9. Mr Delaney has stables at Taree. Mr Bashford has stables nearby.

10. The filly had a bowed tendon. Mr Bashford said that he had a “remedy” to fix the problem: Exhibit A, page 32.80-.90 (the reference to Exhibit A is a reference to the Appeal Books in this matter which contain the transcript of the Stewards’ inquiry, records of all interviews conducted, and photocopies of all the exhibits from the Stewards’ inquiry).
11. The remedy was a solution that Mr Bashford made that contained Listerine, phenol and DMSO.
12. Listerine is a well-known mouth-wash. In his evidence to the Panel, Dr Craig Suann, the senior veterinarian for Racing NSW, explained that DMSO was a universal solvent often used as a topical anti-inflammatory on horses. As a solvent, it assists in carrying substances through the skin.
13. Phenol is an acid. In this case, for the solution prepared by Mr Bashford, it was sourced from a bottle of “Scott’s Wheelie Bin Cleaner” (or equivalent) that was bought at a supermarket: T-38.1872-39.1920.
14. A bottle of Scott’s Wheelie Bin Cleaner was marked as Exhibit B on the appeal. It contains 2.6% of phenol. It is a poison. When it is to be used for cleaning garbage bins, the recommendation is that 25ml of the product is mixed with 5L of water. There are warnings about human exposure to the product in this diluted form, including to the skin. It is obviously not a product for use on animals.
15. The solution that was ultimately applied to the filly’s leg was mixed in approximately the following quantities: 150ml Listerine, 200ml phenol (200ml wheelie bin cleaner) and 5ml of DMSO: T-40.1980-41.2015. There was, however, some evidence that the solution mixture was 500ml Listerine, 200ml phenol and 20ml DMSO: Exhibit A, page 21 (Exhibit 4 of the Stewards’ inquiry).
16. A swab of approximately 8 inches long was soaked in the solution, and applied to the filly’s off foreleg. It was wrapped in plastic, cotton wool, and then a pressure bandage was applied: T-41.2015-.2020.

17. Mr Delaney's evidence was that he was not sure what the solution contained: Exhibit A, page 10.100-.103. Mr Bashford however said that he told Mr Delaney what was in the solution: T-44.2188.
18. Mr Bashford's instructions regarding the treatment of the filly after the solution was applied were as follows:

"Q. What did you tell him to do post-application of the substance?

A. Oh, you leave it on for 24 hours and then you wash and clean the tendon thoroughly and make sure it's completely dry and then you apply cotton wool and a pressure bandage and leave it for ten days and then you just do the same procedure again."

19. The solution was applied to the filly's leg only once. Contrary to instructions, however, the swab and the bandage applied by Mr Bashford was left for two days rather than 24 hours: Exhibit A, page 33.133. After this, perhaps until 1 or 2 June, Mr Delaney's evidence was that the horse was fine. By about 2 June, however, he had noticed changes to the horse's leg. He could see "things were going bad" and "skin peeling off": Exhibit A, page 13.229-.239.
20. From this time, and until the horse was euthanised on 17 June, Mr Delaney admitted that the horse was in pain: Exhibit A, page 13.250-.255; 14.260-.270. The horse was treated with painkiller and penicillin.
21. After the initial bandages were taken off, Mr Delaney said the horse was treated by soaking bandages in "yellow solution", an antiseptic. After this, also on about the 2 June when he noticed the skin was starting to lift from the leg, Mr Delaney noticed that the wound that had developed on the filly's leg was starting to smell. He had never before seen skin come off or wrinkling of the kind that was happening to the filly. The skin seemed to be "just lifting a bit and then it all sort of become loose and just started to come apart": Exhibit A, page 35.223.
22. Prior to the horse being euthanised on 17 June, on about 10 June Mr Bashford examined the horse again with Mr Delaney. Ten minutes before this Mr Delaney had put lime on the horse's bandages: Exhibit A, pages 37.350 and onwards.

23. On 10 June Mr Bashford treated the horse with honey, and then with yellow solution. He did not see it after this date: Exhibit A, page 42.140.
24. Mr Bashford's evidence was that he was at the Gold Coast from 4 to 10 June. He said he enquired about the horse two times before he left and was told that it was okay: T-45.2240.
25. On questioning by the Stewards at the Stewards' inquiry, Mr Bashford agreed that he and Mr Delaney should have called a vet on 10 June: T-49.2410-.2435.
26. Mr Bashford gave evidence that he had treated horses in a similar fashion to this filly (with Scott's Wheelie Bin Cleaner) and had never before had an adverse reaction: T-42.2055-.2089; 69.3377-.3410.
27. Mr O'Sullivan (for Mr Bashford) called evidence from a Mr Peter Eggleston who also supplied a written statement which became Exhibit C. At paragraph 3 of his statement of evidence, Mr Eggleston, who is a licensed trainer (having held a licence for about 35 years), and who is the President for the Newcastle Racehorse Trainers' Association, set out the treatment for the filly as described by Mr Bashford. Mr Eggleston's evidence was that he had treated about 6 horses with "a mixture similar" and that none of these horses had been injured or "exhibited adverse consequences". Mr Eggleston also expressed views in his statement concerning who had responsibility for the care for the horse: see paragraphs 7 and 8.
28. When Mr Eggleston was questioned by Mr Van Gestel, it became clear that he was unaware of the source of the phenol that was used on the filly – and in particular, he did not know that it had been sourced from Scott's Wheelie Bin Cleaner.

Expert Evidence

29. Dr Owen saw the filly on 16 June. He thought it was in pain: T-19.940. He expressed the opinion that what was done to the horse was "cruel": Exhibit A, page 130 (Exhibit 29 in the Stewards' inquiry). The Panel takes this to be an expression of opinion as to what constitutes cruelty to a horse, but not of the proper construction of

the relevant Rules of Racing. Mr Owen's evidence was that the cruelty inflicted on the horse was not intentional, but involved a "high degree of carelessness". He confirmed his opinion regarding cruelty at the Stewards' Inquiry: T-27.1300-.1307.

30. Dr Owen's evidence, on which he was challenged but remained unshaken about, was that Mr Delaney told him that the wrong concentration of acid had been used on the horse: T-21.1010-.1020.
31. At the Stewards inquiry Dr Owen stated that when he first saw the filly it was moderately lame, that it was in pain, and in his view a vet should have been called well before he was: T-23. His full description of his initial examination of the filly is set out in a report he prepared dated 17 June 2016 which is at page 28 of Exhibit A. In that report he confirms again that Mr Delaney said that the solution that had been placed on the filly's off foreleg "contained acid". His report contained the following:

"On examination, all the skin had sloughed from this leg between the distal carpus and the proximal pastern. Granulation tissue covered most of this area. However, there was some exposed cannon bone dorsally, and the flexor tendons were exposed in the proximal cannon area. The superficial flexor tendon appeared necrotic at this site. She was weight bearing on this leg, but was shifting weight on her forelegs, and seemed moderately painful. Mr Delaney said that he had been treating her with procaine penicillin and oral phenybutazone.

I gave Mr Delaney a hopeless prognosis for future athletic soundness, but said she may be able to be salved as a brood mare. I said that if the flexor tendon ruptured, euthanasia would in my opinion be necessary. Mr Delaney requested euthanasia be performed the following day.

I performed euthanasia on 17 June at approximately 9.45am. Photographs of the leg were taken prior. She was moderately lame at the walk on this leg at this time."

32. Dr Suann explained to the Panel the precise nature of the injury that had occurred to the filly. He said it was consistent with a chemical burn and corrosion of the deeper tissues.

33. Through Dr Suann the Panel's attention was drawn to the necropsy report prepared by Dr Neil Horadagoda from the University of Sydney. The final diagnosis in that report was as follows:

"Final Diagnosis: Severe, degloving wound of the right metacarpus with locally extensive, necrotising, chronic active fasciilitis, myositis and tendonitis associated with exposure of the cannon bone and superficial digital flexor tendon and complete transection of the common digital flexor tendon."

34. Dr Suann took the Panel through the various photographs taken of the filly at its autopsy which commence at page 73 of Exhibit A. In summary, these photographs reveal the following:

- (i) necrosis of the skin on the front of the leg and the back;
- (ii) exposure of the digital flexor tendon and about an approximately 9cm oval wound on the filly's leg;
- (iii) browning of the tendon indicating damage or death of the tissues;
- (iv) exposure of the cannon bone due to the chemical burn above the bone;
- (v) burning into the tendon and a loss of normal tendon tissue.

35. Dr Suann's other relevant evidence was as follows:

- (a) Although it goes without saying, wheelie bin cleaner has no legitimate use in the veterinary care of horses.
- (b) The application of 200ml of wheelie bin cleaner in the solution applied to the filly's leg was likely to cause burning and corrosion of the skin and the deeper tissues. This is in fact what happened to the filly.

- (c) The filly would have been in pain soon after the application of the solution. The fact that she bit her bandages is an indication of a pain response.
- (d) When the skin started to come off the filly's leg and the wound started to smell on about 2 June, urgent veterinary treatment was called for.
- (e) That treatment would have involved:
 - (i) pain relief;
 - (ii) assessment of the injury;
 - (iii) treatment to try and limit the injury to the tissues, including washing and lavaging the affected area to get the corrosive material off;
 - (iv) wound management;
 - (v) antibiotics;
 - (vi) possibly taking the horse to a hospital for specialist veterinary care.

- 36. Dr Suann's evidence in summary was that the filly had been mistreated and that what was done to her constitutes an act of cruelty.
- 37. Upon questioning by Mr O'Sullivan, Dr Suann agreed that if Mr Delaney had followed Mr Bashford's instructions, the injury to the filly would not have been as severe. It is not certain that the deep tissues would have been injured, although there still would have been burning of the leg within a few hours after application of the solution.
- 38. Dr Suann also agreed that the application of honey was an old remedy for the treatment of wounds and there was some evidence that it does help the healing process. Dr Suann also informed the Panel that "blistering" of tendon injuries was an

old remedy. It however has no proper application in modern veterinary practice and has fallen out of favour since the 1960s.

Construction of AR175(n)

39. AR175(n) is in the following terms:

“The Principal Racing Authority (or Stewards exercising powers delegated to them) may penalise:

...

(n) *any person who in their opinion commits or commissions an act of cruelty to a horse, or is in possession or control of any article or thing which, in their opinion, has been made or modified to make it capable of inflicting cruelty to a horse.”*

40. “Cruelty” is defined in AR1 in the following manner:

““Cruelty” includes any act or omission as a consequence of which a horse is mistreated.”

41. Ms Iwaszkiewicz for Mr Delaney submitted that *mens rea* needed to be established in order for a breach of AR175(n) to be proven. Mr O’Sullivan joined that submission.

42. We disagree. There is no textual support in the rule or in the definition of “cruelty” which indicates that either intent or knowledge is a necessary ingredient of the offence. The text of the rule and the definition of “cruelty” indicate that the rule is directed to acts that constitute cruelty and that intent or knowledge is irrelevant. This view is supported by authority: *Mitchell v Marshall* [2014] TASSC 43 at [35] per Blow CJ.

“Party to”

43. Mr Bashford was charged with being a “party to” Mr Delaney’s alleged breach of AR175(o). That was a charge brought under 175(l).

44. AR175(o) is relevantly for the charges against Mr Delaney in the following terms:

“The Principal Racing Authority (or Stewards exercising powers delegated to them) may penalise:

...

(o) *any person in charge of a horse who in their opinion fails at any time –*

...

(ii) *to take reasonable steps as are necessary to alleviate any pain inflicted upon a horse; and/or*

(iii) *to provide for veterinary treatment where such treatment is necessary for the horse.”*

45. AR175(l) is in the following terms:

“The Principal Racing Authority (or Stewards exercising powers delegated to them) may penalise:

...

(l) *any person who attempts to commit, or conspires with any other person to commit, or any person who connives at or is a party to another committing any breach of the Rules.”*

46. Mr O’Sullivan submitted that in order for Mr Bashford to be a “party to” Mr Delaney’s offending under AR175(o)(ii) and (iii), he had to know that Mr Delaney would not provide the filly with reasonable care and would not call for veterinary assistance.

47. In construing the words “party to” in AR175(l), the Panel is of the view that it should have regard to the High Court’s reasoning in *York v Lucas* (1985) 158 CLR 661 which is a case concerning accessory liability in relation to the then s.52 of the *Trade Practices Act*. In order for Mr Bashford to be found guilty of a “party to” offence, first, the headline offence against Mr Delaney must be established, and secondly, there must be actual knowledge on the part of Mr Bashford of the essential ingredients of the headline offence.

Mr Delaney – Finding in relation to appeal against guilt

48. The Panel is comfortably satisfied that in allowing a product such as Scott's Wheeble Bin Cleaner to be applied to the filly's leg, which caused a severe burn injury, including damage to the skin and the deeper tissues and tendons, was an act of cruelty.
49. As part of Mr Delaney's defence, Ms Iwaszkiewicz submitted that he had made an "honest and reasonable mistake" (a defence to a strict liability offence). The application of wheelie bin cleaner to a horse is not a reasonable mistake. Its use is unreasonable. It should never be used in the treatment of a horse.
50. On about 2 June, Mr Delaney noticed the skin coming off the filly's leg. The wound had begun to smell. The Panel is comfortably satisfied that in not seeking veterinary care for the filly at this time, Mr Delaney also engaged in an act of cruelty in breach of s.175(n). The filly should have received veterinary treatment at this time in the manner described by Dr Suann.
51. From this point of time, until the filly was euthanised on 17 June, the injury to the leg became worse, and the horse was in pain and discomfort, despite the use of painkillers and anti-inflammatories. The Panel is comfortably satisfied that Mr Delaney engaged in an ongoing act of cruelty through this period in his management of the filly, and in not seeking veterinary assistance for it. This included on 10 June when Mr Bashford examined the wound of the horse and treated it with honey and yellow solution. About 10 minutes prior to this, rather than calling a vet, Mr Delaney had put lime on the horses bandages. All of this was an ongoing act of cruelty and in breach of AR175(n).
52. The Panel is comfortably satisfied that particulars (a) to (g) in the charge under AR175(n) against Mr Delaney are all made out.
53. As previously indicated, the Panel accepts that Mr Delaney's actions were not intended to cause harm the filly. Allowing Mr Bashford to treat the horse in the manner he did was, however, extremely negligent. The ongoing care of the horse

from the time the skin started to come off its leg, and after it was clearly in pain, was grossly negligent, and probably reckless.

54. From at least 2 June when the skin started coming off the filly's leg and the wound started to smell, the Panel is comfortably satisfied that Mr Delaney breached both AR175(o)(ii) and (iii). Reasonable steps to alleviate the filly's pain involved more than just the application of or treatment of it with painkillers or with honey and yellow solution. It required treatment from a veterinarian. Veterinary treatment of the filly was necessary from the time that the skin started to come off the horse's leg. At a minimum the Panel is comfortably satisfied that particulars (d) to (g) of the charge under AR175(o) have been established to sustain a finding of guilt.

Mr Bashford – Finding in relation to appeal against guilt

55. Mr Bashford mixed the solution that was applied to the filly's leg. This caused the burn and injury. The Panel is comfortably satisfied that was an act of cruelty in breach of AR175(n).
56. Mr Bashford says he has used the same solution before with no adverse effects. The Panel is surprised by that evidence. It is also surprised by the evidence of Mr Eggleston – although he was unaware of the involvement of wheelie bin cleaner.
57. No evidence was called to directly contradict Mr Bashford's assertion that he had used the same or similar solution before on six horses with no adverse consequences.
58. However, Mr Bashford's evidence in relation to this runs up against the expert evidence of Dr Suann. Further, the Panel is entitled to apply its own common sense. Wheelie bin cleaner is quite clearly a dangerous product to humans. Even in a highly diluted form, there are warnings on the bottle regarding contact with skin. We are not convinced that Mr Bashford has used the same solution before, at least not with the same quantity or concentration of wheelie bin cleaner. We think it likely some error was made here in the amount of wheelie bin cleaner used. We do not need to resolve this issue however. The application of any wheelie bin cleaner in a solution used on a horse that causes a burn is an act of cruelty.

59. The Panel accepts Mr Bashford did not intend to burn or injure the horse. The Panel also accepts that if his instructions were followed about cleaning the tendon thoroughly the next day, the filly would not have been injured to the extent it was, but would have still received a burn to her leg.
60. The Panel accepts that Mr Bashford did not engage in an ongoing act of cruelty following the original application to the filly of the solution until 10 June. Up to that point, he had been informed by Mr Delaney that the filly was okay.
61. On 10 June, however, Mr Bashford examined the filly. At that point he was clearly examining an injured animal, that had a bad burn. Rather than calling a vet, he applied honey and yellow solution.
62. Had Mr Bashford called a vet, it is unclear whether a vet would have attended to the filly. The filly was not his horse. If the treatment and the wound were described accurately to the vet, however, it is likely the Stewards would have been informed.
63. Mr Bashford should have called a vet on 10 June, as he admitted in his evidence. He should not have treated the horse himself. It was an act of cruelty to treat the horse that day rather than to ring a vet or to attempt to convince Mr Delaney to call the vet himself.
64. The Panel is comfortably satisfied that by 10 June Mr Bashford knew that Mr Delaney was not going to obtain veterinary care for the horse that was necessary, in any kind of timely manner. We are comfortably satisfied that he knew that veterinary care was necessary. This was to both alleviate the horse's pain and to treat what was as a matter of obviousness a significant injury. The Panel is therefore comfortably satisfied that at least on 10 June Mr Bashford was a "party to" Mr Delaney's breach of AR175(o)(ii) and (iii).

PENALTY

Objective seriousness of the offence

65. The acts of cruelty here were not intentional. They did, however, involve a high degree of carelessness. The injury suffered to the horse's leg was extensive. The

Panel will resist using graphic language about the injury, but we find that the offending here by both Appellants was objectively serious.

General Deterrence

66. The penalties for acts of cruelty, even those not involving intent, must reflect the aim of deterring conduct that is cruel to racehorses. Participants in the racing industry should in particular be deterred from using a product such as wheelie bin cleaner, or any like product, in the treatment of a horse.

Specific Deterrence

67. The Panel accepts the submissions on behalf of both Appellants that they have very long histories in horseracing and involvement with horses, and have never engaged in anything like similar offending. We are satisfied that repeat conduct is highly unlikely.

Integrity and image of racing

68. Mr Van Gestel drew the Panel's attention to the Appeal Tribunal's decision in the matter of *Smith* of 15 August 2015 where Mr Armati made the following comments:

"The Tribunal in determining what order is appropriate has regard to what message is to be given to this individual trainer to ensure that in the future this type of conduct is not repeated, but to ensure that there is an appropriate penalty imposed to indicate the response of the community to integrity and welfare issues. In addition, it is a question of what general message is required to be sent to the community at large to indicate those who might be likeminded to engage in such conduct, what the likely consequences are, and, secondly, to indicate to the broader community who are not likely to engage in the type of conduct that, should it be detected, they, whether they be wagerers or people just generally interested in the individual code, will know that it is operating at the highest possible standards."

69. The penalties imposed here must in part seek to uphold the standards and integrity of racing and the rules that apply to the industry.

Precedent

70. There were very few directly relevant precedents. The Panel was provided with a copy of the Appeal Panel's decision in the Appeal of *Sam Nicoletti* delivered on 22

October 2004. That matter involved a breach of AR175(o)(iii) relating to the failure of the appellant to provide proper nutrition to a horse which under his care deteriorated to the extent that it died. The penalty imposed was a 12 month disqualification.

71. The Panel was also supplied with the Panel's decision in The Appeal of *George Woodward* of 18 December 2008. This was another case where the appellant had two horses in his care that he allowed to become so "badly emaciated they had to be destroyed". The penalty imposed by the Panel was a fine of \$5,500.
72. It is important that differently constituted panels deliver consistent decisions. This Panel of course does not have the complete particulars or all of the evidence in the Appeal of *George Woodward*. We are, however, surprised by the apparent leniency of the penalty imposed in that case.

Mr Delaney – Finding in relation to appeal against penalty

73. Mr Delaney was disqualified for five years for the breach of AR175(n) and for three years for the breach of AR175(o)(ii) and (iii).
74. The Panel is in agreement with the Stewards' approach that the offending under s.175(n) was more serious than the s.175(o) breach. That is because the s.175(n) breach included not only Mr Delaney's ongoing conduct, but allowing the horse to be treated with the solution in the first place.
75. In relation to Mr Delaney's personal circumstances, the Panel was advised that he is 75 years old and has been involved with horses and racehorses for 50 years. He has no relevant offending history.
76. There was evidence before the Panel, including evidence from a veterinarian, of Mr Delaney's good character and that he has always treated horses to a high standard: Exhibit A, page 105.
77. There was also before the Panel evidence that Mr Delaney has attained positions as the number one horseman at the Woodland Stud and also at Meryla Stud in Moss

Vale. In the statement that he provided to the Stewards (pages 106-108 of Exhibit A), Mr Delaney set out how badly he has been affected by the events concerning the filly.

78. The Panel accepts that Mr Delaney has had a long career with horses, has been a fine horseman, and on all other occasions has exhibited a high level of care towards horses.
79. In the Panel's view, the penalties imposed by the Stewards properly reflected the objective seriousness of the offence, the need for deterrence, and the need to protect and uphold the integrity and the image of racing.
80. We are however of the view that the penalties imposed do not also properly reflect Mr Delaney's 50 years of good conduct.
81. In lieu of the five year disqualification for the offending under AR175(n), the Panel would impose a three year disqualification.
82. In lieu of the three year disqualification under AR175(o), the Panel would impose a two year disqualification.
83. We agree that the penalties should be served concurrently under the provisions of AR196(3).
84. The effective disqualification period for Mr Delaney will therefore be three years commencing on Monday 13 February 2017. Mr Delaney will be able to reapply for his licence on 13 February 2020.

Mr Bashford – Finding in relation to appeal against penalty

85. Many of the matters that apply to Mr Delaney also apply to Mr Bashford. The three year total disqualification imposed on him was described as a “death penalty” in terms of his ongoing involvement in horseracing.

86. Mr Bashford is 73 years of age. He has been involved in horseracing since 1967 and has an unblemished career in the industry. He has been a successful trainer, including a Group 1 winning trainer.
87. The Panel also accepts, as stated above, that what occurred here was an unintentional act of cruelty.
88. The Panel also accepts that Mr Bashford's conduct was more limited than that of Mr Delaney. First, the horse was in the care of Mr Delaney rather than Mr Bashford. Secondly, Mr Bashford gave instructions to Mr Delaney which, if carried out, would likely have resulted in a less serious injury to the filly. We also accept that after the initial application of the solution, Mr Bashford cannot be held accountable for what occurred to the horse until 10 June when he again treated it.
89. The penalty imposed on Mr Bashford for the breach of AR175(n) was a three year disqualification. The Panel is again of the view that while this penalty properly reflects the objective seriousness of the offence, it does not sufficiently take into account Mr Bashford's long, unblemished history in the horseracing industry. We would substitute the three year disqualification for an eighteen month disqualification.
90. In relation to the breach of AR 175(l), in lieu of the two year disqualification we impose a fifteen month disqualification. Again under AR196(3), both penalties should be served concurrently. The effective disqualification period is therefore eighteen months. The disqualification is to commence on Monday, 13 February 2017. Mr Bashford can reapply for his licence on 13 October 2018.
91. The orders of the Panel are as follows:

Mr Delaney:

 - (1) Appeal against findings of guilt dismissed.
 - (2) Findings of guilt under AR175(n) and AR175(o)(ii) and (iii) confirmed.
 - (3) Appeal against severity of penalty allowed.

- (4) Penalty for breach of AR175(n) varied from a five year disqualification to a three year disqualification.
- (5) Penalty for breaches of AR175(o)(ii) and (iii) varied from a three year disqualification to a two year disqualification.
- (6) Penalties to be served concurrently.
- (7) Effective disqualification period of three years to commence on 13 February 2017 with Mr Delaney being able to reapply for his licence on 13 February 2020.
- (8) Appeal deposit forfeited.

Mr Bashford:

- (1) Appeal against finding of guilt dismissed.
- (2) Findings of guilt under AR175(n) and AR175(l) confirmed.
- (3) Appeal against severity of penalty allowed.
- (4) Penalty of three year disqualification for breach of AR175(n) varied to an eighteen month disqualification.
- (5) Penalty for breach of AR175(l) varied from a two year disqualification to a fifteen month disqualification.
- (6) Penalties to be served concurrently.
- (7) Effective disqualification period of eighteen months to commence on 13 February 2017, and Mr Bashford can reapply for his licence from 15 October 2018.
- (8) Appeal deposit forfeited.

Annexure A

Licensed trainer, Mr Jim Delaney, you are hereby charged with a breach of AR175(n).

AR.175. The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise;

(n) Any person who in their opinion commits or commissions an act of cruelty to a horse, or is in possession or control of any article or thing which, in their opinion, has been made or modified to make it capable of inflicting cruelty to a horse.

The details of the charge under AR175(n) being that you, Mr Jim Delaney, did commit and/or commission an act of cruelty as:

- a. You were at all relevant times, the owner and trainer of the 2yo Filly May'haab x Graceful Touch (“**Filly**”);
- b. In accordance with LR78(2), you were the trainer responsible for the care, control and supervision of the Filly;
- c. On or around 28 May 2016, you permitted licensed trainer Mr Cliff Bashford to apply a liquid solution that he had prepared, containing Listerine, phenol and dimethyl sulfoxide (DMSO) (“**Solution**”) to treat an injury to the lower right foreleg of the Filly without obtaining the appropriate veterinary advice as to the safety, suitability and the potential for toxicity of the Solution;
- d. Such application of the Solution resulted in the Filly sustaining an extensive wound to the lower right foreleg which continued to deteriorate, causing the Filly pain from soon after the time of application of the Solution to the Filly until 17 June 2016;
- e. Even though you were aware that the extensive wound had continued to deteriorate and that the Filly was in pain, you failed to provide reasonable care or veterinary treatment to the Filly from the time of application of the Solution to the Filly until 16 June 2016;
- f. The application of the Solution to the lower right foreleg of the Filly was an act of cruelty, compounded by the further act of cruelty of failing to provide reasonable care or veterinary treatment when you were aware that the extensive wound had continued to deteriorate, resulting in the lower right foreleg of the Filly sustaining a severe degloving wound of the right fore cannon region with locally extensive, necrotizing, chronic-active fasciitis, myositis and tendinitis, associated with exposure of the cannon bone and

superficial digital flexor tendon, as well as complete transection of the common digital extensor tendon;

- g. The injuries detailed in the preceding paragraph resulted in the decision to euthanise the Filly, which was performed by veterinarian Dr Adrian Owen on 17 June 2016; such decision being made on the basis of humane grounds.

Licensed trainer, Mr Jim Delaney, you are hereby charged with a breach of AR175(o)(ii)&(iii)

AR.175. *The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise;*

(o) Any person in charge of a horse who in their opinion fails at any time –

(ii) to take such reasonable steps as are necessary to alleviate any pain inflicted upon a horse; and/or

(iii) to provide for veterinary treatment where such treatment is necessary for the horse.

- a. You were at all relevant times, the owner and trainer of the 2yo Filly May'haab x Graceful Touch (“**Filly**”);
- b. In accordance with LR78(2), you were the trainer responsible for the care, control and supervision of the Filly and, for the purposes of AR175(o), were the person in charge of the Filly;
- c. On or around 28 May 2016, you permitted licensed trainer Mr Cliff Bashford to apply a liquid solution that he had prepared, containing Listerine, phenol and dimethyl sulfoxide (DMSO) (“**Solution**”) to treat an injury to the lower right foreleg of the Filly without obtaining the appropriate veterinary advice as to the safety, suitability and the potential for toxicity of the Solution
- d. Such application of the Solution resulted in the Filly sustaining an extensive wound to the lower right foreleg which continued to deteriorate and causing the Filly pain from soon after the time of application of the Solution to the Filly until 17 June 2016;
- e. From soon after the time of application of the Solution to the Filly until 16 June 2016, even though you were aware that the extensive wound had continued to deteriorate and that the Filly was in pain, in breach of AR175(o), you failed to:

- i. take such reasonable steps as are necessary to alleviate any pain inflicted upon the Filly; and/or
 - ii. provide for veterinary treatment where such treatment was necessary for the Filly;
- f. The application of the Solution to the right foreleg of the Filly was compounded by your failure to take such reasonable steps as were necessary to alleviate any pain inflicted upon the Filly and/or provide for veterinary treatment where such treatment was necessary for the Filly, resulting in the lower right foreleg of the Filly sustaining a severe degloving wound with locally extensive, necrotizing, chronic-active fasciitis, myositis and tendinitis, associated with exposure of the cannon bone and superficial digital flexor tendon, as well as complete transection of the common digital extensor tendon;
- g. The injuries detailed in the preceding paragraph resulted in the decision to euthanise the Filly, which was performed by veterinarian Dr Adrian Owen on 17 June 2016; such decision being made on the basis of humane grounds.

Annexure B

Licensed trainer, Mr Cliff Bashford, you are hereby charged with a breach of AR175(n)

AR.175. The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise;

(n) Any person who in their opinion commits or commissions an act of cruelty to a horse, or is in possession or control of any article or thing which, in their opinion, has been made or modified to make it capable of inflicting cruelty to a horse.

The details of the charge under AR175(n) being that you, Mr Cliff Bashford, did commit an act of cruelty as:

- h. You are a trainer licensed with Racing NSW
 - i. On or around 28 May 2016, you applied a liquid solution to the lower right foreleg of the 2yo Filly May'haab x Graceful Touch ("Filly") trained by Mr Jim Delaney, that you had prepared, containing Listerine, phenol and dimethyl sulfoxide (DMSO) ("Solution") to treat an injury to the lower right foreleg of the Filly without obtaining the appropriate veterinary advice as to the safety, suitability and the potential for toxicity of the Solution;
 - j. Such application of the solution resulted in the Filly sustaining an extensive wound to the lower right foreleg which continued to deteriorate, causing the Filly pain from soon after the time of application of the Solution to the Filly until 17 June 2016;
 - k. Even though you were aware that the extensive wound had continued to deteriorate and that the Filly was in pain, you failed to provide reasonable care or veterinary treatment to the Filly from the time of application of the Solution to the Filly until 16 June 2016;
 - l. The application of the Solution to the lower right foreleg of the Filly was an act of cruelty, compounded by the further act of cruelty of failing to provide reasonable care or veterinary treatment when you were aware that the extensive wound had continued to deteriorate, resulting in the lower right foreleg of the Filly sustaining a severe degloving wound of the right fore cannon region with locally extensive, necrotizing, chronic-active fasciitis, myositis and tendinitis, associated with exposure of the cannon bone and superficial digital flexor tendon, as well as complete transection of the common digital extensor tendon;
 - m. The injuries detailed in the preceding paragraph resulted in the decision to euthanise the Filly, which was performed by veterinarian

Dr Adrian Owen on 17 June 2016; such decision being made on the basis of humane grounds.

Licensed trainer Mr Cliff Bashford you are charged under AR175(l) with being a party to licensed trainer Mr James Delaney committing a breach of AR175(o)(ii) and (iii)

AR.175. The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise;

(l) Any person who attempts to commit, or conspires with any other person to commit, or any person who connives at or is a party to another committing any breach of the Rules.

(o) Any person in charge of a horse who in their opinion fails at any time –

(ii) to take such reasonable steps as are necessary to alleviate any pain inflicted upon a horse; and/or

(iii) to provide for veterinary treatment where such treatment is necessary for the horse.

The details of the charge being that you, Mr Cliff Bashford were a party to licensed trainer Mr Jim Delaney, committing a breach of AR175(o)(ii)&(iii) as:

- a. You are a trainer licensed by Racing NSW
- b. At all relevant times, Mr Jim Delaney was the owner and trainer of the 2yo Filly May'haab x Graceful Touch (“**Filly**”);
- c. In accordance with LR78(2), Mr Delaney was the trainer responsible for the care, control and supervision of the Filly and, as such, Mr Delaney was in charge of such Filly for the purposes of AR175(o);
- d. On or around 28 May 2016, you applied a liquid solution to the lower right foreleg of the Filly, that you had prepared, containing Listerine, phenol and dimethyl sulfoxide (DMSO) (“**Solution**”) to treat an injury to the lower right foreleg of the Filly without obtaining the appropriate veterinary advice as to the safety, suitability and the potential for toxicity of the Solution;
- e. Such application of the Solution resulted in the Filly sustaining an extensive wound to the lower right foreleg which continued to deteriorate and causing the Filly pain from soon after the time of application of the Solution to the Filly until 17 June 2016;

- f. From soon after the time of application of the Solution to the Filly until 16 June 2016, even though Mr Delaney had consulted you in respect of the deterioration of the extensive wound and the pain that the Filly was experiencing (and as part of that consultation you in fact observed those matters yourself), you were complicit in, and a party to Mr Delaney, failing to, in breach of AR175(o):
 - i. take such reasonable steps as are necessary to alleviate any pain inflicted upon the Filly; and/or
 - ii. provide for veterinary treatment where such treatment was necessary for the Filly;
- g. The application of the Solution to the right foreleg of the Filly was compounded by you being a party to Mr Jim Delaney failing to take such reasonable steps as were necessary to alleviate any pain inflicted upon the Filly and/or provide for veterinary treatment where such treatment was necessary for the Filly, resulting in the lower right foreleg of the Filly sustaining a severe degloving wound with locally extensive, necrotizing, chronic-active fasciitis, myositis and tendinitis, associated with exposure of the cannon bone and superficial digital flexor tendon, as well as complete transection of the common digital extensor tendon;
- h. The injuries detailed in the preceding paragraph resulted in the decision to euthanise the Filly, which was performed by veterinarian Dr Adrian Owen on 17 June 2016; such decision being made on the basis of humane grounds.