RACING NEW SOUTH WALES APPEAL PANEL

IN THE MATTER OF LICENCED TRAINER GARRY LUNN

Appeal Panel:	**Mr P Santucci – Convenor**
	Mrs J Foley
	Mr J Murphy
Appearances:	**Stewards: M Cleaver**
	Appellant: W Pasterfield solicitor
Date of Hearing:	**9 December 2025**
Date of Reasons:	**6 January 2026**

REASONS FOR DECISION

1. **The Panel:** This appeal concerns an attempted stable audit inspection at registered stables of the Appellant Mr Garry Lunn on 15 October 2025 at about 3.10pm.
2. The Appellant has been charged with two charges arising from events on that day.
3. Charge 1 alleges a breach of AR232(c)(ii) for obstructing, hindering, or delaying Stipendiary Steward Mr Xavier **Dalton** from carrying out the inspection on the basis that Mr Dalton refused to conduct the inspection once the Appellant raised his voice and said words to the effect:
   (a) "*I have no fucking time for this*"
   (b) "*You're a fucking drop kick*";
   (c) "*You're the dopiest fucking Steward I've ever seen*", and then stated "*Are you a dickhead? That's bullshit"*
4. Charge 2 alleges a breach of AR228(c) on the basis that the Appellant engaged in conduct that was detrimental to the interests of racing by engaging in improper and or insulting behaviour towards a Steward. The particulars of the charge repeat the same matters, but then allege that:

(a) The Appellant followed Mr Dalton out of the stable complex and continued to direct insult to him by stating "I only called you dickheads";

(b) The Appellant opened the door of Mr Dalton's vehicle and engaged in further conversation and "*continued to swear as you questioned Mr Dalton's ability to conduct the stable audit inspection*" (Charge 2, Particular 7);

(c) The Appellant "*spoke in an aggressive tone while directing improper and insulting language towards [Mr Dalton] during his duties*" (Charge 2, Particular 8)

(d) The impropriety can be established either individually or taken collectively (Charge 2, Particular 9).

5. The stewards imposed a 3 month disqualification for Charge 1, and a 9 months disqualification for Charge 2 to be served concurrently.

6. Before the Panel the Appellant pleaded not guilty to both Charges. However, the Appellant accepted that he said the words "Are you a dickhead, that's bullshit" in response to the suggestion that there were a number of discrepancies in the stable returns that had been revealed by a previous inspection on 23 September 2025.

7. His plea of not guilty in this respect turned on the characterisation of those words as not amounting to improper conduct. We return to that issue below.

8. The Stewards presented the evidence from the investigation and Stewards inquiry that took place on 24 October 2025 (along with the statements that had been collected). Also in evidence before the Panel was:

(a) body camera footage taken by a RNSW investigator who attended the property with Mr Dalton on the earlier visit that took place on 23 September 2025;

(b) a CCTV recording without audio of the inspection in question on 15 October 2025;

(c) an audio recording undertaken by Mr Dalton partially recording some of the words that were said on the day by Mr Dalton recorded by his mobile telephone, with only distant and faint recording of the voice of the Appellant.

9. Mr Dalton gave evidence before us, and was extensively cross-examined by Mr Pasterfield who appeared for the Appellant.

10. Mr Dalton remained calm under cross-examination and gave answers that conveyed that the inspection he had attempted to carry out was part of his professional duties, and although he admitted to on-again-off-again tension in his relationship with the Appellant, Mr Dalton's answers conveyed that he was not motivated by ill-will towards the Appellant.

11. Mr Pasterfield's questions were directed to trying to establish that Mr Dalton had been trying to "*throw his weight around*" on the day in question, and that Mr Dalton had been acting in a manner that betrayed a keenness to project the power associated with his role to industry participants, rather than a genuine concern to carry out his function.

12. The Panel was not convinced by that cross-examination. The Panel accepts the answers given by Mr Dalton in questioning. We accept that Mr Dalton was attempting to carry out his function of performing a stable audit, and consistent with his unchallenged evidence as to his usual practice, the inspection was unannounced and not recorded.

13. The only part of the evidence of Mr Dalton the Panel did not accept, was part of his written statement concerning the events that was said to have taken place at the car.

14. Mr Dalton readily conceded towards the end of his cross-examination that he did not have a good recollection of the circumstances in which his car door was potentially reopened by the Appellant.

15. Ultimately, Mr Clever on behalf of the stewards only faintly pressed that part of the case that had alleged that the Appellant's conduct at the vehicle led to Mr Dalton feeling "intimidated".

16. We did not ultimately accept that to be the case based on the CCTV footage. That footage showed the Appellant keeping largely at a close but ultimately not inappropriate distance from Mr Dalton and not in a manner that appeared to be threatening or menacing. But given the frank concessions made in the witness box by Mr Dalton about his inability to recall that part of the evidence we do not conclude that it undermined the balance of his evidence.

17. Mr Dalton was also tested on whether the central words of the allegations were in fact ever said by the Appellant. In that respect (apart from the admission in respect of using the word dickhead) the allegations were denied and the case was presented by the Mr Pasterfield as an oath against oath case, that meant the Panel would not be able to reach the requisite state of actual satisfaction as to the use of the alleged words.

18. For his part the Appellant had consistently denied saying the words attributed to him, but had accepted his use of the word dickhead.

19. Mr Pasterfield urged on us that this spoke to the credit of the Appellant as a witness insofar as he was ready to concede that he had said dickhead, such that we would more readily accept his other denials, and reject the case advanced by the Stewards.

20. Mr Pasterfield also drew attention to the fact that despite what was conceded by Mr Dalton to be a "tense" encounter on 23 September 2025 in the body camera footage of that earlier occasion the Appellant never once swore. Mr Pasterfield asked the Panel to conclude that this made it more likely that the Appellant would not have sworn on the day in question on 15 October 2025.

21. In the result the Panel reached the requisite state of satisfaction that it is more likely than not that the Appellant in fact had said the words:

    (a) *"You're a fucking drop kick*";

    (b) "*You're the dopiest fucking Steward I've ever seen*",

    (c) as well as the admitted phrase to the effect "*Are you a dickhead? That's bullshit"*

22. One important part of the evidence in the present case included the contemporaneous audio recording of part of the conversation. In that recording Mr Dalton narrates the events that have been said to have just occurred including by saying "did you just say" and then repeats the phrases set out above.

23. That evidence was said by the Appellant to be an unreliable source of corroboration because it was only a partial recording that did not capture the Appellant's voice saying any words. It was also faintly suggested in submissions (although importantly not advanced in cross-examination) that Mr Dalton may have made up those words on the recording to implicate the Appellant.

24. While it is true that Mr Dalton was only partially recording the conversation after he had already resolved not to proceed with the inspection, the recording still presents a valuable contemporaneous record. That is because in the midst of being in a verbal dispute with the Appellant, Mr Dalton states words on to the recording that it is alleged were said against him.

25. In the circumstances we accept the words used by Mr Dalton in recording were a fair record of what the Appellant had said to Mr Dalton. The recording was in the midst of an exchange,

and did not suggest premeditation or concoction. The imputed words were expressed in terms consistent with the language that had already been expressed by the Appellant that day in asking whether Mr Dalton was a dickhead. It was also consistent with the Appellant being particular upset and frustrated, that displayed itself in somewhat erratic behaviour.

26. That admission of having already used the word dickhead on that day, nullified the value of any submission that we should take into account the fact that the Appellant had not sworn on an earlier occasion in September.

27. That admitted language also made it more likely than not that Mr Dalton was accurately recording what had just been said to him. Crucially, it was not put to Mr Dalton in cross-examination that he had made up those words on the spot for the purpose of deliberately and wrongly implicating the Appellant. While it was suggested that the words were not said, we consider any allegation that the recording included a fabricated account of what had been said for the purpose of "verballing" the Appellant was a separate and distinct allegation of some gravity that ought to have been put to the witness. We saw and heard no evidence to suggest that Mr Dalton engaged in such serious conduct.

28. For those reasons we are ultimately satisfied that the Appellant had used the words attributed to him contemporaneously by Mr Dalton being "You're a fucking drop kick", and "you're the dopiest fucking Steward I've ever seen" in addition to the question "are you a dickhead".

29. In light of those findings it is necessary to consider whether the charges were made out

30. The Stewards had argued that the words said amounted to impropriety. The Appellant had argued that if we only conclude he had used the word dickhead that was not improper or insulting, and was akin to calling someone a fool or a goose.

31. We do not accept that submission. We accept that the use of the word dickhead (even if that were the only allegation established) to a steward in this context was improper and insulting, and is of a more insulting nature than simply calling someone a fool, an idiot or a goose. It suggests some level of resentment or distrust of a person's character, rather than indicating a person might be mistaken, befuddled or have failed to grasp a situation.

32. Certainly coupled with the other language that we have found was used on the day we consider that the entire conduct taken together was improper and insulting.

33. Stewards are entitled to conduct unannounced audits without an industry participant swearing at them and insulting their ability to carry out their work. This was not an expression of dissatisfaction or professional criticism as to the manner in which the audit was conducted. These were insults intended to sting, that brought into question the capability of the Stewards. Although we accept that they were more likely than not delivered in an off-hand and reflexive manner consistent with frustration at having to undergo a stable inspection. They were not calculated to insult on a deeply personal level, or intended as an attack on Mr Dalton's probity.

34. For that reason we are satisfied that Charge 2 is made out. However, given the nature of the exchange as off-the-cuff, and reflexive, and that in light of the CCTV footage it does not appear, nor was it strongly advanced, that the Appellant became physically threatening at any point in time. We are therefore satisfied that this conduct is at the lower end of the spectrum for such conduct

35. The Stewards also submitted that the conduct amounted to hindering the conduct of the audit on the day. The Stewards submitted that in order to hinder it was only necessary for the Panel to be satisfied that the Appellant made the work of the stewards on the day "more difficult". It was not necessary, so it was argued, to physically impede or completely obstruct, for example as in some cases by absconding to avoid a drug or alcohol test.

36. Mr Pasterfield suggested there was either no hinderance, or very mild hinderance because there was nothing to physically impede Mr Dalton from carrying out his inspection. It was submitted that the fact Mr Dalton ultimately elected to leave himself, without being forced off the property or asked to leave, indicated there was no such hinderance.

37. Ultimately we accepted the submissions of the Stewards in respect of the scope of hinderance that is captured by AR 232(c). We accept that there was hinderance in these circumstances by the language used by the Appellant and his disposition because we are satisfied that it certainly made the stable audit more difficult for Mr Dalton to carryout. The fact that Mr Dalton chose to leave without conducting the stable audit without being forced to leave, while relevant, cannot be determinative.

38. However, we are satisfied that the verbal insults and an erratic and uncooperative demeanour that we have found amount to hinderance at the low end of the spectrum. That is particularly so noting the absence of any physically threatening conduct, any physical obstruction or prevention from entering the premises.

Penalty

39. The Panel raised with the Stewards the fact that the same particulars as we ultimately found to be made out gave rise to two separate charges, such that any protective purpose of the rules may be satisfied by a finding of breach and imposition of penalty in respect of one or the other rules.

40. The Stewards advanced the submission that at a level of principle there was no prohibition on the same facts giving rise to multiple charges. As a more practical matter, the Stewards noted that the issue was best resolved by imposing concurrent sentences in respect of any offences.

41. As to appropriate penalty, the Stewards drew to our attention to the newly introduced Local Rule 108(5) which imposes a mandatory 6 months disqualification for any licenced person held to have engaged in improper conduct been in breach of AR 228(c), subject to an exception for duress.

42. It was conceded by the Stewards only for the purpose of this appeal that the circumstances of the Appellant (corroborated by Exhibit D being a letter from his daughter) amounted to 'duress' such as to enliven the exception to the mandatory minimum sentence. Those circumstances included the significant ill-health of the Appellant's adult daughter who is the single mother of five children, who had received her diagnosis shortly before 15 October 2025. That family circumstance had imposed upon the Appellant the additional responsibilities of becoming the day to day carer of his adult daughter and assisting in raising the five children.

43. Given the concession by the Stewards, the Panel was at liberty to "reduce" the time of the disqualification but were still required to impose some period of disqualification.

44. Further some of the subjective factors about the Appellant are that he is 67 years old. He has been involved in racing for 50 years both as a jockey and a trainer for the last 25 years or so. He has a small stable of horses from which he makes his living.

45. When taking the objective seriousness of the offending (at the low end) together the subjective factors, and the conceded duress that led to the Appellant being in under significant stress at the time of the incident we are satisfied that a relatively short period of disqualification is appropriate.

46. We were ultimately satisfied that both breaches of the rule were at the low end of offending and consider that it would be appropriate that a period of 2 months disqualification be imposed for each offence to be served wholly concurrently.

Orders

47. We make the following orders:

    1. Appeal allowed in part.
    2. The period of 9 months disqualification imposed by the stewards is set aside, and in lieu thereof, the Appellant is disqualified for a period of 2 months.
    3. Pursuant to rule AR 283(7) the commencement of the penalty be deferred for 7 days from the date of these reasons, unless otherwise agreed with the Stewards.
    4. The appeal deposit is to be refunded.

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