IN THE RACING APPEALS TRIBUNAL

RACING NEW SOUTH WALES
Appellant

v

STEPHEN DIXON
Respondent

REASONS FOR DETERMINATION

Date of hearing	**6 August 2025**
Date of determination	**25 August 2025**
Appearances	**Mr O Jones instructed by Mr M Cleaver for the Appellant**
	Mr M Callanan for the Respondent

ORDERS

1. **The appeal is upheld.**
2. **The decision of the Appeal Panel of Racing NSW of 15 May 2025 is quashed.**
3. **In lieu thereof a suspension of 9 months is imposed on the Respondent.**
4. **The suspension in [3] shall commence on 31 March 2025 and shall expire on 31 December 2025.**
5. **Any appeal deposit is forfeited.**

INTRODUCTION

1. In March 2025, officials from Racing NSW (the Appellant) commenced an investigation into the presence of elevated cobalt levels which had been detected in *Huka Falls* (the horse) following a race at Armidale on 27 February 2025. The horse was trained by Stephen Dixon (the Respondent).

2. Part of that investigation involved the conduct of an interview between the Respondent and Ms Nikki Burke, an investigator acting on behalf of the Appellant. Statements made by the Respondent in the course of that interview resulted in his being charged with an offence contrary to r 228(c) of the *Australian Rules of Racing* which is in the following terms:

> *228 A person must not engage in:*
> ...
> *(c) improper or insulting behaviour at any time towards .... any official, (or) employee ... in relation to the relevant person's functions, powers or duties.*

3. The Respondent pleaded guilty to the offence. On 4 April 2025, the Stewards imposed a penalty of 9 months' suspension commencing on 31 March 2025 and expiring on 31 December 2025.

4. The Respondent appealed to the Appeals Panel of Racing New South Wales (the Panel). On 16 May 2025, the Panel made the following orders:

> 1. *Appeal upheld.*
> 2. *Set aside the orders of the Stewards made on 4 April 2025.*
> 3. *Subject to orders (4) and (5) below, order that the Appellant's trainer's licence be suspended until midnight on 30 September 2025.*
> 4. *Provided that the Appellant undertakes, prior to midnight on 31 July 2025, anger management counselling with a qualified psychologist specialising in anger management (such counsellor to be first approved by the Racing NSW Operations Manager, Integrity) on no less than 10 occasions, for at least 50 minutes each, and provides to the Operations Manager, Integrity, a document signed by that counsellor as to the undertaking of those 10 sessions, the*

period of suspension referred to in paragraph 3 shall end at midnight on 31 July 2025.

5. *In the event that any issues arise prior to 31 July 2025, as to the satisfactory completion of the counselling sessions referred to in order 4 above, the Operations Manager, Integrity, is to be notified promptly. The Operations Manager shall, in turn, promptly notify the presiding member of the appeal panel (Alec Leopold SC) with aa view to the hearing being reconvened by AVL in order to deal with that issue.*
6. *Adjourn the hearing indefinitely.*
7. *50% of the appeal deposit to be refunded.*

5. The Appellant now appeals to this Tribunal against the penalty imposed by the Panel. It is the Appellant's position that such penalty is wholly inadequate, and that the original penalty imposed by the Stewards should be restored.

6. The appeal was heard on 6 August 2025, at which time I had the benefit of oral submissions from both parties before reserving my decision. The parties helpfully provided a joint Tribunal Book (TB) containing all relevant documentary material.

THE FACTS OF THE OFFENDING

7. On 29 March 2025, the Respondent participated in an interview with Ms Burke in the context previously set out. Several excerpts of that interview are relevant for present purposes.

8. In the course of the interview, Ms Burke cautioned the Respondent that if it were found that he was not telling the truth in answer to questions which were put to him, he may be fined or otherwise penalised. The following exchange then took place:[1]

Burke: *Do you understand that?*
Respondent: *Yep.*

[1] TB 40.498 and following. The emphasis in each case is mind.

Burke: *And do you understand that it could be a significant fine up to $6,000.00?*
Respondent: *Yes.*

Burke: ***In relation to if you' re found not to be telling the truth. So is there anything that you would like to retract?***
Respondent: ***If I get fined, if I get fined you can shove your licence up your fucking ass. Right.***

Burke: ***Alright. Would you like to apologise for that outburst and swearing at me?***
Respondent: ***No I'm not.***

9. In a continuation of this exchange, the following was then said:[2]

Burke: *Because you don't want to be adding. You don't want to be adding any more.*
Respondent: ***You're trying to be a standover bitch.***

Burke: ***I beg your pardon. I beg your pardon. Would you like to apologise for that as well Mr Dixon?***
Respondent: ***No no, I'm not apologising to you.***

10. The exchange then continued:[3]

Burke: *So you understand that you cursing and swearing at an official et cetera is obviously an offence as well?*
Respondent: ***And when you're ignorant, bitch.***

11. The following exchange then took place:[4]

Burke: *I beg your pardon? I beg your pardon?*
Respondent: ***You're a standover merchant.***

12. At this point of the interview, Ms Burke telephoned Mr Hadley, the Appellant's General Manager of Investigations. Mr Hadley directed the Respondent that he was required to answer questions put to him by Ms Burke, and warned him that any further abuse would not be tolerated.

[2] TB 40.530 and following.
[3] TB 41.544 and following.
[4] TB 42.551 and following.

13. The Respondent initially acknowledged Mr Hadley's direction and warning.[5] However, a short time later the Appellant said to Ms. Burke:[6]

I'm finished. ***Shove your licence up your fucking ass.***

14. The recording of these parts of the interview was played in the course of the hearing of the appeal.[7]

THE MEDICAL EVIDENCE

15. A report of Marielle Braz, Psychologist, confirmed that the Respondent had attended consultations on 26 May 2025 and 16 June 2025 for treatment of depression and anxiety, with a particular focus on anger management. Ms Braz said that the Respondent had reported experiencing low mood and elevated stress in the months leading up to the interview, and had demonstrated some insight into his emotional state. He agreed to participate in 10 Cognitive Behavioural sessions targeting anger management and emotional regulation. Ms Braz diagnosed severe depression, extremely severe anxiety, and moderate stress.

16. In the course of the hearing, it was noted[8] that the Appellant had since attended a further 5 sessions with Ms Braz, making a total of 7. An 8th session was arranged for 11 August 2025.

SUBMISSIONS OF THE PARTIES

Submissions of the Appellant

17. In written submissions, Counsel for the Appellant described the Respondent's conduct as "*very serious"* and in doing so, adopted the Panel's description that it

[5] TB 42.560 – TB 42.590.
[6] TB 43.635.
[7] Transcript 2.5.
[8] Transcript 7.8.

amounted to *"a tirade of aggressive, improper, insulting statements spanning over 1,000 lines of transcript ....."*.[9] Counsel further submitted that:[10]

(i) some of the language used by the Respondent towards Ms Burke was misogynistic;

(ii) the Respondent's conduct was directed at Ms Burke when she was simply doing her job;

(iii) the Respondent had been given the opportunity to apologise, but had rejected that opportunity.

18. It was submitted that bearing in mind the need to take into account considerations of both general and specific deterrence, the penalty imposed by the Panel was wholly inadequate. Such a conclusion, it was submitted, was fortified by the fact that in December 2023, the Respondent had pleaded guilty to a charge involving the use of aggressive language towards a Steward at a Tamworth race meeting, in respect of which a 3 month suspension was imposed. It was pointed out that the present offending occurred approximately 15 months later.[11]

19. To the extent that the Respondent relied on the adverse financial consequences which would ensue in the event of the imposition of a lengthy period of suspension, counsel for the Appellant submitted that such impact was a necessary and appropriate consequence of his offending. It was submitted that in terms of assessing penalty, the primary considerations were protection of the industry, along with general and specific deterrence. With these matters in mind, it was submitted that a 9 month suspension was the minimum required.[12]

[9] Appellant's written submissions (AWS) at [8](a).
[10] AWS at [8](b), (c) and (e).
[11] AWS at [10].
[12] AWS AT [13].

20. Counsel expanded on these submissions orally in the course of the hearing. He emphasised the circumstances of the offending for which the Appellant was suspended in December 2023,[13] and submitted that:

    (i) the cases decided in the context of criminal offending upon which the Respondent relied were irrelevant;[14]

    (ii) the Respondent's anxiety and depression provided neither an excuse nor an explanation for his conduct, and that his reliance on such matters evidenced a lack of insight into his offending;[15]

    (iii) the Respondent's mental state was of limited significance, and that any penalty was to be assessed primarily through the lens of the necessity to protect the racing industry;[16]

    (iv) economic impact was not only an inevitable consequence of offending of this kind, but a key aspect of the rationale behind the imposition of any penalty;[17]

    (v) there appeared to be some evidence of remorse which the Respondent was entitled to have taken into account;[18]

Submissions of the Respondent

21. The written submissions filed on behalf of the Respondent accepted that the conduct in which he had engaged was both improper and insulting,[19] and that the language he had used was *"personal, insolent, vulgar and inappropriate"*.[20] However, it was submitted that such behaviour was explained, in part, by the emotional stress, depression and anxiety which he was experiencing at the time.[21] Reliance was placed on the report of Ms Braz in these particular respects.[22]

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[13] Transcript 4.3.
[14] Transcript 4.6.
[15] Transcript 4.8
[16] Transcript 5.4
[17] Transcript 5.7.
[18] Transcript 5.8.
[19] Respondent's Written Submissions (RWS) at [16].
[20] RWS at [17].
[21] RWS at [17].
[22] RWS at [21].

22. It was emphasised that the Respondent's conduct did not encompass any physical threat to, or apprehension of fear on the part of, Ms Burke.[23] It was also pointed out that before the Panel, the Respondent had tendered an apology and had pleaded guilty.[24] It was submitted that in all of these circumstances, the penalty imposed by the Panel remained a significant one, and that it carried with it onerous financial consequences. Emphasis was placed upon the necessity, when assessing penalty, to strike a fair and proper balance between all of the relevant factors.[25] For all of these reasons, it was submitted that the penalty imposed by the Panel was appropriate.[26]

23. In oral submissions Mr Callanan, who appeared on behalf of the Respondent, emphasised the Respondent's early plea of guilty. Whilst he accepted that a significant penalty was warranted, he identified the principal issue between the parties as being what constituted *"significant"* for that purpose. Mr Callanan accepted that there was a need for any penalty to take into account personal deterrence given the Respondent's previous similar offending,[27] but submitted that the penalty imposed by the Panel adequately addressed that issue.[28] Mr Callanan also accepted, as I understood it, that economic impact was an inevitable consequence of the Respondent's offending, although he emphasised that the financial consequences which would be visited on the Respondent in the event of *any* suspension would be severe.[29]

CONSIDERATION

24. In *Berry v Harness Racing New South Wales*[30] I made the following observations in respect of offending of this general nature:

[23] RWS at [25].
[24] RWS at [26].
[25] RWS at [39] – [40].
[26] RWS at [44].
[27] Transcript 7.8.
[28] Transcript 6.5.
[29] Transcript 8.8.
[30] A determination of 4 June 2024 at [49] – [50].

> *[49] [P]utting it simply, and whilst each case which comes before the Tribunal will, as a matter of fairness, always be assessed and determined according to its own facts and circumstances, it is necessary to send a clear message to industry participants that any conduct towards Stewards which is (amongst other things) abusive, offensive, threatening, obstructive, intimidatory, defamatory, racist or harassing, any conduct which constitutes an assault, and any conduct which constitutes a failure to comply with a reasonable direction by Stewards, is likely to meet with a substantial penalty.*
>
> *[50] That approach stems from the fundamental fact that the tasks and responsibilities of Stewards are difficult enough to begin with. Further, and at the risk of stating the obvious, their role is essential to the proper conduct and regulation of the harness racing industry. The discharge by Stewards of what are, by their inherent nature, onerous duties and responsibilities, should not be rendered even more difficult by behaviour of the kind exhibited by the Appellant in the present case. Moreover, Stewards are entitled to assume that they will be able to carry out their functions in circumstances where they are not subjected to personal abuse, and where their personal safety is not threatened or otherwise placed in jeopardy.*

25. Ms Burke is, of course, not a Steward. She is, however, an official. The above observations are equally applicable to those in her position and, generally speaking, they inform the discretionary exercise of assessing an appropriate penalty. In making that assessment it is convenient to turn firstly to the circumstances of the offending.

26. The Respondent's conduct was fundamentally unacceptable for a number of reasons.

27. First, the conduct was not isolated. There were, as set out above, a series of statements directed towards Ms Burke.

28. Secondly, Ms Burke did not contribute, in any way, to the offending conduct.

29. Thirdly, each of the statements made by the Respondent was (as the Panel found) aggressive, improper and insulting. Some were also personally offensive to Ms Burke.

30. Fourthly, the Respondent was given two consecutive opportunities to apologise to Ms Burke, both of which he rejected.

31. Fifthly, the Respondent was warned by Mr Hadley that ongoing abuse would not be tolerated. He purported to express an understanding of what Mr Hadley told him, only to engage, almost immediately, in further similar conduct towards Ms Burke.

32. Sixthly, and although it was not advanced by the Respondent as a mitigating factor, it needs to be emphasised that the fact that the offending occurred in a closed hearing is not to the point. The majority of, if not all, disciplinary hearings in this jurisdiction are closed. The fact that this is so does not lessen the objective seriousness of the offending, nor does it lessen what can be reasonably anticipated was the disturbing effect upon Ms Burke of the Respondent's conduct.

33. In all of these circumstances, resorting to adjectival descriptions of the Respondent's conduct is entirely unnecessary. The conduct speaks for itself. Any observation about the high degree of culpability demonstrated by the Respondent in acting as he did, and the commensurately high degree of objective seriousness of his offending, would be superfluous.

34. I have taken into account the Respondent's plea of guilty. I also accept that there is some remorse on his part and although it came at a relatively late stage I have had regard to it.

35. Whilst I have taken the report of Ms Braz into account, it is necessary to make a number of observations in relation to that aspect of the evidence.

36. To begin with, the Appellant appears to have taken no steps at all to engage in any treatment following his previous offending which involved directing inappropriate language to a Steward, on three separate occasions, in what was described as an

aggressive manner.[31] That offending was of a strikingly similar nature to the offending in the present instance. The need to address behaviour of this kind should have been apparent to the Respondent after the earlier offence, and should have been acted upon.

37. Further, the Respondent's engagement with Ms Braz appears to have come about largely, if not solely, as a consequence of the orders of the Panel. Whilst any such engagement is laudable, the Panel's determination was that the Respondent undertake treatment on no less than 10 occasions prior to 31 July 2025. Although evidence was tendered that the Respondent has engaged with Ms Braz on occasions over and above those to which she referred in her report, his engagement still falls short of what was ordered by the Panel to be undertaken. In my view, those circumstances are reflective of a continuing lack of insight on the part of the Respondent, and indicative of a need to make the seriousness of his conduct clear to him.

38. General deterrence has a significant role to play in determining the appropriate penalty in the present case. There is a fundamental necessity to impose a penalty which will send a clear message to industry participants that conduct of this general kind will not be tolerated, and is likely to result in the imposition of a significant penalty.

39. Personal deterrence has an equally significant role to play. The Respondent's conduct on this occasion represents an escalation in offending of this kind. The fact that the Respondent engaged in similar conduct within a short period of time of serving a 3 month suspension supports the conclusion that the penalty which was imposed on the previous occasion had little or no deterrent effect at all. The penalty imposed by the Panel for the present offending, in circumstances where such offending of significantly greater gravity than that committed previously, is

[31] TB 46.

only marginally greater. It does not, in my respectful view, properly reflect the need for personal deterrence, amongst other things.

40. Finally, the written submissions of the Respondent relied upon a number of authorities decided in the context of criminal proceedings, in terms of both statements of principle and the penalty imposed. In that regard I make two observations.

41. The first, is that care must be taken in seeking to apply principles developed in the criminal jurisdiction in disciplinary proceedings of the present kind.[32] The second, is that care must also be taken in comparing the penalty imposed in one case with that imposed in another. No two cases are ever factually the same. Whilst consistency is an obviously paramount consideration when determining penalty, it is consistency in the application of principle which is sought to be achieved, not numerical equivalence of the penalties which are imposed.

CONCLUSION

42. Given that the hearing of an appeal before this Tribunal proceeds as a hearing de novo, it is not necessary to establish specific error in the Panel's determination. In my view, the objective seriousness of the offending, the need to protect the racing industry, and the need for general and specific deterrence, are simply not met by the penalty imposed by the Panel. The penalty originally imposed by the Stewards properly addresses those matters, and should be imposed.

43. I make the following orders:

1. The appeal is upheld.
2. The decision of the Appeal Panel of Racing NSW of 15 May 2025 is quashed.
3. In lieu thereof a suspension of 9 months is imposed on the Appellant.

[32] See generally *Australian Building and Construction Commissioner v Pattinson and anor.* [2022] HCA 13.

4. The suspension in [3] shall commence on 31 March 2025 and shall expire on 31 December 2025.
5. Any appeal deposit is forfeited.

THE HONOURABLE G J BELLEW SC

25 August 2025