APPEAL PANEL OF RACING NEW SOUTH WALES

APPEAL BY STEPHEN DIXON

Heard at Racing NSW Offices

Appeal Panel:	**Mr Alec Leopold SC (Convenor)**; **Mrs Judith Foley and Mr John Rouse**
Representatives:	**For the Appellant – Ms Mandy Dixon (the Appellant's daughter)**
	For Racing NSW - Mr Michael Cleaver
Date of Hearing:	**15 May 2025**
Date of Orders:	**15 May 2025**
Date of Reasons:	**16 May 2025**

DECISION

Introduction / background

1. The Appellant (Mr Stephen Dixon), by his own admission, has an anger management problem. The bulk of the hearing concerned the most appropriate way in which the penalty ultimately imposed by the Appeal Panel for the misconduct by the Appellant (which was an outburst of anger directed at a Racing NSW Steward), which he admitted, should be dealt with.

2. The Appellant is a licensed trainer. He was charged by the Racing NSW Stewards for breaching AR228(c) on 4 April 2025. AR228(c) provides that "*A person must not engage in: … (c) <u>improper or insulting behaviour</u> at any time towards a PRA, the Stewards, a Club, or any official, employee, contractor or agent of any of them in relation to the relevant person's functions, powers or duties*". He pleaded guilty.

3. The specific details of the charge against the Appellant are that "*on 29 March 2025 during an electronically recorded interview, he engaged in improper and insulting behaviour by directing aggressive, improper and insulting comments language (sic) towards Racing NSW Official Nikki Burke during the course of her duties*".

4. The specific particulars of the charge were that the Appellant stated to Ms Burke during an interview on 29 March 2025 (concerning a 4 day delay in the Appellant facilitating access to his treatment records):
   (a) "[*If I get fined*] *you can shove your licence up your fucking ass*" (line 522 of the transcript of interview by Ms Burke);
   (b) "*you're trying to be a stand-over bitch*" (line 534 of the transcript of interview by Ms Burke);
   (c) "*you're being an ignorant bitch*" (line 548 of the transcript of interview by Ms Burke);
   (d) "*you're a standover merchant*" (line 555 of the transcript of interview by Ms Burke);
   (e) "*I'm finished. … Shove your licence up your fucking ass*" (lines 629-635 of the transcript of interview by Ms Burke).

5. After correcting typographical errors appearing in lines 304 and 327 of the transcript of the hearing before the Stewards, the penalty imposed by the Stewards was that his trainer's licence was suspended for a period of 9 months, such suspension to commence on 31 March 2025 and to expire on 31 December 2025.

6. The stated grounds of the appeal are "*Mental health abuse and harassment and bullying*".

New evidence sought to be adduced

7. For the purposes of the hearing before the Appeal Panel, the Appellant sought to rely upon (1) a medical certificate dated 15 April 2025 signed by Dr James Marshall and (2) what appears to be an extract of a referral dated 5 May 2025 to Health Wise by Dr V.M. Thompson.

8. LR106(7) provides that any appeal is in the nature of a rehearing, with the evidence to be considered being the evidence adduced at the hearing in respect of the decision appealed against, "*subject to the discretion of the "Appeal Panel] to admit or receive further evidence called by the party*".

9. The Stewards did not oppose the tender of either document in the hearing of the appeal before the Appeal Panel.

10. Given the lack of opposition to their tender, the Appeal Panel is prepared to admit that documents into evidence. However, neither has any weight of any substance:

(a) The medical certificate signed by Dr Marshall comprises just 3 sentences, each of which is bare assertion and unaccompanied by any reasoning. Indeed, the "*medical condition*" which Dr Marshall states the Appellant has is not even identified. Further, although Dr Marshall asserts that that "*medical condition*" "*will have affected*" the behaviour of the Appellant "*during the reported incident*", that can carry no weight given that Dr Marshall does not state what his understanding of the "*reported incident*" was. In other words, one cannot ascertain, from the 3 sentences comprising the medical certificate, what Dr Marshall was told the "*reported incident*" comprised. In addition, the bare assertion that "*horses are critical to [the Appellant's] well being*" is seemingly something which only the Appellant himself could say. In other words, Dr Marshall is seemingly only repeating something what he was told about the importance of horses to the Appellant's well-being (a proposition which the Appeal Panel does not in any event doubt). Reports of this kind are entirely unhelpful to the Appeal Panel;

(b) The referral by Dr Thompson is not signed and appears to be only an extract. It does no more than assert that the Appellant "*has anxiety and depression*". It purports to attach an "*MHCP*" which was not in fact attached to the version which was tendered. Nothing of substance can be taken from the bare assertion that the Appellant has "*anxiety and depression*". In any event, if the conduct of the Appellant the subject of the appeal was in fact a result of anxiety and depression, that raises an issue whether the conduct the subject of the appeal might be likely to recur (in other words, it might suggest that the angry outburst the subject of the appeal was beyond the control of the Appellant and may be repeated in future). The Appeal Panel will deal in much more detail below with the way in which it thinks the Appellant's anger management is best dealt with.

Submissions

Appellant's submissions

12. In his written submissions dated 7 May 2025 the Appellant made a number of points.

13. First, he stated that he felt that the investigation interview (**Investigation Interview**) seemed to him to have no substance. However, the fact is that his treatment records were not available as they were required to have been and it cannot justifiably be said that the investigation had no substance.

14. Secondly, he stated that he felt intimidated by the conduct of Ms Burke and that he felt she had spoken accusingly during the Investigation Interview. However, accusations against licensed persons are of the very nature of an Investigation Interview. Further, having reviewed the transcript of the Investigation Interview the Appeal Panel does not accept that Ms Burke conducted herself in an intimidating fashion. Nor does it appear that she spoke in an accusing fashion (accepting that the very nature of such an inquiry is that it involves putting to a licensed person propositions to the effect that that person has contravened the Rules of Racing). If, as suggested in paragraph 8 of the submissions, when Ms Burke contacted the Appellant on the telephone on 29 March 2025, she said "*I suggest you get your [arse] in here with your treatment records now, and I mean straight away*", the Appeal Panel does not consider that much turns on that. The Appellant had an obligation under the Rules of Racing to have his treatment records available at the time Ms Burke inspected his stables and did not make them available. If she used the language suggested, it was not ideal, but it is hardly language of a kind which was likely to have intimidated the Appellant and it is difficult to resist the conclusion that her frustration at not having the treatment records made available to her was at least to some extent justifiable (assuming, without having heard from her, that she really did say those words).

15. Thirdly, it was submitted that Ms Burke did not give the Appellant sufficient time, during the Investigation Interview, to answer questions before asking

more questions (which is said to have confused him). However, a review of the transcript does not appear to bear that proposition out.

16. Fourthly, it is said that there was no offer of a support person to assist the Appellant at the meeting. However, we see no reason why the Appellant could not request a support person if he wished to have one present.

17. Fifthly, it is said that throughout the Investigation Interview the Appellant was under the impression he was being charged for a high reading of cobalt in one of his horses. It is true that Ms Burke stated at the outset of the Investigation Interview that "*you've just attended our office to bring in some treatment records that we've asked you to get to us since Tuesday [4 days earlier] when we did a stable inspection at your place [w]hen we advised you that you had a high level of cobalt come back in a test".* When the Appellant agreed with that proposition, Ms Burke said immediately "*And so originally when we spoke to you Tuesday afternoon, what did you tell us where your treatment records were, et cetera?*" (sic) and then effectively the entire balance of the interview (which had a duration of some 20 minutes) was wholly concerned with the issue of the delay in producing treatment records. If the Appellant really was under the impression that he claims he was under, then that would no doubt have heightened his anxiety and may have led to his outburst.

18. Sixthly, the Appellant submits that Ms Burke withheld the information that he was not being charged in relation to a high reading of cobalt and "*made him believe this was still being investigated*". However, again, the transcript of the Investigation Interview simply does not bear that out: as noted immediately above, all but the first very brief period of the Investigation Interview was concerned with the treatment records.

19. Seventhly, the Appellant submitted that the offence was confined to an outburst in a closed hearing. However, it is difficult to see that that is a particularly weighty mitigating factor.

20. Eighthly, a guilty plea was entered at the earliest opportunity, but the Stewards took that into account in determining the penalty of a 12 month

suspension reduced to 9 months. The Stewards also took into account the Appellant's personal and professional circumstances.

21. Ninthly, the Appellant does have reading and literacy issues, which need to be taken into account.

22. Tenthly, the Appellant has been in racing for a long time – he has held a trainer's licence for over 20 years. The fact that two offences involving lack of anger management have occurred recently over a very short time frame needs to be viewed in that context.

23. Eleventhly, as a result of the penalty imposed by the Stewards the Appellant has had to turn away all of the horses that he was training, except those owned by him and by his daughter.

24. Twelfthly, the Appellant has been affected by a marriage separation in early 2025 and by the death of his brother in October 2024.

25. Thirteenthly, and the Appeal Panel thinks most importantly, the Appellant submits that the economic impact on him is great, representing a loss of revenue of $42,000 per month and a loss of weekly net income of approximately $1,200. The Appellant points out that the period of suspension of 9 months is likely to result in a loss of revenue of some $378,000; and that he has no other form of income, whilst at the same time he has weekly expenditure (unrelated to the training of horses) of $1,650.

26. That last matter is of considerable importance. It is in effect new evidence – it was not raised before the Stewards and therefore was not taken into account. The Appeal Panel is prepared to admit that fresh evidence; and will return to this factor below.

<u>Aggravating circumstances</u>

27. There are a number of weighty aggravating circumstances.

28. First, the aggressive, improper and insulting statements which (by his plea of guilty) the Appellant has accepted that he made were not a single statement in isolation. Rather, it was a tirade of aggressive, improper and insulting

statements spanning over 100 lines of the transcript of the interview by Ms Burke. Accordingly, the (five) infringing statements were made over several minutes of the interview. It appears to the Appeal Panel that they were a manifestation of the anger management problem which the Appellant accepts that he has.

29. Secondly, the context is important. The statements occurred in the context of Racing NSW attempting to carrying out an entirely lawful inspection of the treatment records maintained by the Appellant as a racehorse trainer.

30. Thirdly, the improper or insulting behaviour in respect of which the Appellant pleaded guilty was not a single instance of such behaviour – rather, it comprised no less than 5 instances of such behaviour.

31. Fourthly, the Appellant aggravated the impugned conduct when, having been asked by Ms Burke whether he would like to apologise for saying "*you can shove your licence up your fucking ass*", he distinctly stated that he was not apologising (see "*No I'm not*" at line 528 of the transcript of the interview before Ms Burke) and when, shortly afterwards, calling her a "*standover bitch*" and being asked whether he apologised for that further statement, he stated "*No no, I'm not apologising to you*". That lack of remorse is significant.

32. Fifthly, even after the event, when making his application on 5 April 2025 for a stay of proceedings, the Appellant explicitly accused Ms Burke of "*harassment and workplace bullying*". It seems to the Appeal Panel that Ms Burke was doing no more than performing the role she was employed by Racing NSW to carry out and that the Appellant was annoyed that she wished to inspect his treatment records and could not manage his anger. In those circumstances, the accusation against Ms Burke seems to the Appeal Panel to be unjustified and was so inappropriate as to constitute an aggravating factor in the context of fixing the appropriate penalty.

33. Sixthly, even accepting that the conduct was the consequence of anxiety and depression with which Appellant has had to deal (as Dr Thompson appeared to say in his referral, as to which see above; and see paragraph 15 of the

Appellant's written submissions dated 7 May 2025), that does not, in the circumstances of this matter, justify a lower penalty. If, as appears to be submitted, those issues resulted in the contravening conduct by the Appellant, then the fact of those mental health issues may well give rise to the risk that the Appellant might further engage in such conduct if his licence were to remain intact, again subject to dealing properly with the Appellant's anger management problem (see below).

34. Seventhly, the Stewards were right to take into account the purpose of issuing penalties as a protective measure for the image, interests and welfare of the thoroughbred racing industry; and they appropriately took into account principles of specific and general deterrence. (As to general deterrence, the concern is related to the message being sent to the industry in respect of such conduct.)

35. Eighthly, and most significantly, confirming that the Appellant has an anger management problem, this is not the first occasion on which the Appellant has committed an offence of this kind. On 24 December 2023, at a Tamworth race meeting, after being told that the Stewards had placed an embargo on one of his horses for its behaviour at the start of an earlier race that day, he behaved in an aggressive manner and directed inappropriate language towards a Steward. The Stewards suspended the Appellant's trainer's licence for a period of 4 months (reduced to 3 months after taking into account his guilty plea "*and other relevant considerations*" - see transcript lines 300-303). That such behaviour should recur less than 18 months later, in a form which in the view of the Appeal Panel was even worse than his behaviour in December 2023, demonstrates the need for a very significant penalty to be imposed on the Appellant. If the 4 month penalty imposed in December 2023 did not (as it plainly did not) stimulate compliance by the Appellant with the basic principle that officials of Racing NSW who are seeking to administer the operations of the sport are entitled to be treated with respect, then it is clear that a heavier penalty was appropriate in relation to the charge the subject of this appeal.

36. However, the economic impact of the 9 month suspension, to which we have referred above, being a matter not raised before the Stewards, is of

considerable significance. As noted above, the economic impact on the Appellant of the 9 month suspension is a loss of weekly net income of approximately $1,200, whilst at the same time the Appellant remains exposed to weekly expenditure of approximately $1,650.

Decision

37. Balancing all of the factors above, a significant penalty is warranted, but at the same time it is critical to mould orders which seek to deal with the Appellant's acknowledged anger management problem.

38. In all those circumstances, the Appeal Panel decided to make the following orders.

Orders

39. The Appeal Panel made the following orders at the conclusion of the hearing:

(1) Appeal upheld.

(2) Set aside the orders made by the Stewards 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 above shall end at midnight on 31 July 2025.

(5) In the event that any issue arises 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 a view to the hearing being reconvened by AVL in order to deal with the issue.

(6) Adjourn the hearing indefinitely.

(7) 50% of the appeal deposit to be refunded.

16 May 2025



Alec Leopold SC
Acting Principal Member
Appeal Panel of Racing NSW