RACING APPEAL PANEL OF NEW SOUTH WALES

APPEAL OF DEAN BOAL

Panel: Mr T Hale SC – Convenor, Mr T Carlton, Mr K Langby

Appearances: For the Stewards: Mr T Moxon.

For the Appellant: Mr D Boal

Date of Hearing: 24 September 2020

Date of Orders: 16 October 2020

REASONS FOR DECSION

Mr T Hale SC, Convenor

Introduction

1. Since at least March of this year, New South Wales and Australia has been in the grip of the world wide pandemic COVID-19. This has changed our day to day lives. In order to contain the spread of the virus, government has imposed significant restrictions on the numbers and circumstances in which people may associate and get together. Amongst other things, this has had a substantial effect on our economy.

2. The racing industry has not been affected by these restrictions to the same degree as most other industries. In NSW this has been due, to a significant degree, to the protective procedures that have been adopted by the industry and the vigilance of the

industry in ensuring compliance with those procedures, many of which are enforceable by a direction from Racing NSW.

3. The present appeal concerns whether or not there has been compliance with those procedures. Racing NSW issued the following direction which took effect from 10 July 2020, and included the following:

    (a) **Any person (including Essential Personnel) that resides in Victoria or has travelled to Victoria** (irrespective of whether a work permit has been issued) may attend a racecourse or licensed premises only after they complete a period of 14 days isolation/quarantine in NSW away from a racecourse or licensed premises. Any previous approval provided by Racing NSW for a person to travel from Victoria to NSW licensed premises or racecourses is rescinded. Such persons must contact Racing NSW Stewards at the commencement of their isolation/quarantine and provide location where they will isolate/quarantine and date of commencement.

    (b) .Effective 8 July 2020 Racing NSW has **prohibited the transfer of horses from Victoria** to any NSW racing stable, licensed premises or racecourse. The previous protocols which permitted the transfer of horses from Victoria have now been rescinded until further notice.

4. The obvious purpose of the direction was to protect the NSW racing industry. The direction was issued at a time when there was an alarming increase in COVID-19 cases in Melbourne and Victoria.

The Hearing before the Stewards

5. On 26 August 2020, at the Murrumbidgee Turf Club, the Stewards, J A Shultz (Chairman) and S Knight, conducted an inquiry into licensed trainer Mr Dean Boal and Ms Kylie Taylor concerning an alleged breach of Racing NSW COVID-19 Policy.

6. Both Mr Boal, who I shall refer to as the appellant, and Ms Taylor were each charged with, and found guilty of, two breaches of the Australian Rules of Racing.

7. Mr Boal was charged with a breach of AR 227(b) (Charge 1) and a breach of AR 232(i) (Charge 2).

8. **AR 227(b)** provides:

> Without limiting any other powers, a PRA or the Stewards may penalise any person who:
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> (b) attempts to commit, aids, abets, counsels, procures, connives at, approaches or requests another person to commit, conspires with another person to commit, or is a party to another person who commits, a breach of the Rules.

9. **AR 232(i)** provides:

> A person must not:
>
> (i) give any evidence at an interview, investigation, inquiry, hearing and/or appeal which is false or misleading.

10. In respect of Charge 1, the appellant was disqualified for a period of 4 months commencing on 31 July 2020 and expiring on 30 November 2020. In respect of Charge 2, the appellant was disqualified for a period of 4 months, commencing on 30 November 2020 and expiring on 31 March 2021.

11. Ms Taylor was charged with a breach of AR 232(b) (Charge 1) and a breach of AR 232 (i) (Charge 2)

12. AR 232(b) provides that:

> A person must not:
>
> (b) fail or refuse to comply with an order, direction, or requirement of the Stewards on an official.

13. Ms Taylor received the same period of disqualification that the appellant received. Four months disqualification for Charge 1- and four-months disqualification for Charge 2. Like the appellant, she was disqualified until 31 March 2021.

14. The appellant has appealed to this Panel against the severity of the penalty imposed by the Stewards. Ms Taylor has not appealed.

The Appeal pursuant to section 42 of the Thoroughbred Racing Act

15. The appellant appeals to this Panel pursuant to s 42 of the *Thoroughbred Racing Act 1996*. Pursuant to s 43(1), the appeal is by way of a new hearing and fresh evidence, or evidence in substitution to or in substitution for the evidence before the Stewards, may be given.

16. At the hearing before this Panel:
    (a) the Stewards were represented by Mr T Moxon;
    (b) the appellant was unrepresented and appeared for himself.

17. Before this Panel, the appellant maintained his pleas of guilty in respect of both charges. In relation to Charge 2, he initially changed his plea to not guilty. However, after a short time, he sought leave to change his plea back to one of guilty. On behalf of the Stewards, Mr Moxon said that he would not make any submission on penalty based upon the short period of time that the appellant pleaded not guilty in relation to Charge 2. He accepted that this Panel should approach the determination of penalty on the basis that the appellant had at all times pleaded guilty.

18. The appeal was heard by audio-visual link. We received the Appeal Book into evidence, which became Exhibit A. We received as Exhibit B a schedule of precedent penalties. As Exhibit C we received the Stewards Reports into two other cases, which were relied upon by the Stewards as precedent penalties. The appellant relied upon a letter dated 29 August 2020 from Ms Taylor. This formed part of Exhibit A. The appellant did not give evidence. He did, however, make submissions, which included making assertions about his conduct, which strictly speaking did not amount to evidence but which the Panel took into consideration nonetheless.

The Charges

19. Charge 1 against the appellant, to which he pleaded guilty, was a charge of breaching AR 227(b). In summary, it was in these terms:

> Mr.Boal was a party to a breach of AR232(b) by Ms. Kylie Taylor, in that on 19 July 2020, he did employ Ms. Kylie Taylor to assist [him] with his duties at the Narrandera Race Club on 19 July 2020, when Ms. Taylor had not completed the 14 days self-

isolation period after travelling from Victoria , in accordance with the COVID-19 directions issued by Racing NSW.

20. Charge 2, to which the appellant also pleaded guilty, was a breach of AR 232(i). In summary, it was in these terms:

> Mr. Boal did provide false and misleading evidence to Stewards during an investigation into a breach of Racing NSW COVID-19 policy.

21. Although Ms Taylor did not appeal, to give context to Charge 1 against the appellant, it is useful to set out the first charge against her, to which she pleaded guilty:

> AR232(b) Fail to comply with a direction or requirement of Stewards, in that Ms Taylor did attend the Narrandera Race Clubs meeting on 19 July 2020, when she had not completed the 14 days self-isolation period after traveling from Victoria in accordance with the COVID-19 Directions issued by Racing NSW.

The Background Facts

22. Ms Taylor is the registered owner of the horse *Humdrum*. It was kept at the stables of Mr Wayne Nicholls at Benalla, Victoria. Ms Taylor worked there as an unpaid stable hand in return for Mr Nicholls training the horse. Ms Taylor holds a Racing Victoria stable hand's licence. Mr Nicholls is a Victorian licensed trainer and he holds a visitor's licence with Racing NSW. He shares the stables with Ms Julie Schmidt, who is also his partner. Ms Schmidt has a restricted trainer's licence in Victoria. She does not hold a licence with Racing NSW. Mr Nicholls and Ms Schmidt each own horses which are kept at the stables.

23. The appellant, Mr Boal, is a Victorian licenced trainer and has a visiting trainer's permit in NSW. Since May 2020 he has based himself at Tocumwal, NSW, across from the Tocumwal Race Club. He also has a property in Wangaratta, Victoria. He has his own horse transport.

24. The evidence establishes the following chronology of events, which do not appear to be in dispute:

(a) On Saturday 4 July 2020, *Humdrum* raced at Echuca, Victoria.

(b) With effect from 8 July 2020, Racing NSW prohibited the transfer of horses from Victoria to any NSW racing stable.

(c) With effect from10 July 2020, the new Racing NSW directions applied, which provided:Irrespective of whether a work permit has been issued, no person that resides in Victoria or has travelled to Victoria may attend a racecourse or licensed premises until after they have completed a period of 14 days isolation/quarantine away from a racecourse or licensed premise.

(d) On Tuesday 14 July 2020, at around 8.30 am, licensed farrier Phillip Kirkham attended the stables of Wayne Nicholls at Benalla and pulled shoes from *Humdrum*.

(e) According to Mr Nicholls and Ms Schmidt, on Thursday 16 July 2020, Ms Taylor collected the horse *Humdrum* from their stables at Benalla. The evidence of Mr Nichols was that Ms Taylor worked at the stables from 5am and left with *Humdrum* at 7.30 am. She drove a car towing a horse float carrying the horse. The evidence of Mr Nichols, confirmed by Ms Schmidt, is that from 4 July, after the race at Echuca, until 16 July, *Humdrum* was at their Benalla stables.

(f) After leaving Benalla, *Humdrum* was taken to the appellant's stable at Tocumwal.

(g) On 19 July 2020, both the appellant and Ms Taylor attended the race meeting at Narrandera. The appellant had three horses running.

(h) *Humdrum* was accepted to race on 27 July 2020 at a race meeting at Leeton.

25. It is against this background that the conduct of the appellant is to be considered.

26. On Monday 20 July 2020, the appellant rang Ms Debbie Winter at Racing NSW and advised her that *Humdrum* arrived from Victoria at his Tocumwal stables either on Monday 6 July or Tuesday 7 July, having raced at Echuca on Saturday 4 July. The two alternate dates nominated, 6 or 7 July, predated the Racing NSW directions that took effect from 8 July and 10 July 2020. It strains credulity to accept that the dates nominated were anything other than a deliberate attempt to deceive Ms Winter and Racing NSW into accepting that the transfer of the horse from Victoria was prior to the 8 July and 10 July 2020 directions, and thus not subject to them.

27. That the appellant was aware of the significance of the date of 8 July 2020, is clear from the evidence that he gave to Ms Jacqueline Johnson, Senior Investigator Racing NSW on 24 July 2020:

> J JOHNSTONE: You mentioned before about the interstate border restrictions that became effective on 8 July.
> D BOAL: Yes, yeah, yes. Well, I said to her [meaning Ms Taylor], "Geez, you were lucky that you got over here before that come into effect", you know, with the horse being here type of thing, you know.

28. However, in his evidence before the Stewards on 26 August 2020, the appellant gave the following evidence at T7:

> CHAIRMAN: Mr Boal, what day did the horse arrive at your stables?
> D BOAL: On the 9th.
> CHAIRMAN: On the 9th?
> D BOAL: On the Thursday and then - yes, Thursday the 9th and then - well, I think that's the date anyway, on Thursday the 9th and Kylie arrived on the 10th. Well, she come on the 9th and she come on the 10th.
> CHAIRMAN: In the transcripts I think it was consistent there that the horse arrived - the day is still yet to be determined - it arrived at approximately 2pm in the afternoon--

D BOAL: Yeah, it was in the afternoon. It was in the - probably around - yeah, it was after lunch anyway. You could say a time after lunch, so it was after lunch.

29. The appellant is precise as to the date and time that the horse arrived. It was Thursday 9 July at approximately 2pm. This is the day after the 8 July direction but before the 10 July direction.

30. At another point in the transcript the appellant said (at T8):

D BOAL: We went - we did do nine days or eight, probably nine days quarantine it was because the race was on the 19th. Is that right?
CHAIRMAN: The Narrandera race meeting?
D BOAL: Yeah, that was the 19th.
CHAIRMAN: That was on Sunday, 19 July.
D BOAL: Yes, and Kylie had come over on the 10th, so it was only nine days, not ten days.
CHAIRMAN: Did she come over on the 9th or the 10th? You're telling me the horse arrived on the 9th?
D BOAL: Kylie went over on the 9th, come over, brought the horse on the 9th. Then she went back because she had to finish at Wayne's on the 10th, so she went. She come over, dropped the horse off, went back to Wayne's, went home and then went back to Wayne's on the 10th, on the Friday morning and worked there and that was her last day. That's what she told me and then she come over and stayed on 10 July at my place in the afternoon, after lunch and whatever she done with her place over there and she hadn't gone back.
CHAIRMAN: Ms Taylor, what would you say to that?
K TAYLOR: That's correct.

31. Ultimately, Ms Taylor seemed to accept that the horse came across the border on 16 July 2020. She said (T77):

CHAIRMAN: You say now there is a chance your dates may have been out?
K TAYLOR: Quite possibly.

CHAIRMAN: So you would say there is a possibility that the horse may have come across on the 16th?
K TAYLOR: Yes.

32. Similarly, the appellant appeared to accept that the horse arrived at his stables on 16 July 2020. He said (T75):

CHAIRMAN: You're saying it is possible the horse may have come over the border--
D BOAL: Yes.
CHAIRMAN: --on 16 July?
D BOAL: Yeah, or the 14th, maybe the 14th.
CHAIRMAN: Maybe the 14th?

33. Although Ms Taylor has not appealed against either of the charges, she provided a letter of support for the appellant, which was in these terms:

From: kylie taylor
Sent: Saturday, 29 August 2020 12:38 PM
To: Dean Boal
Subject: letter
To whom it may Concern,
I Kylie Taylor would like to inform you that I did tell Dean Boal that my last day Working for Mr Wayne Nichols was on the 10th of July as Dean is not good With dates,, I told him that it was the Friday 10th July and the horse Humdrum Come to his stable on the 9th July. I did say to him that were the dates.
Which I had the incorrect dates and Dean believe me and took my word for it. Dean is not at fault, he only listened to me. He was only helping me to race my Horse. Therefore I'm the guilty party not Dean.
He faced the Stewarts (sic) with the wrong dates without knowing
I don't believe Dean should not be able to race as I was the one in the wrong.

34. The appellant relies upon this evidence to support his argument in mitigation of penalty. He submits that he made a genuine mistake about the date that Ms Taylor brought *Humdrum* to his stables.

35. Ms Taylor and *Humdrum* arrived at his stables on Thursday 16 July. Four days later, on Monday 20 July 2020, he rang Ms Debbie Winter at Racing NSW and advised her that *Humdrum* arrived at his Tocumwal stable from Victoria either Monday 6 July or Tuesday 7 July. The date 6 July was two weeks before he rang Ms Winter on 20 July. The appellant asks this Panel to accept that when he rang Ms Winter on Monday 20 July, he had no recollection that Ms Taylor and the horse only arrived four days earlier and that he genuinely thought Ms Taylor and *Humdrum* arrived two weeks before. I do not accept what he says. Neither do the other members of the Panel, Mr Carlton and Mr Langby. We find as a fact that when the appellant rang Ms Winter on 20 July 2020, he knew that Ms Taylor and *Humdrum* had arrived at his stables from Victoria on Thursday 16 July 2020.

36. Ms Winter recorded the details of her conversation with the appellant on 20 July 2020 in an email she prepared that day, but which was sent to Mr Wade Birch early the next day. According to the email, Ms Winter and the appellant had "a huge chat". According to the email, the appellant discussed with her the implications of COVID-19, both in relation to *Humdrum* and also in relation to his intention to transport horses back to his property in Wangaratta, Victoria.

37. The reason the appellant told Ms Winter that Ms Taylor and *Humdrum* arrived at his Tocumwal stables on 6 July or 7 July, rather than on 16 July, is clear. The appellant was aware of the Racing NSW directions of 8 and 10 July and was fully aware of his obligations pursuant to the directions. He deliberately chose to ignore the directions. He sought to deceive Ms Winters as to when Ms Taylor and the horse crossed the border and arrived at his Tocumwal stables in order to cover up his breach of the directions. He then sought to perpetuate his deceit in his interviews with the Stewards until he was caught out and he knew "the jig was up".

Conclusions on Penalty

Charge 1- Breach of AR 227(b)

38. So far as Charge 1 is concerned, it is hard to overstate the irresponsibility and selfishness of the appellant's actions in deliberately flouting the directions from Racing NSW, which took effect from 8 July 2020 and which were reaffirmed on 10 July 2020. The charge does not allege that the appellant breached that part of the direction that prohibited the transfer of horses from Victoria to any NSW racing stable. Rather, it alleged a breach of that part of the direction which imposed restrictions on person coming from Victoria attending a racecourse or licensed premises in NSW.

39. The restriction was that such a person may attend a racecourse or licensed premises:

> Only after they complete a period of 14 days isolation/quarantine in NSW away from a racecourse or licensed premises….Such persons must contact Racing NSW Stewards at the commencement of their isolation/quarantine and provide location where they will isolate/quarantine and date of commencement.

40. Ms Taylor arrived from Victoria at the appellant's stables at Tocumwal, NSW on Thursday 16 July 2020. She stayed with the appellant. The appellant knew that Ms Taylor had travelled from Victoria. Under the direction, Ms Taylor was to self-isolate for 14 days, to 30 July. She was required to contact Racing NSW Stewards to provide the location where she would isolate and the date her isolation commenced. She did not contact Racing NSW when she arrived. Instead, the appellant contacted Racing NSW on Monday 20 July and provided the false information to Ms Winter about the date of *Humdrum's* arrival at his stables.

41. Rather than self-isolate when she arrived from Victoria on 16 July, as the directions required, three days later, on Sunday 19 July, she accompanied the appellant to the race meeting at Narrandera, where the appellant had three horses running. The appellant knew this and was therefore a party to a breach of the directions by Ms.

Kylie Taylor. In breach of AR 227(b) he aided and abetted, counselled and procured Ms Taylor to breach the directions of 8 and 10 July 2020. The appellant has pleaded guilty to this breach.

42. In light of the forgoing facts, this Panel is to determine what penalty is appropriate to be imposed.

43. The present appeal has a novel aspect about it. It concerns a breach of a direction intended to inhibit the spread of COVID-19 from Victoria to NSW in the context of the worldwide pandemic. It is therefore appropriate to restate the principles that apply to the imposition of a penalty. In the matter of the appeal of jockey N Callow before the Racing NSW Appeal Panel (3 May 2017), I said this about the approach to determining penalties for breach of the Rules of racing:

> *37. The offence of which the Appellant has been found guilty is a breach of the Australian Rules of Racing. Those rules are adopted by the Thoroughbred Racing Act 1996 and, inter alia, govern thoroughbred horseracing in New South Wales. The regulatory scheme under the rules bears a closer relationship to professional discipline than to the general criminal law: Day v Sanders; Day v Harness Racing New South Wales (2015) 90 NSWLR 764 per Leeming JA at [70] with whom Simpson JA agreed at [131].*
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> *38. Disciplinary proceedings are regarded as being "entirely protective … notwithstanding that [they] may involve a great deprivation to the person disciplined, there is no element of punishment involved." :NSW Bar Association v Evatt (1968) 117 CLR 177 at 183-184.*
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> *39. This panel is what JRS Forbes, Justice in Tribunals, 4th Edition 2014, describes*
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> *at [2.17] – [2.19] as being a "hybrid tribunal". There are consensual rules of racing (see AR 2), which have statutory support under the Thoroughbred Racing Act 1996: see for example, s.4(1); s.13(1)(a)(e); s.14(2)(l); and ss.42,43. This panel is a domestic tribunal invested by the legislature with the duty of disciplining persons subject to the rules of racing as defined by this*

Act: see R v Wadley; ex parte Burton [1996] QdR 286 per Wanstall SPJ at 291, in relation to the Queensland Racing Club Committee. Although it is not a professional disciplinary tribunal, this Panel bears some relationship or similarity to such a tribunal. The principles which apply to such tribunals are of assistance in determining the proper approach to penalty in the present circumstances. Both the Australian Rules of Racing and the Local Rules of Racing NSW refer to "penalty".

40. The penalty is to be determined in the context of the subject matter, scope and purpose of the Thoroughbred Racing Act and the functions of Racing NSW established under the Act, which include in s.13(1)(c):

> *"The promotion, strategic development and welfare of the horseracing industry in the State and the protection of the public interest as it relates to the horseracing industry."*

41. In professional disciplinary matters, the principles which apply to determining penalty recognise the importance of deterrence, particularly in regard to the protection of the public. In Law Society of New South Wales v Foreman (1994) 34 NSWLR 408, which concerned disciplinary action against a solicitor, Giles AJA, said at [471]:

> *"But the object of protection of the public also includes deterring the legal practitioner in question from repeating the misconduct, and deterring others that might be tempted to fall short of the high standards required of them."*

Mahoney JA said (at [441]):

> *"It has frequently been said that disciplinary procedures and the orders made in the course of them are directed not to the punishment of the solicitor but to the protection of the public. This, of course, is true. The protection of the public has been described as, for example, the primary purpose or a primary object of such proceedings…In the relevant sense, the protection of the public is, in my opinion, not confined to the protection of the public against further default by the solicitor in question. It extends also to the protection of the public*

against similar defaults by other solicitors and has, in this sense, the purpose of publicly marking the seriousness of what the instant solicitor has done."

42. In our view, by analogy these principles concerning deterrence are apposite to determining penalty for breach of the rules of racing. It will be noted that in Foreman the role of deterrence was considered in relation to the protection of the public. Deterrence will have a broader application in relation to the rules of racing. The principles will extend not only to the protection of the public but also the promotion of the safety of horses and jockeys as well as the integrity of racing. In determining penalty, consideration may be given to the deterrent effect that the penalty might achieve in deterring a repetition of the offence and in deterring others who might be tempted to fall short of the high standards required of them under the rules of racing. The penalty may also be seen as publicly marking the seriousness of the offence.

44. As those passages demonstrate, the penalty is to be determined in the context of the subject matter, scope and purpose of the *Thoroughbred Racing Act* and the functions of Racing NSW established under the Act, which include in s 13(1)(c): "*The promotion, strategic development and welfare of the horseracing industry in the State and the protection of the public interest as it relates to the horseracing industry."*

45. While the COVID-19 directions of 8 and 10 of July were in the interests of public health generally, they also had a more specific purpose, which was for the welfare of the horseracing industry in NSW, those who work in the industry or in industries related to it, as well as the racing public. The appellant's conduct in having Ms Taylor assist him at the Narrandera Race Club on 19 July 2020, when she should have been in isolation or quarantine, carried with it the risk of spreading COVID-19 from Victoria to the racetrack. Had that occurred, it would have had significant ramifications not only for the health of others, but also for the industry itself and those employed in the industry. Unless government can have confidence in the racing industry's vigilance in enforcing effective COVID-19 procedures, it might consider it necessary to impose harsher controls and restrictions on the industry.

46. The penalty to be imposed must have a sufficient deterrent effect to deter others who might be tempted to breach the rules and directions concerning COVID-19.The penalty must also be seen as publicly marking the seriousness of the offence and demonstrating the racing industry's commitment to enforcing its COVID -19 procedures.

47. In the present appeal, nothing short of a lengthy period of disqualification would meet these principles.

48. In the circumstances of the present appeal, the Panel considers that the disqualification of 6 months is at the lower range of the period of disqualification that would be appropriate to impose. Licensed persons in the racing industry must understand that if they deliberately breach COVID-19 directions issued by the Stewards they will be disqualified for a lengthy period.

49. Although the Panel has some misgivings that the penalty may be too lenient, we nonetheless consider that we should simply dismiss the appeal in relation to Charge 1, noting that the Stewards found that the appropriate penalty was a period of disqualification of 6 months, which after taking into account the plea of guilty, was reduced to a period of disqualification of 4 months. In doing so we take into account the considerations that the Stewards took into account

Charge 2- Breach of AR 232(i)

50. Charge 2 was that in breach of AR 232(i) the appellant provided false and misleading evidence to Stewards during an investigation into a breach of Racing NSW COVID-19 policy. He has pleaded guilty to the charge.

51. In his interview on 24 July 2020 with Ms Jacqueline Johnson, Senior Investigator Racing NSW, the appellant stated that Ms Taylor first delivered *Humdrum* to his stables at Tocumwal on 6 July or 7 July 2020. In short, he maintained the same false story that he told Ms Winter on 20 July, which he now accepts was untrue. As earlier mentioned, the appellant submitted that although his statement was wrong, it was a genuine mistake. For the reasons earlier explained, we do not accept this explanation

as truthful evidence. He deliberately gave false evidence to Ms Johnson to avoid admitting that Ms Taylor and the horse came across the Victorian border after the directions of 6 July and 10 July.

52. The Panel received into evidence, as Exhibit B, a schedule tendered by Mr Moxon of penalties for giving false evidence. The penalty of 6 months disqualification, which the Stewards in this case found was the appropriate penalty, is consistent with periods of disqualification in Exhibit B. The Stewards reduced the penalty to a disqualification for 4 months, having taken into account the appellant's plea of guilty.

53. Licensed persons owe a duty to tell the truth. A number of decisions of the Racing NSW Appeal Panel and the Victorian Racing Tribunal have emphasised this, and have also emphasised the importance of there being a degree of trust between those who enforce the rules of racing and licensed persons, otherwise confidence in the racing industry will be eroded. The giving of false and misleading evidence hinders the proper administration of racing. It is of sufficient seriousness that it goes to the fitness of a person to hold a licence in the racing industry. This is why such breaches of the rules of racing is so often met with disqualification.

54. In the matter of *Leek*, the Chairman of the Victorian Racing Tribunal, the Honourable Judge Nixon said:

> "Racing is a major industry in this state, and the racing industry in Victoria, I believe, bears a high reputation throughout the length and breadth of Australia. It is important that the reputation of the whole racing industry be maintained in order to maintain public trust and public confidence in that industry. A licensed person, such as Mr Leek, has certain rights and privileges, and those rights and privileges carry with them on the other hand certain obligations. There must be a degree of trust between those who are empowered to enforce the rules of racing-and I have in mind, of course, the stipendiary stewards, in particular,-and licensed person, otherwise the system which has stood the test of time will break down, and public confidence in the racing industry will be eroded……Licensed persons owe a duty to tell the truth….. Those who lie like this must realise that they will suffer as a trainer, or as a licensed jockey, no doubt, financial detriment. They should think of that before they engage in this

course of deception. It is very easy to lie. It is very difficult to determine when a person is lying; as a Judge of this court one quickly realises that. But here I have no hesitation in saying that the appeal should be dismissed, both as a deterrent to Mr Leek, Junior, and as a deterrent to others who might be minded to engage in similar course of deception."

55. In the decision of the matter of *Robl*, a decision of this Panel, the Principal Member, Mr Hiatt said:

> *Further those who give false and misleading evidence at Inquiries or Appeals should expect severe sanctions, because such a breach hinders the proper administration of racing…….The betting breaches and the false and misleading evidence breaches go to the fitness of the Appellant to hold a license to cite Judge Perrignon in the Appeal of Cassidy (1995) 12.13:*
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> > *"Disqualification is a well-known and legitimate indeed a necessary safeguard to be adopted to secure the absence from a racecourse of persons who have been found guilty of conduct seriously detrimental to the Rules of Racing is vital to the proper administration of Racing"*

56. In the Appeal of Licensed Trainer Clint Lundholm (7 August 2020) the Principal Member Mr Beasley SC said that "*when licensed trainers lie to Stewards it is a real attack on the integrity of the sport. It is an obvious hindrance to those charged with upholding that integrity."* To similar effect was what he said in the Appeal of Licensed Trainer Laura McCullum (20 August 2020): *"Lying to Stewards is a serious offence. It undermines their capacity to protect the sport*."

57. We have taken these principles into account. In all the circumstances, which includes the plea of guilty, we consider that the period of disqualification of 4 months imposed by the Stewards was the appropriate penalty. We therefore dismiss the appeal in relation to Charge 2.

Orders

58. The orders of the Panel are:

1) In relation to Charge 1, being for a breach of AR 227(b), the appeal is dismissed and the period of disqualification imposed by the Stewards is confirmed, namely the appellant is disqualified for a period of 4 months commencing on 31 July 2020 and expiring on 30 November 2020.

2) In relation to Charge 2, being a breach of AR 232(i), the appeal is dismissed and the period of disqualification imposed by the Stewards is confirmed, namely the appellant is disqualified for a period of 4 months commencing on 30 November 2020 and expiring on 31 March 2021

3) The appeal deposit is forfeited.