

## APPEAL PANEL OF RACING NEW SOUTH WALES

### THE APPEAL OF MRS DEBORAH PREST

Appeal Panel: **Mr L. Vellis - Convenor; Mrs J. Foley; Mr J. Murphy**

Representatives: **Appellant - Mr A. Casselden SC, instructed by Mr D.C. Kane, Solicitor**  
**Racing NSW - Mr M. Van Gestel, Chairman of Stewards**

Date of Hearing: **14 December 2020**

Date of Reasons and Orders: **24 December 2020**

### REASONS FOR DECISION

#### Introduction

1. At a Stewards' hearing conducted on 18 September 2020, the Stewards heard two charges under AR 228(c) of the Australian Rules of Racing (**Rules**) issued against licensed trainer Mrs Deborah Prest in respect of certain social media posts made by Mrs Prest during the period from March 2020 up to and including August 2020. Mrs Prest appeared by video conference.
2. Mrs Prest was found guilty of both charges, with the charges as follows:
  - (a) **Charge 1:** breach of AR 228(c) for engaging in improper and/or insulting behaviour towards Racing NSW, the details of the charge being that Mrs Prest did engage in improper and/or insulting behaviour towards the PRA Racing NSW by posting comments on the social media platform Twitter; and
  - (b) **Charge 2:** breach of AR 228(c) for engaging in improper and/or insulting behaviour towards Racing NSW Chief Executive Mr Peter V'landys AM, the details of the charge being that Mrs Prest did engage in improper and/or insulting behaviour towards Racing NSW Chief Executive Mr Peter V'landys AM (an Official) by posting comments on the social media platform Twitter.
3. AR 228(c) is in the following terms:

*"A person must not engage in:*

  - (c) *improper or insulting behaviour 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".*

4. The penalty imposed by the Stewards for the 2 breaches of AR 228(c) was:
  - (a) suspension of trainers license for a period of 1 month;
  - (b) \$5,000 fine; and
  - (c) that the penalty of a \$5,000 fine issued on 22 October 2019 for breach of AR 228(a) and AR 228(c) also be applied, resulting in the total fine applicable being \$10,000.

### **Appeal**

5. Mrs Prest appealed to the Panel against the findings of the Stewards that she had breached AR 227(c) with respect to both Charge 1 and Charge 2.
6. Mrs Prest also appealed against the severity of the penalty imposed upon her.
7. Mrs Prest was represented on appeal, with leave, by Mr Adam Casselden SC, instructed by Mr Darren Charles Kane.
8. The Stewards were represented in the Appeal by Mr Marc Van Gestel, the Chairman of Stewards for Racing New South Wales.
9. The Appeal Book was tendered in the Appeal as Exhibit A.
10. A Statement of Debbie Prest was tendered in the Appeal as Exhibit B.
11. 7 character references in relation to Mrs Prest were tendered in the Appeal as Exhibit C.

### **Charge 1**

12. There are 11 tweets (set out in Annexure 1 of Exhibit A) relevant to whether Mrs Prest did engage in improper and/or insulting behaviour towards the PRA Racing NSW by posting comments on the social media platform Twitter.

### **Charge 2**

13. There are 29 tweets (set out in Annexure 2 of Exhibit A) relevant to whether Mrs Prest did engage in improper and/or insulting behaviour towards Racing NSW Chief Executive Mr Peter V'landys AM (an Official) by posting comments on the social media platform Twitter.
14. There was no suggestion or evidence otherwise presented that the tweets were posted by anyone other than Mrs Prest.

### **Submissions by Mr Casselden SC**

15. Mr Casselden SC sought to clarify whether the tweets the subject of Charge 1 and Charge 2 were deemed to be "improper" or "insulting", to which the Stewards contended that each of the tweets were both improper and insulting.

16. References were also made by Mr Casselden SC with respect to ensuring procedural fairness. In this regard the Panel believes it is helpful to refer to Sections 43 of the *Thoroughbred Racing Board Act 1996* (NSW), which provides as follows (relevant parts, being subsections (1)-(3), extracted):

***"Procedure on an appeal***

- (1) *An appeal to the Appeal Panel is to be in the nature of a rehearing.*
- (2) *The Appeal Panel may subject to this Act and the local rules of racing of the Board determine its own procedure.*
- (3) *On an appeal the Appeal Panel:*
- (a) is not bound to act in a formal manner, and*
  - (b) is not bound by the rules of evidence and may inform itself on any matter in any way that it considers to be just, and*
  - (c) is to make its decision on the real merits and justice of the case and is not bound to follow strict legal precedent."*

17. It was further submitted by Mr Casselden that the onus was therefore on the Stewards to make out a breach of Charge 1 and Charge 2 on the basis of an amended charge that required an offending tweet to be "improper and insulting". The Panel respectfully disagrees that AR 228(c) should be treated this way as the rule itself requires behaviour that is "improper" or "insulting", not both. The clarification may be considered trivial by some based on the Panel's ultimate determination.

18. Mr Casselden submitted that the subject matter of Charge 1 and Charge 2 was substantially the same and rather than there being 2 charges, there should really only be 1 charge. The Panel disagrees and notes that while there were some overlapping tweets between Charge 1 and Charge 2, the nature of these tweets and their subject matter could be sufficiently distinguished so as to identify tweets commenting on Racing NSW and others commenting on Mr V'landys, and in some cases, both.

19. It was also submitted by Mr Casselden SC that AR 228(c) should be read and interpreted along with the heading that appears at AR 228, which is as follows:

*"Conduct detrimental to the interests of racing".*

20. As noted in the submissions of Mr Van Gestel during the Appeal, AR 1(3) specifically addresses this item and provides as follows:

*"Where they appear, headings are for reference purposes only and are not to be regarded as operative parts of these Australian Rules."*

21. Another submission made by Mr Casselden SC was that some of the tweets the subject of Charge 1 and / or Charge 2 were not "in relation to the relevant person's functions, powers or duties" as is required by AR 228(c), but were in fact relevant to the sport of Rugby League, for which Mr V'landys is the Chairman of the Australian Rugby League Commission.

22. While there were numerous tweets that began as Rugby League items, Mrs Prest is a licensed trainer and in several instances has introduced racing matters into these threads, such that the Panel is comfortably satisfied that such tweets are "in relation to the relevant person's functions, powers or duties". For example, in Mrs Prest's tweet of 22 May 2020 (Annexure 2.22 of Exhibit A) she tweeted as follows in response to a tweet that appeared to be discussing Rugby League:

*"Yes and Racing is paying him a full time salary while he does all this for rugby league."*

23. In another example, in Mrs Prest's tweet of 14 May 2020 (Annexure 2.23 of Exhibit A) she tweeted as follows in response to a tweet that appeared to be discussing Rugby League:

*"Consultation is just a word PV puts in a press release. No one ever challenges it, they should but they don't. Racing has the weakest consultation process of all because they have all given up."*

24. Mr Casselden SC also submitted that the tweets the subject of Charge 1 and Charge 2 were neither improper or insulting (and in any event were not both), and that they were in the nature of "honest opinion", "fair comment" or "honestly held opinion".

25. Another submission made by Mr Casselden SC was with respect to the tweeting statistics contained in Exhibit B. Mr Casselden SC noted that very few people actually followed Mr Prest's Twitter account and the response (measured by number of engagements, number of likes and number of retweets) to the tweets the subject of Charge 1 and Charge 2 was inconsequential. The Panel respectfully disagrees with the assertion that because the tweets were viewed by what Mr Casselden SC considers to be relatively few people that this in some way could be a defense to Charge 1 and Charge 2, although this factor may be more relevant to penalty than whether the breaches of AR 228(c) can be made out.

26. For completeness, the Panel notes that according to Exhibit B Mr Prest has 660 followers on her Twitter account, and the tweets the subject of Charge 1 had 339 "engagements" according to Exhibit B and the tweets the subject of Charge 2 had 1,945 "engagements" according to Exhibit B.

27. In addition, Mr Casselden SC submitted that the penalties imposed by the Stewards were manifestly excessive. Of course, there is no need for this to be proven: only to convince the Panel to impose a lesser penalty. Mr Casselden SC was of view that a suspension of any nature and the amount of the fine imposed were both well beyond what was appropriate.

28. In particular, Mr Casselden SC pointed to these matters:

- (d) Mrs Prest's impeccable character, as indicated by the 7 references included within Exhibit C;
- (e) Mrs Prest's over 30 years as a licensed trainer and industry participant and Mr Prest's exceptional record during such time;
- (f) Mrs Prest's genuine affection and care for the racing industry; and
- (g) penalties in other matters for conduct that Mr Casselden SC submitted was objectively more serious than the matters the subject of Charge 1 and Charge 2.

29. Mr Casselden SC was of the view that a reduced fine would be a more appropriate penalty rather than a suspension and a fine in the event that the Appeal with respect to Charge 1 and Charge 2 was dismissed.

### **Submissions by Mr Van Gestel**

30. Mr Van Gestel submitted that each of the tweets contained within Annexures 1 and 2 of Exhibit A was both improper and insulting, with respect to Racing NSW in Charge 1 and with respect to Mr V'landys in Charge 2.
31. Mr Van Gestel submitted that the tweets the subject of Charge 1 variously suggested that Racing NSW had compromised integrity, did not have appropriate governance procedures, would selectively apply rules, treated different participants preferentially and / or was pursuing an agenda to eliminate certain participants from the racing industry, and that each tweet of this nature was both improper and insulting behaviour to Racing NSW in relation to its functions, powers or duties.
32. Mr Van Gestel submitted that the tweets the subject of Charge 2 variously suggested that Mr V'landys had compromised integrity, did not follow appropriate governance procedures, was not properly performing his job as Chief Executive of Racing New South Wales, treated different participants preferentially and / or was pursuing an agenda to eliminate certain participants from the racing industry, and that each tweet of this nature was both improper and insulting behaviour to Mr V'landys as an official (in this case, Chief Executive of Racing New South Wales) in relation to his functions, powers or duties.
33. Mr Van Gestel further submitted that as a licensed trainer, there was a certain standard of behaviour expected of Mrs Prest. In particular, Mr Van Gestel referred to the decision of the Panel in the *Appeal of Richard Dicey (31 January 2014)*, in which the Panel noted that when considering what conduct amounts to improper conduct that:

*"In respect of standards of conduct expected of licensed persons it is recognised such persons are granted certain rights; it is a privilege to be granted a licence and along with the grant are certain duties and one is to uphold the good name of racing and another is to comply "with the duty to behave in an appropriate manner". Conduct which is wrong and a departure from proper standards is improper conduct."*

34. The Panel also notes that the Form of Racing NSW Licence Renewal - Trainer, includes a section detailing the "Terms and Conditions of Licence". Relevantly, sections 1(a) and 1(e) of such Terms and Conditions provide as follows:

*"1. The trainer acknowledges and agrees to be subject to and be bound by:*

- a) The Rules of Racing of each Principal Racing Authority in which he/she trains as amended or varied by each Principal Racing Authority from time to time;*
- e) The trainer submits to the non-exclusive jurisdiction of each Principal Racing Authority, its officials and Stewards in respect of all matters arising in relation to racing in the State or Territory of that Principal Racing Authority."*

35. Mr Van Gestel also submitted that Mr Prest's tweets contained matters the basis for which Mrs Prest was unable to verify. For example, in Mrs Prest's tweet of 28 July 2020 (Annexure 1.4 of Exhibit A) she tweeted the following (relevant part extracted):

*"...Why did RNSW stewards bend over backwards to bend the rules for Matthew Dunn".*

36. Mr Van Gestel submitted by way of example that Mrs Prest would have no way of knowing what processes Racing NSW Stewards followed in their interactions with Mr Dunn and yet there was a tweet from Mrs Prest suggesting such Stewards had behaved with impropriety.

37. Mr Van Gestel also submitted that to the extent Mrs Prest had legitimate concerns or queries with respect to racing matters, that there were numerous other (non-public) forums available to her to express such concerns, including letters, email or telephone calls with Racing NSW (including the Stewards) or the NSW Trainers Association.

38. Mr Van Gestel further submitted that the offending should be viewed as serious and that a fine would not be an appropriate penalty if the Appeal were to be dismissed.

39. Mr Van Gestel emphasised:

- (a) the previous 4 warnings given by Stewards to Mrs Prest in 2017 and 2018 in relation to her conduct and use of social media;
- (b) that on 22 October 2019, Mrs Prest was found guilty of breaches of AR 228(a) and AR 228(c) and that as a result a fine of \$5,000 was issued but the operation of such penalty was suspended if Mrs Prest did not breach the conduct rules for the next 2 years;
- (c) Mr Prest had previously been advised on 22 October 2019 that should she be found guilty of a conduct related offence in the 2 years following 22 October 2019, the \$5,000 fine would immediately apply, together with any other penalty determined by the Stewards for the relevant offence, which with the Stewards noting such penalty may include a period of suspension or disqualification; and
- (d) in less than 12 months from the date Mrs Prest was found guilty of breaches of AR 228(a) and AR 228(c), Mrs Prest was again appearing before the Stewards and found guilty of a conduct related offence.

### **Determination**

40. With respect to AR 228(c) and behaviour that is "improper", the Panel relies upon the ordinary meaning of such word, being behaviour that is not proper, erroneous, not in accordance with propriety of behaviour or manners, unsuitable or inappropriate as for the purpose or occasion, abnormal or irregular.

41. With respect to AR 228(c) and behaviour that is "insulting", the Panel relies upon the ordinary meaning of such word, being behaviour that is rude, offensive or disrespectful.

42. The Panel notes that while there are 11 tweets that are the subject of Charge 1 and 29 tweets that are the subject of Charge 2, if the Panel is satisfied that 1 of the tweets of Mrs Prest in Annexure 1 of Exhibit A satisfies the requirements of AR 228(c), then Charge 1 is made out. Similarly, if the Panel is satisfied that 1 of the tweets of Mrs Prest in Annexure 2 of Exhibit A satisfies the requirements of AR 228(c), then Charge 2 is also made out.
43. The Panel also reinforced this position during the Appeal and does not propose to address each of the tweets included in Annexure 1 and 2.
44. With respect to Charge 1, the Panel is satisfied that the charge is made out and Mrs Prest is guilty of AR 228(c).
45. Below are three tweets from Annexure 1 (there are others, but as mentioned at Paragraph 42, only 1 such tweet is required) that the Panel consider to be improper and insulting with respect to Racing NSW in relation to its functions, powers or duties:

- (a) Mrs Prest's tweet of 28 July 2020 (Annexure 1.4 of Exhibit A) whereby she tweeted the following (relevant part extracted):

*"...Why did RNSW stewards bend over backwards to bend the rules for Matthew Dunn".*

The Panel is satisfied that this tweet is improper and insulting to Racing NSW and on an objective reading suggests that Racing NSW and its stewards lack integrity and behave inappropriately and without regard to necessary procedures and rules.

- (b) Mrs Prest's tweet of 2 July 2020 (Annexure 1.8 of Exhibit A) whereby she tweeted the following:

*"...Had a good practice run in town under the favour of RNSW, wonder how many other Country trainers can get a "try before they buy" and still keep all the country champs, highways and kozi eligibility?"*

The Panel is satisfied that this tweet is improper and insulting to Racing NSW and on an objective reading suggests that Racing NSW is inappropriately treating certain industry participants favourably and with without regard to necessary procedures and rules.

- (c) Mrs Prest's tweet of 10 March 2020 (Annexure 1.10 of Exhibit A) whereby she tweeted the following:

*"Absolutely, I get a \$5,000 fine and a 2y good behaviour bond for expressing my opinion, asking questions and exposing issues. Might have to do something serious so I can get away with it, what do you think would be allowable?"*

The Panel is satisfied that this tweet is improper and insulting to Racing NSW and on an objective reading suggests that Racing NSW lacks integrity, treats certain industry participants favourably, behaves inappropriately and without regard to necessary procedures and rules

and are the sort of organisation that would overlook or ignore a serious breach of the Australian Rules of Racing.

46. With respect to Charge 2, the Panel is satisfied that the charge is made out and Mrs Prest is guilty of AR 228(c).

47. Below are three tweets from Annexure 2 (there are others, but as mentioned at Paragraph 42, only 1 such tweet is required) that the Panel consider to be improper and insulting with respect to Mr V'landys in relation to his functions, powers or duties:

(a) Mrs Prest's tweet of 12 August 2020 (Annexure 2.3 of Exhibit A) whereby she tweeted the following:

*"2018 V'landys banned leading from cars or using joggers, overnight, based on investigated complaint, didn't do due diligence or any reviews. No process or appeal for the 315 trainers in NSW who lead or use joggers".*

The Panel is satisfied that this tweet is improper and insulting to Mr V'landys and on an objective reading suggests that Mr V'landys does not follow proper procedures and adhere to good corporate governance and is careless or reckless in using his power, performing his duties and in his decision making.

(b) Mrs Prest's tweet listed at Annexure 2.4 of Exhibit A, whereby she tweeted the following:

*"Peter V'landys bans & doesn't back down, even in the light of overwhelming evidence, like the jogger ban, no process or due diligence, RNSW board compliant, border ban same. If overturned after Messara steps in well then we all know for certain he only cares about top end big boys".*

The Panel is satisfied that this tweet is improper and insulting to Mr V'landys and on an objective reading suggests that Mr V'landys lacks integrity, does not follow proper procedures and adhere to good corporate governance, treats certain industry participants favourably, and has little regard for less affluent industry participants.

(c) Mrs Prest's tweet of 29 July 2020 (Annexure 2.9 of Exhibit A) whereby she tweeted the following:

*"That's because PV thinks prizemoney is more important than opportunity to race and safe facilities. Just look at the hype and bullshit around everests and eagles meanwhile way behind victoria with metal running rails still at heaps of tracks. a proven killer of horses/humans"*

The Panel is satisfied that this tweet is improper and insulting to Mr V'landys and on an objective reading suggests that Mr V'landys has no regard for the safety of industry participants, has allowed unsafe practices to continue that may kill horses or humans and lacks integrity as he values prizemoney over safe facilities and therefore the safety of industry participants.



## Penalty

48. With respect to penalties, the penalties imposed are not for the purpose of punishment, but are a means of protecting the industry, and to demonstrate to the public that racing officials will take steps to ensure that the reputation of the industry, and its integrity, are protected.
49. Deterrence is another important matter, itself related to both the protection of the sport, and the racing public. The question to be asked is what kind of penalty is required to deter the conduct involved in a particular breach of the Rules.
50. The Panel has considered these matters in assessing what penalty is appropriate in this matter, together with the subjective circumstances of the Appellant.
51. We do not agree with the submission by Mr Casselden SC that an appropriate penalty here is closer to a fine, or that the penalty imposed was manifestly excessive.
52. The racing industry cannot afford participants such as licensed trainers ignore or flout the Australian Rules of Racing.
53. Mrs Prest has received 4 prior warnings from Racing NSW in relation to her conduct and use of social media.
54. Further, on 22 October 2019, Mrs Prest was found guilty of breaches of AR 228(a) and AR 228(c) and was issued a fine of \$5,000 but the operation of such penalty was suspended if Mrs Prest did not breach the conduct rules for the next 2 years. In less than 12 months from the date Mrs Prest was found guilty of breaches of AR 228(a) and AR 228(c), Mrs Prest was again appearing before the Stewards and found guilty of a conduct related offence.
55. Mr Prest was also previously advised on 22 October 2019 that should she be found guilty of a conduct related offence in the 2 years following 22 October 2019, the \$5,000 fine would immediately apply, together with any other penalty determined by the Stewards for the relevant offence, which with the Stewards noting such penalty may include a period of suspension or disqualification. The Panel has considered these items in its assessment of penalty and they must be given sufficient weight.
56. Other important matters the Panel has had regard to in this Appeal are the following:
  - (a) Mrs Prest's character, as indicated by the 7 references included within Exhibit C;
  - (b) Mrs Prest's over 30 years as a licensed trainer and industry participant and Mr Prest's otherwise excellent record during such time; and
  - (c) Mrs Prest's genuine affection and concern for, and service to, the racing industry.
57. Taking all these relevant factors into consideration, we agree with the Stewards that the nature of the penalty to be imposed here must be a suspension of Mrs Prest's trainers licence and the Panel does not differ in its view as to the length or suspension imposed by the Stewards.

58. Where we differ from the Stewards is as to the amount of the fine. It was accepted by the Appellant that should she be found guilty of Charge 1 and / or Charge 2, the previously issued fine (from Mrs Prest's 22 October 2019 matter) of \$5,000 would automatically apply. The Panel cannot disturb this amount.
59. With respect to the fine of \$5,000 issued by the Stewards for the two breaches of AR 228(c), this, when considering the application of the previous fine in the same amount and Mrs Prest's long standing service to the industry and otherwise clean record, is a larger amount than we consider to be appropriate. The Panel is of the view that the fine to be imposed with respect to Charge 1 should be \$1,250 and that the fine to be imposed with respect to Charge 2 should also be \$1,250.
60. The Appeal against Severity of Penalty is allowed. The Penalty should remain a suspension of Mrs Prest's trainers licence for 1 month, but the fine should be reduced from a total of \$10,000 to a total of \$7,500.

### **Orders**

In the Appeal of Mrs Deborah Prest, the following Orders are made by the Panel:

1. The appeal on conviction is dismissed with respect to each of Charge 1 and Charge 2 and the conviction with respect to each of Charge 1 and Charge 2 is confirmed.
2. Appeal against severity of penalty allowed.
3. Mrs Prest's trainers license is suspended for a period of 1 month, with such suspension to commence on Friday 25 December 2020 and to expire on Monday 25 January 2021.
4. A fine in the sum of \$7,500 is imposed.
5. Appeal deposit to be forfeited.