

TASMANIAN RACING APPEAL BOARD

Appeal No 01 of 2021-22

Panel:	Patrick O'Halloran (Chair) Kim Backhouse (Deputy Chair) Rodney Lester (Member)	Appellant:	Raymond Pullen
Appearances:	Steven Shinn (on behalf of the Stewards) Anthony O'Connell (on behalf of the Appellant)	Rules:	AHRR 231(2)
Heard at:	Elwick Racecourse 6 Goodwood Road GLENORCHY TAS	Penalty:	3 months suspension (wholly suspended for 12 months) Fine of \$750 (previously suspended under the same rule)
Date:	20 October 2021	Result:	Appeal against conviction dismissed. Penalty varied to a fine of \$1000 with \$750 suspended for a period of 2 years on the condition that Mr Pullen is not found guilty of any offence under AHRR 231. Appeal against the invoking of the suspended \$750 fine is dismissed.

REASONS FOR DECISION

1. Following an incident at the Tasmanian Trotting Club meeting on 25 April 2021, Stewards conducted an inquiry into the conduct of the appellant in respect of an incident with licenced harness trainer Samantha Gangell in the stabling area following Race 3.
2. Within the inquiry held on 14 July 2021 the Stewards found the appellant had a charge to answer in relation to Australian Harness Racing Rule 231(2).

Rule 231 provides

231 (1) A person shall not: -

- (a) threaten
- (b) harass
- (c) intimidate
- (d) abuse
- (e) assault
- (f) otherwise interfere with
- (g) bully

anyone employed, engaged or participating in the harness racing industry or otherwise having a connection with it

(2) A person shall not misconduct himself in any way.

3. The appellant was advised within the inquiry that:

'..... the particulars of the charge are as follows, that you Mr Ray Pullen are and were at all relevant times a trainer licenced by the Office of Racing Integrity Tasmania and are a person bound by the Australian Harness Racing Rules, and that you were a person conducting activities regulated by licence at the Tasmanian Trotting Club meeting on the 25th of April 2021, as the trainer of Most Perfect Major and Distinctive Del, and it is the opinion of Stewards that on the 25th of April 2021 you misconducted yourself by engaging in improper behaviour towards another licenced person, that being Ms Samantha Gangell, in that you inserted yourself between Ms Gangell and Mr Michael Pullen in a forceful manner and using offensive language towards Ms Gangell'

4. The appellant plead not guilty and was subsequently found guilty on that charge.

5. On 6 August 2021, the Stewards imposed the following penalties:

- In regard to the conduct of 25 April 2021 - the appellant's training and driving licences were suspended for a period of three months. The suspension being wholly suspended on the provision that the appellant did not reoffend under AHRR 231 or 'Rules of that nature' for a period of 12 months.
- In regard to a separate penalty - that was imposed on 14 February 2021 which related to a breach of the same Rule (AHRR 231(2)) and the same complainant where the appellant - following his plea of guilty - had been fined \$1000 with \$750 of that fine being suspended for a period of two years - the Stewards invoked the \$750 fine.

6. The appellant has appealed to this Board against conviction and penalty. Within the filed 'Notice and Grounds of Appeal' it was submitted that:

I maintain that I am not guilty of the charge issued by the Stewards under AHRR 231(2).

The Stewards failed to properly assess and investigate the evidence that was before them which resulted in them forming a view that a charge was warranted.

The Stewards when determining guilt erred as the evidence before them was not of the requisite standard to make such a finding.

I also appeal the penalties that were issued against me as they were manifestly excessive given the facts of the incident and I am aggrieved that the Stewards after evaluating all the evidence decided to invoke the provisions of AHRR 256(5)(c) especially as they have a discretionary power not to do so.

Appeal against Conviction

7. When distilled into the core arguments in support of the appeal against conviction the submissions made by Mr O'Connell on behalf of the appellant were:
 - That an assessment of each individual witness statement in isolation and/or when compared to the surveillance footage demonstrated inaccuracies in each witness's account such that each aspect of the alleged particularised conduct of the appellant could not be proved to the requisite standard
 - That the absence of any evidence from Mr Michael Pullen impacted on the ability to make any proper determinations
 - That an assessment of the totality of the evidence revealed that there was insufficient evidence to prove each aspect of the alleged particularised conduct to the requisite standard
 - That within their reasons for decisions the Stewards had not identified with particularity what evidence they had relied upon in making their determination
 - (Whilst directed more toward penalty) that the incident was of limited duration and that insufficient weight had been placed on Ms Gangell's conduct during and immediately following the incident

8. In reply, Mr Shinn for the Stewards submitted in summary:
 - That there was no error made by the Stewards in the process they undertook within their inquiry and that there was sufficient evidence to find the charge proved
 - That the witnesses Nigel Pitchford and Bronte Miller had provided similar evidence which was broadly consistent and corroborative of both (i) Ms Samantha Gangell's evidence and (ii) that which was depicted in the surveillance footage evidence.
 - The witnesses Mr Bates and Mr Ashwood – who the appellant initially indicated within the inquiry as being able to provide potentially exculpatory evidence – did not provide evidence in support of the appellant's narrative as to the specific words said by each party as they 'didn't hear anything' - and to the contrary Mr Ashwood provided evidence that undermined the appellant's version when he provided he heard (more than one) raised voice.

- That what each witness could (or could not) detail as to what they heard of the verbal exchange as ‘ear witnesses’ was not a reflection on their credibility or bias in favour of Ms Gangell but was explicable in consideration of who was speaking (ie male or female voice) and the location of the incident.
- That the appellant’s credibility was impacted by the fact that the version of events he provided to the Stewards modified 2 to 3 times during the inquiry and that the versions that he provided (regarding his movement near and interaction with Ms Gangell) were at relevant times inconsistent with the surveillance footage evidence.
- That no valid complaint could be made of the Stewards process or reasons provided – noting the finite duration of the incident, and the availability of and the limited number of witnesses. Further that the published reasons clearly reflected that the Stewards had assessed the evidence in its totality and that in a practical sense the only additional information the Stewards could have added to those published decision was to list each of the individual witnesses’ names.

Ground 1

The Stewards failed to properly assess and investigate the evidence that was before them which resulted in them forming a view that a charge was warranted.

9. In regard to the findings of fact made and the evidence relied upon in making those findings - the Stewards stated within the Stewards Inquiry Decision published 6 August 2021 - that:

Stewards considered written and verbal evidence tendered from a number of witnesses, surveillance footage of the incident, and written and verbal evidence from both Ms Gangell and Mr Pullen.

The surveillance footage showed Ms Gangell and Mr Michael Pullen conversing in the stabling area, when Mr Ray Pullen moved toward them stepped in between them, facing Ms Gangell.

Witness accounts described Mr Ray Pullen stepping in between Ms Gangell and Mr Michael Pullen in what could be construed as an intimidating way, facing Ms Gangell and then using abusive language toward her.

10. In regard to the asserted failure of the Stewards to properly assess and investigate the evidence that was before them the Board notes that the lengthy transcript of the inquiry shows that the Stewards carefully and appropriately:
 - went to some lengths to ensure and confirm that the appellant (whilst unrepresented before them)
 - (i) understood the nature of the inquiry and the respective roles of each party within that inquiry,
 - (ii) had read and received the content of the written material that was before the Stewards

- (iii) was aware of his ability to ask questions of any person who had made a statement and
 - (iv) was aware of his ability to call any witnesses
- ensured that the appellant received a fair hearing by proactively contacting and hearing evidence (without notice to Ms Gangell) from witnesses that the appellant stated were important to support his version of events
11. A further submission for the appellant was that a plain reading of the witness statements of Ms Miller (who it was asserted demonstrated 'selective hearing) and Mr Pitchford (whose recall of events was not entirely consistent with the surveillance footage evidence) demonstrated a prima facie indication of bias in favour of Ms Gangell and as such from that point in the inquiry the Stewards should have commenced interrogating each witness.
12. At the outset, the Board observes that -
- as in every inquiry involving consideration of eyewitness evidence there are factors (such as the vagaries of human perception and recollection, memory distortion and suggestibility; in addition to further factors such as stress, rapidity of events, distance or lighting) that impact on the assessment of and the weight that can be given to such evidence
 - in consideration of those limitations there could be no reasonable expectation that all eyewitness accounts will have complete consistency and in the event that different witnesses provide varying but not inconsistent accounts this is not a prima facie indication of a witness displaying bias or prejudice
 - having understood the limitations of such evidence it is readily understandable why the surveillance footage evidence (although not having any audio) which captured the interaction between the parties assumed some prominence in the determination of what occurred between them. So much can be observed in the specific notation the Stewards made on this evidence in their published decision of 6 August 2021
13. Within a separate submission Mr O'Connell for the appellant submitted that in consideration of those present at the time of the altercation the Stewards could have done more to obtain a statement or call evidence from Mr Michael Pullen. It was submitted that his evidence was the 'key that is missing'.
14. Within the inquiry the appellant stated to the Stewards that *'I spoke to Mr Pullen about it and he said he wouldn't give evidence against Sam Gangell because of the friendship with Mr Eric Jacobson, he didn't want to fall out with him over that'*
15. The appellant himself further raised before the Stewards the absence of any statement from Mr Michael Pullen. It was detailed to the appellant by the Stewards that Mr Michael Pullen was not a licenced person, was unwilling

at the time to make a statement in regard to the matter, and that the Stewards had no power to compel him to attend an inquiry.

16. Having been so advised the appellant seemingly in acceptance of that position did not seek to adjourn the matter or make attempt to call that witness himself - stating to the Stewards '*so we cant get him here so we'll move on with that*'.
17. It was not submitted to the Board on appeal that the evidence of Mr Pullen had the definite ability to impact the findings made by Stewards. To the contrary it was submitted on behalf of the appellant before the Board that Mr Pullen had a 'leg in both camps' which the Board understood to mean that any evidence that the witness could have given - when taken at its highest in regard to (i) any wrongdoing or misconduct by the appellant and/or (ii) any evidence contrary to the narrative provided by Ms Sam Gangell would have been equivocal on both issues.
18. In consideration of the submissions made on behalf of the appellant in support of this ground the Board finds that the Stewards properly investigated the matter and properly assessed the available evidence they had to hand at the time of the inquiry. For those reasons, this ground must fail.

Ground 2

The Stewards when determining guilt erred as the evidence before them was not of the requisite standard to make such a finding.

19. At the outset of his submissions to the Board Mr O'Connell for the appellant did not dispute that an incident (involving the parties) had taken place - such a submission in light of the available surveillance footage evidence was sensible in the circumstances.

The evidence before the Stewards

20. Notwithstanding that concession made by the appellants' representative to the Board in determining whether there was sufficient evidence to find the charge proved it remains necessary for the Board to assess (i) what evidence was before the Stewards, (ii) the extent to which - if at all - that evidence was challenged by the appellant and (iii) what evidence was available to establish each individual particular of the interaction between the parties.

Did the appellant insert himself between Ms Gangell and Mr Michael Pullen?

21. In determining the physical movements and interaction between the appellant and Ms Gangell the Board observes that there is clear evidence to support the findings that the appellant did insert himself between Ms Gangell and Mr Michael Pullen by stepping in between them.

22. So much is clear from the movements of the appellant as captured in the surveillance video alone.
23. Notwithstanding that the Stewards within their decision described the interaction as 'stepping in between them' it was submitted on behalf of the appellant that the Stewards had erred in drafting the particulars of the original charge by characterising the movement as *'that you inserted yourself between Ms Gangell and Mr Michael Pullen in a forceful manner'*.
24. The related submission for the appellant was that the appellant's movement when placing himself in between Mr Michael Pullen and Ms Gangell was not forceful but that the surveillance footage evidence shows that he 'just inserts' himself into that position.
25. The Board observes that the use of the word 'forceful' does not necessarily convey the meaning that the actions included the use of a physical application of force – but can be taken to mean in the context of this case and the manner in which it was expressed as conveying that the positioning of the appellant between the parties was completed in an intentional and purposeful manner.

Did the appellant use offensive language towards Ms Gangell?

26. In consideration of the second aspect of the charge laid and the determination as to whether the appellant used offensive language Ms Gangell's within her statement dated 17 May 2021 provided:
 7. *Mr Ray Pullen came out from the stalls where his horses were, and stood in front of me and Mr Pullen, at first I was a bit shocked though he was listening to me talk about my stepdad then he stepped in between us, turned and face me and a (sic) said 'FUCK OFF'.*
 8. *I said 'excuse me' then Ray Pullen said 'You heard FUCK OFF ya CUNT'*
 9. *And I said 'what the fuck, your nothing but a fucking grub Ray how dare you speak to me like that' and he continued to tell me to 'fuck off'.*
 10. *I walked away and said 'your just an absolute cunt of a person ray, go kill yourself'*
27. When questioned by the stewards within the inquiry Ms Gangell readily accepted all these aspects of her statement *'Yep I said that. Yeah I take full responsibility for what I said. I just wish Mr Pullen would take responsibility for what he said'* (p 27 of 39 line 28)
28. In an assessment therefore of whether Ms Gangell was a credible and reliable witness the Board observes that having clearly outlined the words she heard the appellant direct toward her Ms Gangell did not then seek to cast herself in a blameless or non-responsive manner and in fact readily accepted that she had responded in a similar manner. Such candour supports the finding that Ms Gangell was an honest and accurate witness.

29. Of further relevance was the statement of Bronte Louise MILLER dated 24 May 2021. Within the inquiry the appellant did not seek to call or ask questions of Ms Miller¹. (p 28) Of relevance -in corroborating Ms Gangell's account Ms Miller provided:
4. *There was a man standing there with Mr Ray Pullen that Ms Samantha Gangell knew. So this man was friends with Sam's step dad and he asked Sam about how Sam's stepdad was going.*
 5. *Mr Ray Pullen stepped in between Sam and the other man and told Sam 'fuck off ya cunt'.*
 6. *I heard Sam reply but did not hear what she said.*
30. Before the Board Mr O'Connell submitted that in providing the above account Ms Miller had demonstrated a bias in favour of Ms Gangell by having 'selective hearing' in not being able to hear the content of Ms Gangell's reply in circumstances where - he submitted - Ms Miller would have been able to hear the specific words stated by Ms Gangell.
31. In circumstances where the Stewards already had before them evidence of the content of Ms Gangell's reply from Ms Gangell herself (which did not cast her in an altogether favourable light) it lacks foundation to reason that Ms Miller's inability to recount the content of Ms Gangell's reply demonstrated bias in favour of Ms Gangell or was an example of minimising any contributory wrongdoing by Ms Gangell.
32. The inquiry further had before it a witness statement from Mr Nigel PITCHFORD dated 20 May 2021 which further corroborated Ms Gangell's account of what had occurred. In summary the witness provided that he had observed Sam Gangell speaking with an older gentleman (Mr Michael Pullen) before the appellant approached Ms Gangell and instigated a verbal altercation '*at an above talking level, raised voice, not quite yelling and people 10 meters away did not hear*'. Whilst the particulars of the words he heard stated by the appellant differed to those outlined by Ms Gangell the words and phrases he heard could also readily be described as offensive language.
33. Relevantly other evidence included that immediately following the interaction with the appellant Ms Gangell was:
- observed by others to be distressed (ref Denise GANGELL², Nigel PITCHFORD) and/or
 - disclosed to witnesses aspects of the verbal altercation she had just had with the appellant (ref Denise KINGSTON, Ben YOLE)
34. The Board observes that it is of relevance that Ms Gangell disclosed the incident to witnesses shortly after it occurred and presented as distressed and upset when doing so. Such 'recent complaint' or 'complaint evidence'

¹ Ref p 28 of 39

² Denise GANGELL providing within her witness statement that she received a call from her daughter at approximately 6.30pm from the ladies drivers room in hysterics

can properly be used in assessing the credibility and consistency of conduct of Ms Gangell and her evidence.

35. **The appellant's evidence** as provided by him directly to the Stewards – in summary - was that:
- Having had a partially suspended fine imposed on him in February 2021 he was conscious of keeping away from Ms Gangell
 - That on this date he *'never left his horses and she crossed over and proceeded to stand in front of my horses and I walked back in between her and Michael and excused myself and Michael stepped back to let me through, because I didn't want her near my horses or touching them'* – before then politely asking Ms Gangell to keep away from him ³.
 - That in response to this request Ms Gangell's became verbally abusive toward him
 - That he *'didn't answer to it and that's why I turned me back on her. I didn't want to talk to her, and all I done was ask her to go across the other side. I never swore at her. I did say piss off at one stage when she kept coming back at me. Not once did I raise my voice at her. So that's pretty well her⁴*
 - He later provided *'(Michael Pullen) acknowledged her and we went back to our conversation and then she walked over and butted into our conversation. I just ducked briefly to the left to check on one of the horses and came back and walked in between them, and then I turned my back on Sam because I didn't want to have any trouble with her and I asked her would she please go back over to her own side.....and then she proceeded to walk away and for some reason....then she proceeded to turn around and as I said she started to abuse me and then she walked a little bit further, turned around and abused me again ...'*⁵
36. Within the Steward's inquiry the appellant further indicated that there were witnesses who could corroborate his version of what was said: *'There was a couple of witnesses that heard it but I didn't feel like asking them to take a day off work to come to it'* (p 8 of 39 line 34 to 35) (and again at p 11 of 39 lines 36 to 39)
37. As noted within the reasons under heading of 'Ground 1' the Stewards – notwithstanding that potential witnesses named by the appellant had not previously made any statements - were able to consider evidence from those witnesses – namely a Mr Bate and Mr Ashwood.
38. Mr Bate's brief unchallenged evidence was that in the stables in the laneway *'I was just walking through and then I heard just a raise of voices, a couple of voices and I just kept on walking'*⁶ – and that he then looked around (to the source of the voices) and saw Ms Gangell, the appellant, and 'Ray's uncle'.

³ Ref P 5 of 39 , lines 31 to 51 , see also pp 9-10

⁴ Ref p 7 of 39 , lines 18 to 22

⁵ Ref p 10 of 39, line 6 to 15

⁶ Ref p 14 of 39, lines 22 to 24

39. Mr Ashwood also gave brief and unchallenged evidence that - when positioned about four or five horses down from Mr Pullen's he heard a *'bit of a verbal conversation between Sam and Mr Pullen, and it went from there and then she stormed off'*. And clarified it was *'just a verbal thing between both of them'* where they were *'just probably shouting at each other'*.
40. Of note therefore was that both these witnesses contradicted the appellant's version of events regarding him (i) *'Not once did I raise my voice at her'*, (ii) only ever speaking politely with Ms Gangell and/or (iii) that Ms Gangell raised her voice at him unprompted.
41. The Board accepts the evidence of Ms Gangell in regard to the content of the verbal exchange as a frank and candid account of what was said by each of them once the appellant was standing in close proximity to her. The Board - for the inconsistencies noted above - does not accept the evidence of the appellant on this issue
42. In consideration of the evidence of the other witnesses - particularly Mr Bates and Mr Ashwood - the Board finds that the appellant said the words denoted by Ms Gangell with a raised voice.

Was that behaviour improper?

43. In a discussion with the Board as to the nature of the interaction and incident - and with reference to the Steward's decision that they found the interaction to have occurred *'in what could be construed as an intimidating way'* Mr O'Connell submitted that the behaviour could not be characterised as such as Ms Gangell had not explicitly stated this within her witness statement or in any oral submission made to the Stewards.
44. In consideration of the:
- Location of the incident
 - The number of persons within the immediate vicinity when the incident occurred
 - The respective differences in ages between Ms Gangell and the appellant
 - The respective differences in years of experience and standing within the industry between Ms Gangell and the appellant
 - The manner in which the appellant physically interacted with Ms Gangell and others at that location at that time
 - The content and the volume in which the words stated by the appellant were made to Ms Gangell

The Board is satisfied that appellant's behaviour was improper - and noting the distressed state Ms Gangell was observed to be in immediately following the incident resulted in Ms Gangell feeling intimidated.

45. The appeal against conviction is dismissed.

Appeal against sentence

46. As stated above - regarding the conduct of 25 April 2021 - the appellant's training and driving licences were suspended for a period of three months. The suspension being wholly suspended on the provision that the appellant did not reoffend under AHRR 231 or 'Rules of that nature' for a period of 12 months.
47. In specific regard to that penalty Mr O'Connell submitted that in the event that the appellant was found to have breached the stated rule that the breach was negligible or low-level conduct (of that type).
48. In specific regard to the invocation or activation of the previously suspended \$750 fine it was submitted that the suspended penalty should have been re-suspended in its entirety.
49. Across both penalties it was submitted that the penalty imposed demonstrated that the Stewards had not given sufficient weight to the mitigating factors of:
 - The reputational damage the imposition of these penalties would have on the appellant
 - His hitherto good record and the absence of 'conduct charges' of this type and charges generally over a long and established professional involvement within the industry
 - That the proceedings had caused the appellant to seriously consider his ongoing involvement within the industry
50. Mr Shinn for the Stewards submitted
 - That when viewed in isolation the appellant's conduct of the 25 April 2021 possessed a level of seriousness in and of itself - noting that at that time and place the appellant had the simple option to step away and remain distanced from Ms Gangell
 - That the altercation had had a 'very negative effect' on Ms Gangell
 - That the principle of general deterrence had primacy with the need to 'send a signal to the industry that (conduct of this sort) won't be tolerated'
 - That - in consideration of the offending in February 2021 - the principle of specific deterrence was enlivened and attracted greater prominence.
 - That the invoking of the previously suspended fine in full was appropriate noting the breaching offence occurred within approximately two months of the earlier fine being suspended and was breached with a breach of the same rule and the same complainant.

Determination of penalty

51. In a determination of penalty, the Board endorses several of the factors stated by the Stewards as relevant principles regarding penalty (quoted below from their decision dated 6 August 2021).

52. Regarding the conduct and/or the basis on which the appellant falls to be penalised:
- *'The appellant walked approximately five metres and physically placed himself between Ms Gangell and Mr Michael Pullen and stood face to face with Ms Gangell. The physical aspect of this matter is a significant contributing factor. This is much more intimidatory than a simple verbal altercation'*
 - *'Mr Pullen abused Ms Gangell with no provocation from Ms Gangell'* - for completeness the factual basis for sentence includes that the appellant did state the words alleged by Ms Gangell in her original statement
 - *'A penalty needs to act as a deterrent, both personally and to the industry as a whole, in order to uphold the image and integrity of the industry'*
 - *'ORI does not tolerate this kind of behaviour towards any person'*
 - The observation that - *'race meetings are a place of work, and that all participants have a right to feel safe when attending race meetings'*
53. Regarding circumstances personal to the appellant:
- That the appellant plead not guilty to the matter and *'His submissions in relation to the not guilty plea'* - ie that he could not (as he had done for the February matter) call upon his plea of guilty as a mitigating factor
 - The prior matter of 14 February 2021 which was for a breach under the same rule which also involved Ms Gangell
 - *'His relevant personal circumstances'* - which the Board notes from the Stewards inquiry included:
 - o *His offence record prior to this incident. He had no offences under this rule since 2002'*
 - o his limited finances, and
 - o from the appeal hearing the referees speaking to his good character
 - That the appellant *'did not consider the outstanding fine as a deterrent from acting in this manner'*

Precedent

54. The Board has given careful consideration as to whether there is an established 'penalty range' or 'current penalty practices' for this charge and specifically the Steward's comment that one of the factors they took into account was the *'Penalty precedents imposed throughout Tasmania and indeed Australia of a similar nature'*.
55. Regretfully no expansion or clarification was provided by the Stewards as to which precedents or line of authority was relied upon within that consideration.
56. Within the appeal both parties⁷ provided to the Board past decisions to demonstrate what disposition or range of penalties had been imposed for the same or similar charges.

⁷ From Mr Shinn for the Stewards (i) Lisa MILES decision of VRT dated 31 March 2021, (ii) Tony CAMILLERI decision of Harness Racing NSW dated 12 May 2021, (iii) Darren HRYHOREC,

57. Whilst in consideration of AR 228(b) the Board also notes the comments of then Chair Tom Cox in the appeal William Ryan (Appeal No.07 of 2019/20) are apposite.
58. Accepting of course that each case turns on its facts a review of similar cases reveals that the most common disposition imposed for misconduct matters involving a broad variety of verbal altercations are financial penalties.

Discussion

59. That observation leads therefore to the conclusion that - notwithstanding (i) the findings the Board has made in regard to the conduct which satisfied the misconduct charge, (ii) the need for general deterrence and (iii) specific deterrence - the penalty imposed for the conduct committed on 25 April 2021 (albeit that such a suspension was suspended) was excessive.
60. Before turning to what variation should be made to that penalty - for the purposes of totality - it is necessary to consider whether there was any error in the Stewards decision 'invoking' or activating the portion of the fine that had been suspended.
61. AHRR 256(5)(c) relevantly provides (*emphasis added*)

*If the offender breaches any term or condition imposed during the period of suspension then, **unless the Controlling Body or Stewards otherwise order, the suspended penalty thereupon comes into force and penalties may also be imposed in respect of any offence constituted by the breach.***

62. Whilst it's correct - as submitted by Mr O'Connell that the rule does give Stewards a discretionary power not to invoke or activate - it is clear that the intention of the rule as drafted is that in the event there is a breach of the suspended penalty the suspended penalty must come into force (i.e. activated or invoked) *unless* '...the Stewards otherwise order'.
63. The plain reading interpretation of that section also expresses that the suspended penalty shall come into force **in full** or put another way in circumstances where a suspended penalty is breached the starting point is that the suspended penalty will 'come into force' in its entirety.
64. The rule is silent as to what threshold or considerations the Stewards should consider when considering whether to depart from the default position of not to activate the entirety of the suspended penalty.

Matthew MAGUIRE, Robin MAGUIRE, Karen MAGUIRE decision of Harness Racing SA dated 30 October 2019, (iv) Haydon GRAY , Derrick KRFFT decision of Harness Racing Victoria dated 14 May 2020, (v) Anton GOLINO, Matthew CRAVEN decision of VRT dated 12 May 2021

From Mr O'Connell - Michael PEARCE, Natasha CROFT ORI Stewards dated 29 September 2021, Terry EVANS ORI Stewards dated 4 July 2021

65. With that reading of that rule and in the circumstances of this case - including but not limited to the proximity in time of the Appellant breaching the same rule against the same complaint the Board is of the view that it was entirely appropriate to invoke or activate the suspended penalty.
66. The orders of the Board are
- The decision to suspend the appellant's training and driving licence for a period of three months (with that suspension being wholly suspended on the provision that he does not re-offend under that rule or rules of that nature for a period of 12 months) is varied to a fine of \$1000 with \$750 of that fine being suspended for a period of two years on condition that the appellant not reoffend under any part of AHRR 231)
 - The \$750 fine which was previously suspended for the breach of AHRR231(2) on 14 February 2021 is ordered to come into force (ie ordered to be paid in full)
67. The 'total effective penalty' or practical effect of the financial penalties therefore is that the appellant is required to pay the total sum of \$1000.
68. The decisions of the Stewards having been varied, the Board orders pursuant to ss 34(1A), (2), (4A) and (4B) of the *Racing Regulations Act 2004* that 25 per cent of the Appellant's prescribed deposit is forfeited to the Secretary of the Department and that the Appellant pay 25 per cent of the cost incurred in the preparation of the transcript of the Steward's inquiry.

DATED: 1 February 2022.