

# TASMANIAN RACING APPEAL BOARD

Appeal No. 05 of 2020/21

<b>Panel:</b>	<b>Tom Cox (Chair) Wendy Kennedy (Member)</b>	<b>Appellant:</b>	<b>Taylor Ford</b>
<b>Appearances:</b>	<b>Steven Shinn (on behalf of the Stewards) Anthony O'Connell (on behalf of the Appellant)</b>	<b>Rules:</b>	<b>AHRR 156(2)(a)</b>
<b>Heard at:</b>	<b>Lands Building Hobart Tasmania</b>	<b>Penalty:</b>	<b>Suspension for 4 race meetings and \$200 fine</b>
<b>Date:</b>	<b>3 November 2020</b>	<b>Result:</b>	<b>Varied to a suspension for 2 race meetings</b>

## REASONS FOR DECISION

1. At the commencement of this hearing, the appellant sought leave to withdraw her appeal against the breach of *Australian Harness Racing Rules* (AHRR) and confined her appeal to the severity of penalty imposed by the Stewards. The Board now grants leave to the appellant to withdraw the appeal pursuant to s.30(3) of the *Racing Regulation Act 2004*.
2. The appellant was fined \$200 and suspended for four race meetings for applying the whip otherwise by only using a flicking motion contrary to AHRR 156(2). That rule was amended, effective 1 September 2020 to clarify what was meant by using the whip with a "*wrist only flicking motion*". The amendments provided that that phrase means:
  - (a) ensuring no force was generated by the use of the elbow or shoulder when applying the whip;
  - (b) the forearm is not raised beyond forty-five degrees relative to the racing surface;
  - (c) not applying the whip with overt force.
3. The appellant accepts that on at least two occasions she applied the whip with her forearm raised beyond forty-five degrees relative to the racing surface. Although the amendments only became effective on 1 September 2020, the rule prohibiting the use of the whip otherwise than by a wrist only flicking motion has been effective for some years. In the lead-up to the

amendments the Stewards were active in advising the drivers, including the appellant, of the need to comply with the rule by only using a flicking motion of the wrist. The Chairman of Stewards specifically spoke to the appellant, among other drivers, earlier in the year and has constantly reminded the appellant of the need to comply with the rule and the manner or motion by which she should use her wrist to apply the whip. Despite those reminders, the appellant has struggled since 1 September to comply with the rule. Indeed, she has been in breach of the rule on four occasions. On the first occasion she breached the rule during three races. As a result she was cautioned. On the next occasion she was in breach of the rule during one race. As a result she received a reprimand. On the third occasion she was in breach of the rule in one race. As a result, she received a fine of \$200 which was wholly suspended. On the fourth occasion, being the subject of this appeal, she received \$200 fine and a four-race meeting suspension.

4. There is a factual dispute between the parties as to why she applied the whip in the way that she did during this race. It is common ground that as the field approached the 1000 metre point, the appellant commenced a three-wide run from towards the rear of the field. It is also common ground that as the appellant was leaving the back straight on the final occasion, she applied the whip contrary to the rules. At this point the appellant says that her horse was hanging out and that she corrected it by using the whip. By contrast, the Stewards say that at the point in time at which she applied the whip the horse's head had turned inwards and it was unnecessary for any correction to be made.
5. At the inquiry before us the appellant accepted that the horse's head had turned back inwards after hanging out, although she was wary of the driver to her inside and so kept her right hand raised above with pressure on the rein from the right to keep the horse from moving further in. It was at this point that she applied the whip on two occasions.
6. The slight difference in the versions of events reflects a difference in how this Board may categorise the conduct. The Stewards say that the appellant's conduct was a blatant breach of the rules whereby she applied the whip merely to gain an advantage. At best, it may be said for the appellant, now that she concedes that the horse was not hanging out, is that the conduct was opportunistic.
7. It seems clear to us that the appellant is having great difficulty in complying with this rule and would benefit from some mentoring and extended practice on how to apply the whip within the meaning of the now amended AHRR 156(2). This Board does not have the power to make orders requiring mentoring or training or the like, however, we note that the Stewards may enter into an arrangement with a mentor to see that a driver obtain specific training and assistance with a particular aspect of their driving and, in return for the driver complying with that mentoring program, exercise their discretion to suspend half of any penalty imposed for a breach of this type of rule. We would actively encourage the Stewards to consider such a course in a case such as this. However, that has not occurred and it remains for this

Board to determine whether or not the penalty the Stewards imposed was manifestly excessive. It is important to bear in mind the purpose of this rule. It is a rule that has been discussed and debated at length between integrity teams across all jurisdictions in an effort to formulate a rule that is easy to understand, simple to comply with and straightforward to police. The wrist only flicking action is designed to limit the force with which a whip can be applied while still allowing its principal use as a means of communication between the driver and horse. The limitation of force both perceived and actual is the crux of the whip rule amendments. I note some of the comments from a recent article from Australian Harness Racing which provides in part “*The social licence for harness racing to operate is hard fought among the changing expectations of the wider community – and needs to be protected. Taking a proactive approach to self-moderation as an industry is critical to our future.*”

8. The Stewards from various jurisdictions have formulated penalty guidelines. In this jurisdiction the guidelines provide as follows:

<i>1<sup>st</sup> Offence:</i>	<i>Minimum \$200 fine</i>
<i>2<sup>nd</sup> Offence within 2 months period:</i>	<i>Minimum \$400 fine</i>
<i>3<sup>rd</sup> Offence within 2 months period:</i>	<i>Minimum 2 race dates suspension of licence to drive in races plus \$200 fine</i>
<i>4<sup>th</sup> Offence and greater within 2 months period:</i>	<i>Minimum 4 race dates suspension of licence to drive in races plus \$400 fine</i>

9. Whereas by contrast in the New South Wales, the penalty guidelines provide as follows:

<i>1<sup>st</sup> Offence</i>	<i>Fine \$200</i>
<i>2<sup>nd</sup> Offence – if a driver reoffends within 60 drives or a period of 60 days, whichever occurs first, of the 1<sup>st</sup> Offence</i>	<i>Fine \$400</i>
<i>3<sup>rd</sup> Offence - if a driver reoffends within 60 drives or a period 60 days, whichever occurs first, of the 2<sup>nd</sup> Offence</i>	<i>Fine \$400 and 7 days suspension</i>
<i>4<sup>th</sup> Offence - if a driver reoffends within 60 drives or a period of 60 days, whichever occurs first, of the 3<sup>rd</sup> Offence</i>	<i>Fine \$1,000 and/or 14 days suspension (at the discretion of the Stewards)</i>
<i>5<sup>th</sup> Offence - if a driver reoffends within 60 drives or a period of 60 days, whichever occurs first, of the 4<sup>th</sup> Offence</i>	<i>21 days suspension</i>

10. This Board has said on many occasions that penalty guidelines need not be followed and that is so, because every case turns on its facts and, invariably, the guidelines are produced in circumstances where there have been amendments to the rules. In our view the stewards have, with good reason, been lenient on the appellant over the first three occasions since the amendments to the rule. However, the imposition of a fine of \$200 and four race meetings on her fourth breach of the rule is, in our view, too high in the circumstances of this case. The appellant needs assistance and training in order to break what appears to be a habitual response rather than a lengthy

period of suspension. In our view a two-race meeting suspension is adequate.

11. In accordance with section 34 of the *Racing Regulation Act 2004* the Board orders that 50% of the appellant's deposit be forfeited to the Secretary of the Department and the appellant is ordered to pay to the Secretary of the Department 50% of the cost of preparing the inquiry transcript.