

TASMANIAN RACING APPEAL BOARD

Appeal No. 08 of 2020/21

Panel:	Kate Cuthbertson (Chair) Wendy Kennedy (Member) Rodney Lester (Member)	Appellant:	Scott Ford
Appearances:	Anthony O’Connell (on behalf of the Appellant) John King (Director of Racing)	Rules:	N/A
Heard at:	1 Civic Square LAUNCESTON TAS 7250	Penalty:	N/A
Date:	9 December 2020	Result:	Dismissed

REASONS FOR DECISION

1. On 9 December 2020, the Tasmanian Racing Appeal Board (the Board) heard an appeal filed by Scott Ford on 18 November 2020 against the Director of Racing’s refusal to grant him a C Grade Trial drivers’ licence. The appellant applied for that licence by application filed 17 September 2020. The appellant’s licence was refused by the Director on the basis that he was not a fit and proper person to hold a licence within the racing industry.
2. This Board previously affirmed a determination by the Director that the appellant was not a fit and proper person to hold a licence within the racing industry in its decision in Appeal No. 4 of 2016/17 handed down on 10 November 2016. The appellant’s assertions that he has since reformed and is now fit and proper to participate in the industry was not accepted by the Director in his decision dated 10 November 2020. The appellant is appealing against this decision.

The evidence

3. The following information was made available to the Board prior to the hearing:
 - (a) The notice and grounds of appeal filed on 18 November 2020;
 - (b) The appellant’s licence application form received by the Office of Racing Integrity on 17 September 2020;

- (c) Transcript of the Licencing Panel interview held with the appellant on 30 October 2020;
- (d) Letter to Mr Ford from the Director of Racing dated 10 November 2020;
- (e) Tasmanian Harness Licence Application Requirements 2020/21;
- (f) TRAB decision Scott Ford Appeal No. 12 of 2015/16;
- (g) TRAB decision Scott Ford Appeal No. 4 of 2016/17;
- (h) Transcript of Licensing Panel interview with the appellant held on 19 June 2020;
- (i) Criminal History Check Certificate dated 12 March 2020 in respect of the appellant;
- (j) Statement of Stipendiary Steward Investigator Laura Lord dated 18 June 2020;
- (k) Statement of Stipendiary Steward Investigator Laura Lord dated 5 August 2020;
- (l) Statement of Heather Edgecombe, Stipendiary Steward, dated 30 November 2020;
- (m) Statement of Stipendiary Steward Investigator Dominic Tyson dated 17 June 2020;
- (n) Statement of Shane Spilsbury, Operations and Support Officer with ORI dated 7 July 2020;
- (o) Letter to appellant from the Director of Racing dated 1 July 2020;
- (p) Letter to the Director of Racing from Anthony O'Connell dated 5 July 2020;
- (q) Email from the Director of Racing to Anthony O'Connell dated 7 July 2020;
- (r) Letter from the appellant to the Director of Racing undated;
- (s) Letter from Anthony O'Connell to the Director of Racing dated 21 October 2020;
- (t) Emailed reference authored by Leigh Gray dated 8 October 2020;
- (u) Emailed reference authored by Rodney Plunkett dated 7 October 2020;
- (v) Reference authored by Eric Jacobson dated 8 October 2020;
- (w) Letter from Glyn Spaulding, psychologist dated 8 October 2020;

- (x) Email addressed to the Director of Racing authored by Karyn Ford dated 7 October 2020;
 - (y) Letter authored by Dr Greg Pitt dated 24 September 2020;
 - (z) Certificate confirming the appellant's completion of the Equips Addiction Program dated 27 May 2017;
 - (aa) Offence report for the appellant printed 27 November 2020;
 - (bb) Letter of attendance from Positive Counselling Solutions dated 9 December 2020.
4. The Board also heard from the appellant and his representative during the course of the appeal and received submissions from the Director of Racing. The Board has also had regard to the decisions in previous licensing appeals heard by the Integrity Assurance Board and the TRAB concerning the appellant, including those noted in the list of evidence above and IAB Appeal No. 1 of 2014/15.

The Director's power to refuse to grant a licence

5. Section 6 of the *Racing Regulation Act 2004* (the Act) relevantly provides that the Director of Racing has the following responsibilities:
- (a) Regulating and controlling racing to ensure that it is conducted with integrity (s.6(1)(a)); and
 - (b) Granting licences under the Rules of Racing (s.6(2)(f)).
6. AHRR.90 in turn governs the grant of licences in the harness racing industry. Relevantly, that rule provides as follows:
- AHRR.90:
- (4) The Controlling Body [in this State the Director of Racing] may grant a licence for such period and upon such terms and conditions as it thinks fit.
 - (5) An application for a licence may be refused by the [Director] without assigning any reasons.
7. Part 4 of AHRR sets out particular requirements for certain licences and a general requirement that a person satisfy any medical requirements attaching to a licence. Otherwise, the Act and rules are silent as to the factors to be taken into account when deciding whether to grant or refuse a licence. More particularly, there is no explicit legislated requirement that a person be fit and proper to be granted a licence.
8. The rules in the main specify the knowledge and experience requirements for each licence category. For example, a Grade C Drivers' Licence is not to be granted to a person younger than 15 years and a person seeking a Grade

C or Grade A Trainers' Licence needs to provide evidence of their financial capacity to operate a training establishment.

9. Given the Director's function to regulate and control racing to ensure that it is conducted with integrity, whether a person is considered fit and proper to participate in the industry is clearly a relevant consideration.
10. The Director has developed a set of criteria that is applied when considering licence applications. Those criteria are set out in the Tasmanian Harness Licence Application Requirements 2020/21 (the Requirements). Under the heading "Suitability of Licence Holders", the Requirements provide that an applicant must be assessed as a fit and proper person to be granted or continue to hold a licence. The Requirements also provide that licence holders and applicants for licences must meet and continue to meet the requirements to be fit and proper to hold a licence in Tasmania. The Requirements then specify the following criteria that are considered when assessing whether a person is fit and proper:

"Fit"

To be considered "fit" a person must:

- *Be physically fit to perform the duties of a particular licence category;*
- *Have the stated skills and knowledge required for a licence;*
- *Be able to display the appropriate level of mental fitness to make correct decisions in relation to behaviour by demonstrating a continuing moral commitment to good behaviour and good character.*

The Director may require an applicant to provide appropriate evidence of their fitness, skills and knowledge through testing, training and assessment or other means.

"Proper"

The requirements to be considered "proper" relate to the general level of integrity of the person. It is primarily concerned with general behaviour and conduct inclusive of:

- *History;*
- *Reputation;*
- *Integrity;*
- *Honesty;*
- *Character;*
- *Regard to laws and community values.*

Propriety will be assessed on the basis of general behaviour and conduct by an applicant, or an executive officer of an applicant, in particular any evidence of:

- *An applicant's previous racing disciplinary history;*
- *Any previous acts of dishonesty by the applicant or an executive officer of the applicant;*
- *Improper behaviour towards an official or employee of the Office of Racing Integrity, Tasracing or a club and other licence participants or animals;*
- *Any conduct or statement made by the applicant, or an executive officer of the applicant, that would impact on the applicant's reputation and more broadly on the reputation of other licence holders, the Director, an official or employee of the Office of Racing Integrity, Tasracing, a club or the Tasmanian racing industry as a whole;*
- *An ability of the applicant, or an executive officer of the applicant, to consistently operate within the requirements of the Racing legislation, a standard, policies of the Office of Racing Integrity or Tasracing, the Rules of Racing and any other laws and regulations in the State of Tasmania, another State or the Commonwealth, including any gambling and gaming legislation;*
- *Bad behaviour and/or misconduct by the applicant, or an executive officer of the applicant, including police records, court records and letters of complaint regarding the licence holder;*
- *A failure to adequately demonstrate sufficient and acceptable financial means to fulfil the requirements of the licence;*
- *Where a licence holder or applicant for a licence has been convicted of or pleaded guilty to an offence in Tasmania, any State or Territory of Australia or in any other country.*

Exclusion due to certain convictions

The Director may deem that a person is not a "fit" and "proper" person and thus revoke or not grant a licence if:

- *The applicant has been convicted of an offence (the conviction), and the conviction remains on the licence holder's criminal record, against a law in Tasmania or another State or Territory which relates to:*
 - *Dishonesty, fraud, forgery, match fixing;*
 - *Animal welfare or cruelty to animals;*
 - *Trafficking and supply of drugs, illicit or illegal substances;*
and

The Director may at any time, including on application, request that a licence holder applicant provide a current (dated within the last 3 months) national police certificate. Where a corporation is the applicant, all executive officers of the corporation may be required to submit such certificate.

All convictions whether against a law in Tasmania or another State, stated in a national police certificate, will be considered relevant to the application for a licence. An offence committed over 10 years ago may also be considered relevant to the broader assessment of whether an applicant is “fit” and “proper” to be granted a licence.

Where a conviction is recorded, the Director may request an interview with the applicant to discuss the conviction.

11. The Requirements set out a number of criteria which are clearly aimed at regulating the harness racing industry as a whole by requiring that licensed participants possess the necessary qualities so that the integrity of the industry is not undermined.

The Director’s reasons for refusal

12. In his letter to the appellant dated 10 November 2020, the Director referred to previous findings by Directors that the appellant was not a fit and proper person to hold a licence having regard to the extent to which he was able to abide by the industry’s rules and policies. It was noted that these views had been upheld by this Board in its November 2016 decision. In that decision, the Board noted the appellant’s history of rule breaches and his inability to regulate responses to those in authority.
13. The Director noted that the appellant had claimed to have changed since then but emphasised that his past behaviour was still relevant. In particular, it was noted that the appellant claimed to have changed since he had beaten his drug addiction. The Director indicated that he was in a position where he had to assess the reality of those claims particularly against the background of recent actual interactions between appellant and those that regulate the industry.
14. Specific reference was made to what occurred during the course of a stable inspection in June 2019 where it was alleged that the appellant made references to firearms and assaults. The Director stated that this was unacceptable and that the actions were a clear indication that the appellant did not respect those in authority. The Director also formed the view that the appellant had been untruthful in his version of those events during his licencing panel interview in June 2020 where he denied saying the words, “You’re lucky I didn’t shoot you”.
15. Further evidence of his poor judgement was said to have arisen from derogatory comments he made regarding Racing Integrity staff following that panel interview in June 2020.

16. The Director also expressed concern that the appellant had apparently continued to drive without a licence and was untruthful about that during the licence panel interview.
17. On that basis, he indicated he was not convinced that the appellant had made the claimed changes and believed it would be detrimental to the Tasmanian racing industry to grant him a licence.

The appeal

18. This appeal before the Board is pursuant to s.28A(1)(a) of the Act. The onus is on the appellant to demonstrate that the Director's decision to refuse him a licence ought be reversed. In considering this appeal, the Board is not limited to the materials that were before the Director when the decision was made, but may have regard to all the material before it at the hearing, including evidence given during the course of the appeal itself.
19. AHRR 90(6)(b) provides that a licence may be suspended or cancelled by the Director where the Director is satisfied that the person holding the licence is not a fit and proper person to be associated with harness racing. As previously noted, no such requirement is specified in respect of the decision to grant or refuse a licence. The specific reference to this requirement in AHRR 90(6) further fortifies the Board's view that the Director is correct to require that a person is fit and proper to be associated with the harness racing industry before *granting* a licence.
20. In *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, the High Court considered what was meant by the term "fit and proper person". At [36] of the joint decision of Toohey and Gaudron JJ, their Honours stated as follows:

The expression "fit and proper person", standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of "fit and proper" cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not a fit and proper person to undertake the activities in question.

21. The context in which the appellant seeks to operate is the harness racing industry. He has applied for a Driver C (Trials) licence. If granted, the licence would permit the appellant to perform stable hand duties, drive at trials, carry out trackwork on registered tracks and drive at any meeting to

prepare a horse to race at that meeting otherwise than during the horse's immediate pre-race preliminary. As such, the appellant would expect to have considerable contact with horses, other participants and those responsible for undertaking regulatory functions in the harness racing industry.

22. The harness racing industry is a regulated industry that must maintain both the perception and the reality of high standards of integrity. So much is reflected in the functions of the Director who is responsible for ensuring that the industry is conducted with integrity. Racing integrity, and the integrity of participants in the industry, is a clear matter of interest.

Appellant's licencing and disciplinary history

23. The appellant has been driving since 1985 when he was 20 years old. Apart from periods of suspension and disqualification, the appellant was an active participant in the racing industry from that time. He was first suspended for a significant period in 1989 due to failing to take all reasonable and permissible measures. The period of suspension imposed was 6 months. An appeal against that decision was dismissed. Although the appeal decision is not available, the length of the suspension ultimately imposed suggests that there were integrity issues associated with the drive.
24. The appellant has been disqualified for breach of prohibited substance rules in August and October 2000, December 2003, and June 2011. In March 2003, the appellant was suspended for having alcohol or a drug of abuse in his body when carrying on or purporting to carry on a licensed activity or official duties at a meeting. The offence report records that he was required to provide a clean urine sample and attend drug counselling. In March 2016, he was found guilty of failing to deliver a urine sample.
25. Further, his record is replete with examples of him being found guilty of engaging in misconduct, frequently towards stewards. There are at least 13 instances in his record of misconduct generally and 11 involving misconduct towards stewards or other officials. That behaviour has endured from at least 1987 until 2014.
26. In 2016 the appellant was convicted in respect of a loading a horse onto a float when he was not licensed to do so. In 2017, the appellant was found guilty on two separate occasions of driving a horse on a racecourse or training track when not licensed to do so. He was warned off for a total of 13 months as a consequence.
27. In September 2014, the Integrity Assurance Board heard an appeal against a decision of the Director to revoke his driver licence for a period of 12 months and require him to attend an anger management course. The Director's decision was based on a finding that the appellant was not a fit and proper person to hold a licence following his misconduct during the course of a Stewards' Inquiry held in respect of his breach of the whip rule and his later behaviour in interrupting an inquiry involving Nathan Ford. It was alleged that the appellant swore and directed offensive language towards Stewards at the end of the first inquiry, then slammed a door so hard that windows in

building shook and later behaved in a threatening manner towards Mr Crowther. The Director formed the view that the appellant posed a health and safety risk to staff of the Office of Racing Integrity.

28. On appeal, the Integrity Assurance Board found that the appellant was not currently a fit and proper person to be licensed within the Tasmanian racing industry. His licence was cancelled pursuant to the rules. It was noted that the appellant had breached rules arising from his conduct on the track and towards Stewards on many occasions and not learnt from previous penalties imposed. The Board found that the appellant's record demonstrated a general disregard for the rules of racing. In particular, it was noted that despite having recently been allowed to re-enter the industry after serving a long period of disqualification for breaches of the prohibited substance rules, the appellant remained unable to regulate his response to those in authority. Finally, the Board indicated that if and when the appellant was able to satisfactorily demonstrate that he had addressed his ability to deal with those charged with the responsibility of enforcing the rules of racing, he was free to apply for a licence and seek to persuade the Director that he is a fit and proper person to hold a licence within the industry. The Board did not consider that it had any power to impose a timeframe within which the appellant could bring a further licence application.
29. In February 2015, the appellant was granted a non-race day stable hand's licence by the Director. He had evidently applied for, but been refused, a Driver A licence. In September 2015, the appellant again lodged an application for a Driver A or Driver B licence. That application was refused. The appellant appealed the Director's decision to refuse that application. That appeal was heard in February 2016. At that stage the appellant was licenced as a non-race day stable hand. The Director had reasoned that it was necessary for the appellant to be licensed at a lower category in order to demonstrate his ability to work within the rules of racing and, particularly, his ability to accept the authority of Stewards.
30. The Board considered that because the appellant had been granted a stable hand licence he had presumably satisfied the licensing authority that he was a fit and proper person for the purpose of that licence. The Board noted that the appellant had participated in counselling with a psychologist, Mr Spaulding, who had concluded that the appellant seemed to have good awareness and decision-making regarding his anger management and had shown good knowledge of triggers, early warning signs, planning, analysis and problem solving relating to anger. Mr Spaulding's report was not challenged by the Director during the course of the appeal.
31. The majority of the Board determined that the appellant ought to be granted a driver's licence. In reaching that decision, the Board noted that one of the reasons the appellant had been removed from the industry related to his inability to manage his temper in line with requirements of participants, that expert opinion suggested that the appellant now had an understanding of his weakness in the area and some strategies to manage it and that there was no evidence that he was otherwise unfit or improper and had already been

accepted as being fit and proper for the purposes of a stable hand licence. The Board noted that their conclusion was not reached lightly. Finally, the Board noted that should the appellant breach the rules in a similar way again, it was unlikely that he would be able to persuade a licensing body that he was capable of reform or rehabilitation, although such a matter would necessarily turn on the circumstances at the time.

32. Shortly after that appeal was heard, the appellant was found guilty of failing to provide a urine sample as directed by Stewards and suspended for 3 months.
33. The appellant re-applied for a licence on 15 July 2016. In his application, the appellant falsely answered “no” to a question which asked whether he had been convicted of an offence punishable by fine or imprisonment in Tasmania or elsewhere of a traffic related nature or any other offence. It was noted that he had in fact twice received suspended sentences of imprisonment for drink driving. The Director refused the appellant’s application on the basis that he was not a fit and proper person to be associated with harness racing. The Director relied on evidence of matters involving the appellant that were then pending before the Magistrates Court, which included four separate complaints arising from his driving a motor vehicle whilst having amphetamines in his blood, driving whilst unlicensed and being in possession of ammunition without the appropriate firearms licence. The appellant had at the time of the hearing of the appeal pleaded guilty to all charges and was to be sentenced in December 2016.
34. In concluding that the appellant was not a fit and proper person to hold a licence within the racing industry, the Board noted as follows:

“Mr Ford has demonstrated repeated non-compliance with not only the conditions of his licence in the racing industry, but also the conditions of his licence to drive over a very long period. He has been in breach of the rules relating to prohibited substances. He has four convictions for drink driving. He had pleaded guilty to four charges of driving whilst having an illicit substance in his blood in recent months. He has convictions for driving whilst unlicensed and he has breached the Rules of Racing by performing activities for which a licence was required, whilst not having one. He has numerous breaches of the rules for misconduct against Stewards. He has been in possession of firearms and ammunition without a licence. His history of personal drug use and the use of prohibited substances in the industry strikes both at the integrity of the industry and the safety of other participants within it.”

35. The Board also noted that the appellant had been less than candid in his dealings with the Office of Racing Integrity, the Stewards and the Board. Many of the explanations he provided during the course of that appeal were not accepted by the Board.
36. The Board concluded that the appellant was not a fit and proper person to hold a licence within the racing industry on the basis that he was not capable of compliance with the rules of racing or meeting the standards of integrity

expected of participants. The appeal against the Director's decision was, therefore, dismissed.

The Appellant's Conduct Since 2016

37. As noted above, the appellant has twice been warned off as a consequence of being found guilty of driving a horse on a racecourse or training track without a licence. In December 2016, the appellant was sentenced in respect of the offences referred to above to 7 months imprisonment wholly suspended on condition for 18 months that he not commit another offence punishable by imprisonment, comply with conditions of a probation order and complete 50 hours of community service. The conditions of the probation order included that he must attend education or other programs as directed by the Court or a probation officer and undergo assessment and treatment for alcohol or drug dependency as directed by a probation officer. He was also required to submit to medical, psychological and psychiatric assessment and treatment as directed by a probation officer. His driver's licence was disqualified for 2 years. In February 2017, the appellant was sentenced in respect of firearms charges and a fine was imposed. In March 2018, the appellant was sentenced for driving whilst disqualified and disqualified for a further period of four months.
38. In 2019, Stewards were tasked with conducting a notification and stable inspection at the training facility operated by Bianca Heenan. Whilst Stewards were waiting for Ms Heenan to return to the property, they were approached by the appellant, who tapped on the window of the car they were parked in. The Steward sitting in the driver's seat wound down the window to speak with the appellant. The following exchange occurred:

SF: *"You're lucky I didn't shoot you; I didn't know who it was"*. [Stewards at that stage were parked on the road outside the property.]

DT: *"Well I don't think we are on anyone's private property, you wouldn't need to shoot us."*

SF: *"Hang on a second, you're sitting outside someone's place, what am I supposed to think? I'm not here, I live over there"*.

DT: *"We've already spoken to Philip"*.

SF: *"What's that got to do with me? You didn't speak to me"*.

DT: *"Well is that your property?"*

SF: *"Here? It's my sons and daughters, my daughter-in-law's sorry"*.

DT: *"Yeah, and we've spoken to her too"*.

SF: *"Well how would I know that?"*

DT: *"Well you would ring her, wouldn't you?"*

SF: *"Well what would I ring her for? She's at work".*

LL: *"Well it's Bianca's registered training address".*

SF: *"I don't care who it is I'm just saying when I was over there welding, all I kept seeing was this car parked here. My phone's inside."*

DT: *"Well we're waiting off the property and we're waiting for Miss Heenan".*

SF: *"Well I don't care where you're waiting, it gets a bit suspect with cars parked outside someone's property, doesn't it?"*

DT: *"Well you know who we are now Mr Ford".*

SF: *"Yeah I do".*

DT: *"Good".*

SF: *"Don't be smart, because I'm not registered".*

DT: *"Hey, Hey, I'll tell you as Stewards that we have the right to go onto that property whenever we like".*

SF: *"I didn't say you didn't. Don't speak to me like you are".*

DT: *"Don't accuse me of being smart, because I'm not, I'm telling you the facts".*

SF: *"Hang on a second, don't speak to me like a pig, because I'm not a registered person, remember that, and I don't want to be a registered person either. So, don't ever go down that track with me and be a smartarse with me I've copped your shit for years."*

DT: *"Alright, Mr Ford, I'm not going to continue this conversation".*

SF: *"So I'll slap you, there you go".*

DT: *"Enough, enough".*

SF: *"I'll slap you".*

[The appellant then walked away from the vehicle back towards Ms Heenan's driveway. He returned a little later and showed stewards his phone]

SF: *"There's the proof I didn't fucking know, have a look at the messages I missed, I mean the phone calls I missed. There you go".*

LL: *"There's no need to worry about it".*

DT: *"We're not concerned thanks Mr Ford".*

SF: *"Well you're the one that carried on".*

DT: *"I don't think I carried on"*.

SF: *"Well you said I should know who it was, I didn't know who it was"*.

DT: *"Well we don't need to discuss it anymore"*.

LL: *"Yep, no need to worry about it Mr Ford"*.

39. The encounter was recorded by Stewards on a body worn camera.
40. In August 2020, Stewards were conducting a stable inspection at a training facility operated by Mr Zeke Slater. During the course of that inspection, the appellant was seen driving a horse transport truck that was then loaded with horses. Stewards followed the truck being driven by the appellant from the Brighton training complex through to the Elwick Race Course in Glenorchy. It transpired that the appellant was not licensed to drive at the time.
41. On 19 June 2020, a licensing panel interview was conducted with the appellant concerning his application for a licence. At the conclusion of that licensing panel hearing, the appellant left the conference room and spoke to his brother who was waiting outside. The appellant was overheard telling his brother, *"She's a fucking bitch"*. One of the members of the licensing panel on the day was female.

The Appellant's Submissions to the Licensing Panel

42. In his letter in support of his application addressed to the Director, the appellant provided the following information:
 - Mr O'Connell has offered to mentor him in relation to adherence to rules and how to conduct himself during inquiries;
 - he had decided to downgrade his application to that of a C-grade driver to demonstrate to the harness industry that he can and will rebuild the trust and respect required to successfully participate in the industry;
 - he had learnt a lot since he beat his drug addiction and subsequent to his previous interviews;
 - he now had a solid support structure in place to assist him rebuild his harness racing involvement and life in general;
 - in respect of the incident during the stable inspection in June 2019, the appellant explained that it was a stressful time of his life, which included the loss of the family home and marriage difficulties. He explained he was *"a little paranoid"* about strange cars being parked opposite anywhere he was residing. He asserted that the Steward he was speaking to was obnoxious towards him and that as a consequence he was unable to walk away. He also asserted that the Steward had previously assaulted his daughter-in-law and that had possibly influenced his behaviour;

- he admitted using colourful language to describe the female member of the licensing panel in June 2020, but stated that the language was used in a private conversation with his brother and that the member of the panel was not identified in the course of that conversation. He referred to taking exception to the licensing panel member's tone of voice and body language during her questioning him and her reaction to his answers. He stated that he did not like the licensing panel member in question as she had a bias against him.
43. In further support of the appellant's application, a number of letters and references were provided, a summary of which is as follows:
- a. Anthony O'Connell stated that he had known the appellant for eight years in his capacity as an advocate and support person and previously as a person who held a regulatory role in the industry. He stated that he found the appellant to be a person who responds best when afforded respect and courtesy and that he had never experienced a problem with him. He believed that the appellant had been subjected to bullying and victimisation by past and present employees of the Office of Racing Integrity. He stated he had observed a marked change in how the appellant analyses situation and processes the consequences of his actions. He offered to make himself available to be consulted by the appellant as a sounding board in respect of racing and personal matters. He had counselled the appellant that he will have to place trust in the regulators and demonstrate that the regulators can trust him. He supported his application as it would assist with his rehabilitation and be a positive step in his assimilation back into the community;
 - b. Leigh Gray advised he had known the appellant for around 20 years and never had any issues with him. He was aware of the appellant's previous issues and the steps he had undertaken to rehabilitate and that he was changed person with a more positive approach to life in general. He highlighted the appellant's harness racing skills and stated he would be able to make a positive contribution to the industry if given an opportunity. He said the appellant had always been approachable and courteous in their dealings and wished him the best with his application;
 - c. Rodney Plunkett also highlighted the appellant's skills as a reins person and horseman and opined that he had a lot to offer the industry as a consequence. From his perspective, the appellant appeared to have reformed himself and deserved a chance to share his skills. He also believed the structure would be important to the appellant as someone who has recently overcome addiction;
 - d. Eric Jacobson explained that he has known the appellant for over 40 years, that he knew he had been through a bad patch and made some wrong decisions in the past but that he found he had changed his

ways in the last two years and learnt from his mistakes. As such, he recommended that he be re-licensed;

- e. Glynn Spauling, the appellant's former psychologist stated that during his recent contact with the appellant he was calm, rational and well-considered and that as a consequence he was supportive of his desire to regain his licence;
- f. Karyn Ford, the appellant's wife also indicated that she had noticed changes in the appellant and that he was more likely to walk away, rather than engage in an argument or confrontation with people;
- g. Dr Greg Pitt, wrote that had been the appellant's general practitioner for many years and that whilst he had previously had issues with depression and anger, these had resolved. He stated there had been no presentations to him relating to emotional or behavioural dysfunction for over 2 years.

Licensing Panel Interview October 2020

44. During the course of the October 2020 Licensing Panel interview, the appellant was told that there were three main areas that the panel wanted him to address, namely:

- the appellant's ability to abide by rules;
- his ability to work with people in a professional manner who regulate the industry; and
- whether he was a fit and proper person to be involved in the racing industry in Tasmania.

45. The appellant told the Licensing Panel that he understood that if he was granted a licence it was going to be his last chance. He said he was older and wiser and believed he was worthy of holding a licence. In relation to the stable inspection incident, the appellant reiterated that he was going through a bad patch at the time. He agreed that he had engaged in the dispute with Stewards during the course of that stable inspection. In response to a suggestion that he had told panels before that he had changed, he stated that it was different this time, as *"it was a matter of changing or I had no family so you know I had to change plain and simple"*.

46. It was put to the appellant that he had been driving the horse transport truck without a driver licence. He denied the driving that was observed by Stewards on 2 August 2020. He said:

"I never (inaudible) you prove that to me I never took the truck to the races, I drove the truck in there because they wouldn't let ... what's his name wouldn't let him drive it in there so I drove the truck in because I went up there to Pencil's. ... I never drove the truck to the races that night I never

drove it, I never drove it to the races no, and I swear I never drove it to the races."

47. He insisted during the course of the licensing panel hearing that he had only driven the truck outside the gate and no further. This was contrary to a statement given by Stewards who had observed him driving to Elwick Race Course and that there were no other occupants in the truck.

The Appellant's Submissions

48. During the course of the appeal, the appellant acknowledged that he had been untruthful during the course of the licensing panel hearing in respect of his driving of the horse transport truck from the Brighton training centre to Elwick Race Course. He told the Board that he had subsequently sought counselling to address why he struggles to be fully truthful in an effort to address what he described as an inadequacy in his personality. During the course of that counselling, the appellant stated that the discussion centred around him being less than truthful when he feels challenged or under pressure. The appellant discussed in detail the contact he has had with counsellors in the recent past. The appellant further explained that he had significantly changed his lifestyle. He no longer went to pubs, did not drink alcohol and did not place bets. More relevantly, he asserted that he now has a support structure and recognised that he could not succeed without it. He now knew that he could contact Mr O'Connell at any time if he ever needs an ear, or as a sounding board on racing related issues.
49. It was noted that the appellant knows only one thing, and that is horses. It was submitted that he is highly skilled and whilst in the industry was one of the best drivers in Tasmania. His goal was to get his licence back, jump through hoops and prove that he is worthy of again being a participant in the industry.
50. The appellant submitted that he understood if he was readmitted to the industry it would be his last chance.

Director's Submissions

51. The Director asserted that his finding that the appellant was not a fit and proper person to participate in the industry was the correct decision on the basis of the appellant's extensive previous misconduct and direct evidence that he had not changed. Although the appellant asserted and quite likely believed that he had changed, the Director stated those claims and his references to similar effect did not align with reality. Current and real world examples of the appellant's attitude included the June 2019 stable inspection, the appellant's derogatory comments directed at a member of the licensing panel following the June 2019 licensing panel hearing, his breach of traffic legislation by driving whilst unlicensed and his dishonesty in respect of that driving during the last licensing panel hearing in October 2020.
52. Of particular importance, the Director asserted that granting the appellant a licence would create perception issues in the industry. Further, it was noted

that when explaining his conduct, for example during the course of the stable inspection in June 2019, the appellant would blame others for his outbursts. The appellant continued to demonstrate a poor attitude towards regulators which tended to suggest that his assertions that he had changed did not accord with reality. The Director reiterated that his work health and safety responsibilities required him to provide an environment where his staff were not subjected to abuse and aggression. The appellant's behaviour more recently tended to suggest that risk had not abated.

Discussion

53. The Board acknowledges that the appellant has taken significant steps to address his drug addiction. He is to be commended for his continued abstinence and also his efforts to seek support in the form of counselling or other psychological assistance to address his behaviour.
54. The appellant has an extensive history of breaching the rules of racing, including those that strike at the heart of the integrity of the industry or involve misconduct directed at those charged with upholding those rules. In the Board's view, the appellant's recent behaviour demonstrates that these are ongoing issues. He was aggressive and obnoxious during the course of a stable inspection conducted in June 2019. The Board's distinct impression is that the appellant has a general animus towards those regulating the industry and cannot abide being challenged. Similar behaviour was demonstrated by the appellant after the licensing panel hearing in June 2020. The Board has considered the transcript of that hearing. It again shows the appellant being quick to respond in an unacceptable manner when his assertions about his conduct are challenged. In general, the appellant continues to demonstrate an unacceptable attitude towards regulators. Such conduct cannot be countenanced in an industry that requires participants to comply with rules and afford respect to those undertaking the difficult task of ensuring that those rules are followed.
55. Further, the Board cannot ignore that the appellant has sought to minimise or lie his way out of the consequences of his behaviour. Such is amply demonstrated by his explanations for his conduct during the stable inspection in June 2019 and his denial of the driving that was put to him during the course of the October 2020 licensing panel interview. Such behaviour is inconsistent with the appellant's assertion that his attitude and conduct has changed.
56. It is noted that the appellant has sought some assistance to address what he now acknowledges to be "an inadequacy in his personality". A letter from Positive Counselling Solutions confirms that the appellant had attended three counselling sessions. They took place in the weeks preceding the hearing of his appeal, with the last session occurring on 8 December 2020. The Board, however, is not satisfied at this juncture that this amount of counselling is sufficient or that the appellant's asserted self-reflection has resulted in any material change. Until the appellant is able to demonstrate a

fundamental change in his attitude and conduct, he remains a person who is not fit and proper to participate in the industry.

57. The appeal against the decision is dismissed. The decision of the Director is affirmed. The appellant is required to forfeit 50% of the prescribed deposit to the Secretary of the Department pursuant to s.34(1A) and (2) of the Act. It is also ordered that the appellant pay 50% of the cost incurred in the preparation of the transcript of the October 2020 Licensing Panel interview pursuant to s.34(4A) and (4B)(a) of the Act.