

# TASMANIAN RACING APPEAL BOARD

## Appeal No 11 of 2025-26

|                     |  |                   |  |
|---------------------|--|-------------------|--|
| <b>Panel:</b>       | <b>Ms Amber Cohen<br/>(Chair)<br/>Ms Wendy Kennedy<br/>(Member)<br/>Mr Rod Lester (Member)</b> | <b>Appellant:</b> | <b>Mr Matthew Cooper</b>                     |
| <b>Adviser:</b>     | <b>N/A</b>   | <b>Rules:</b>     | <b>AHRR 90. Refusal to<br/>grant licence</b> |
| <b>Appearances:</b> | <b>Mr Dominic Deayton on<br/>behalf of Tasmanian Integrity<br/>Unit</b>                        |                   |  |
| <b>Heard at:</b>    | <b>Conference Room<br/>Prospect Government Offices<br/>171 Westbury Road<br/>Prospect TAS</b>  | <b>Penalty:</b>   | <b>N/A</b>                                   |
| <b>Date:</b>        | <b>17 December 2025</b>  | <b>Result:</b>    | <b>Upheld</b>                                |

## REASONS FOR DECISION

### Background

1. On 11 August 2025, Mr Matthew Cooper (the appellant/Mr Cooper) made an application to the Tasracing Integrity Unit (TIU) for a Driving Stablehand harness racing licence (the application).
2. On 5 September 2025, the Tasracing Integrity Unit (TIU) conducted a licensing panel interview in respect to the application.
3. On 25 September 2025, Ms Lester, Chief Racing Integrity Officer, of the TIU wrote to Mr Cooper with the outcome of the application. The decision of the Licensing Panel was to refuse his application (the decision).
4. On 8 October 2025, Mr Cooper appealed the decision based on the following grounds of appeal:

*I have been denied procedural fairness for my Driving Stablehand license application heard before the licensing panel on 11 August 2025, they include but not limited to:*

*– a fair hearing was not given to allow an adequate opportunity to present a case and respond to allegations as to why an application should be granted.*

*– Duration of the licensing panel meeting lasted approximately 10 minutes. I was not cautioned that the meeting would be recorded, meaning a transcript of the meeting would not be available*

– a perceived prejudgement due to meeting duration and a panel free from bias which did not include the newly appointed chairman of stewards.

– Reasons given for refusal were not accompanied by a clear and logical explanation gained from the licensing panel meeting.

5. Following the second directions hearing held on 28 November 2025, the appellant provided a further ground of appeal, on 2 December 2025, as follows:

the licensing panel erred in their decision (letter 25.9.25) by relying on evidence and testimony from a previous panel hearing 28.3.25 and the substantive omission of modified behaviour, evidence and testimony regarding the new license application hearing for stablehand.

6. On 17 December 2025, the Board heard the appeal.
7. The additional ground of appeal was accepted without objection from TIU. The amended ground of appeal was allowed at the hearing pursuant to section 79(6). In short, the two primary issues in contention at the hearing were:
- (a) Whether the appellant had been denied procedural fairness by the Licensing Panel; and
  - (b) Whether there was an error on the part of the Licensing Panel in determining the question of whether the applicant satisfied the fit and proper person test.
8. On behalf of the TIU, Mr Deayton submitted that the appropriate course would be for this Board to consider the appeal ground in respect to denial of procedural fairness first, and if satisfied there was an error, then the Board could then consider the question of whether there had been an error on the part of the Licensing Panel in determining the issue of whether Mr Cooper was a fit and proper person. Mr Deayton said that whilst he accepted that the Board can stand in the shoes of the original decision maker in determining the question of whether the applicant is a fit and proper person, the Board should only do so if it finds that Mr Cooper was not afforded procedural fairness.
9. For context, Mr Cooper had applied for Driver A and Trainer B harness racing licences on 21 February 2025, had participated in a Licensing Panel interview on 28 March 2025, and had received a letter from the TIU advising the outcome of that application on 13 May 2025. The decision of the Licensing Panel on that occasion was that the licences applied for were refused on the basis that Mr Cooper was not a “fit and proper person” to hold a licence under the Rules of Racing. The decision is detailed further at paragraphs 43 and 44 below.

### **Material before the Board**

10. Given the submissions put forward by Mr Cooper regarding the issues of procedural fairness, it is necessary, in this instance, to note the material before the Board for the purpose of the Appeal. This material included:
- (a) Appeal application lodged 8 October 2025;
  - (b) Letter advising of Licensing Panel decision dated 25 September 2025;
  - (c) Licensing Panel Agenda Item – Matthew Cooper – 5 September 2025 and the 21 attachments;
  - (d) Tasmanian Harness Licence Application Requirements – 2025/2026;
  - (e) Referee Report from Mr Andrew Dean dated 9 September 2025;
  - (f) Email from appellant of 2 December 2025, providing additional ground of appeal;
  - (g) Email correspondence between Tasmanian Racing Integrity Commission office and Mr Cooper of 2 June 2025;
  - (h) Email correspondence between Ms Angela Barrett of Tasracing Integrity Unit of 11-15 October 2025, regarding Mr Cooper’s request for a copy of the Racing Integrity Committee’s advice report to the Licencing Panel;

- (i) Referee Report Form from Steve Lukac dated 1 September 2025;
- (j) Letter from Tasracing regarding RTI request from Mr Cooper, dated 11 November 2025;
- (k) Letters of support for Mr Cooper (nine in total);
- (l) Submissions from Mr Cooper supporting his grounds of appeal;
- (m) Licensing Panel Agenda Item – Matthew Cooper – 5 September 2025, including a “Reason/Background” summary;
- (n) Statement from Ms Angela Barrett as to her recollections regarding the un-recorded Licensing panel interview; and
- (o) Email chain between Chief Racing Integrity Officer and the Chair of the Racing Integrity Committee dated 8 December 2025.

11. At the conclusion of the appeal, Mr Cooper sought to admit a written statement that had been attached to the email referred to at paragraph 10(g) above. The admission of that document was objected to on behalf of the TIU. It was allowed by the Chairperson pursuant to s81(3) of the Act, as it formed a part of an email that had already been admitted. It was, however, viewed by the Board as being in the nature of a submission about the impact of the refusal of licence and as such, the weight given to it was limited.

### **Grounds regarding denial of Procedural Fairness**

12. In the additional material provided, and at the hearing of the appeal, the appellant addressed further the ground of appeal based on a denial of procedural fairness, detailed at paragraph 4 above. Some of the issues relevant to these grounds, identified by the appellant prior to or at the appeal included:
- (a) The Licensing Panel did not advise him that the interview would be recorded and the interview was not recorded. Accordingly, no transcript of the interview was available;
  - (b) He was not advised what the purpose of the interview was (unlike on a previous occasion when it was expressly stated to him that Panel was to decide whether he fit the criteria for a fit and proper person);
  - (c) He was not given an opportunity to respond to the factors which weighed against him, such as historical matters, and, in fact, did not know what material the Panel was considering;
  - (c) He was not given an opportunity to describe the modifications he had made to his behaviour;
  - (d) He was not given the material that the Panel had before them, including the document titled “Licensing Panel Agenda Item” or the 21 attachments to that document – the appellant stated he had, in fact, never seen some of the material, which included witness statements from an incident which occurred in May 2021, before the hearing of this appeal;
  - (e) At no stage was he asked to submit any additional material, other than a report from his mental health outreach worker to confirm that he was continuing counselling, which he did (see item (e) at paragraph 10 above);
  - (f) The matter had been pre-judged by the Panel, as demonstrated by such factors as:
    - the interview lasted for no longer than 10 minutes;
    - the Panel comprised of two people only (whereas in the past, it had comprised of four persons)
    - the letter advising of the Panels’ decision to refuse the licence application stated that it was made “for the same reason” as the Panel had given in respect to the previous application he had made on 21 February 2025 (with the decision being given by letter of 13 May 2025), and as such, did not take into account discussion had at the interview.
    - the letter advising of the Panel’s decision states that the Racing Integrity Committee has determined that no further applications will be considered from the appellant in the current racing season.
  - (g) The Licensing Panel did not include the newly appointed Chairman of Stewards, who would have brought an unbiased mind to the application.

13. As a separate matter, but related to Mr Cooper’s experience, and the perception of denial of procedural fairness, Mr Cooper sought a copy of the Racing Integrity Committee’s advice as to their position on his application noting it would be relevant to his appeal to this Board. In the letter from the Chief Racing Integrity Officer to Mr Cooper dated 25 September 2025, advising of the outcome of his application, Ms Lester had stated

*Pursuant to Part 4, Section 58(1)(d) of the [Racing Regulation and Integrity Act 2024], advice was sought from the Racing Integrity Committee regarding your application. The Committee has determined that no further applications from you will be considered during the current racing season (2025/26). For the avoidance of doubt, you may re-apply for a licence for the 2026/27 season, which commences on 1 August 2026.*

14. Section 58(1)(d) of the Act provides:

*The functions of the Racing Integrity Committee are:*

...

*(d) to review any applications and other matters relating to licences and registration referred to the Committee by Tasracing and to give advice and make recommendations in respect of those applications and matters;*  
*and*

...

15. Mr Cooper explained that he had noted that the letter did not specifically state that the Committee had agreed with the refusal of the licence, and that he was confused as to how they could have come to their view.
16. In response to his request for a copy of Racing Integrity Committee’s advice regarding his application, Mr Cooper was advised by email of 15 October 2025 that he would need to “lodge an RTI with the Department of Natural Resources & Environment Tasmania”. The Board understands this to be a reference to making an application under the *Right to Information Act 2009*. Mr Cooper then made that application on 3 November 2025. He received a response from the TIU “RTI Officer” on 11 November 2025 advising that the Department of Natural Resources and Environment Tasmania did not possess the information and had, accordingly transferred the application to Tasracing. The letter went on to advise that Tasracing also did not possess the information requested and as such, his application was not accepted. The letter specified that the information Mr Cooper had requested was

*All correspondence between Tasracing Licensing Panel and the Tasracing Integrity Committee regarding information gathered and sought in relation to my licence application interview before the Licensing Panel dated 5 September 2025. Also pursuant to Part 4, section 58(1)(d) of the Racing Regulation and Integrity Act 2024 I seek the advice report sought by the Licensing Panel from the Integrity Committee regarding my licence application/interview.*

17. The Board observes that the information sought by Mr Cooper was indeed information relevant to his appeal. It was information that the TIU openly stated had been relied upon in the making of its decision. It appeared that in the Committee’s response to the Licensing Panel, it purported to fetter Mr Cooper’s right to make a further application in respect to a licence in the industry. If it existed, it would have been proper that it be provided to this Board, and to the parties, whether by direction of the Board or in the ordinary course, for the purpose of this Appeal as it is information the Licensing Panel relied on in the making of its decision. It should not have been necessary for Mr Cooper to make a *Right to Information Act 2009* application in respect to it.
18. The Board further observes that it is understandable that Mr Cooper would be confused about how the Committee’s advice was arrived at given the response to his *Right to Information Act 2009* application was that no such correspondence existed between the Licensing Panel and

the Racing Integrity Committee. It would appear that no information was provided to the Racing Integrity Committee in respect to the application, such as the application itself, the referee report attached to it or the counsellor's report provided by Mr Cooper shortly after the Licensing Panel interview (as contemplated by section 60(3) of the Act).

19. An email was provided to this Board, dated 8 December 2025, shortly prior to the hearing of the appeal, from the Chairperson of the Racing Integrity Committee, Ms Regina Weiss, which reads:

Dear Heidi

Thank you for the below email.

I confirm that the Racing Integrity Committee did indeed support the recommendation to not license Mr Cooper as a Driving Stablehand for the same reasons he was denied a trainer's license previously.

Best  
Regina  
Chair: Racing Integrity Committee

20. That email had been in response to an email from Ms Heidi Lester, Chief Racing Integrity Officer, of earlier that same day, 8 December 2025:

*Dear Regina*

*Following on from my verbal conversation with the Racing Integrity Committee, I am writing to request confirmation that the Committee did support the Licensing Panel's recommendation not to license Mr Matthew Cooper as a Driving Stablehand, due to his being deemed not a fit and proper person. The record of this conversation was not minuted.*

*I would also seek confirmation that this decision was made separately to, however for the same reasons as, his being denied a trainers license earlier this year.*

*With kind regards  
Heidi Lester*

21. In any event, it is not the role of the Board in this appeal to review the decision of the Racing Integrity Committee in respect to this matter. It is relevant only to the extent of Mr Cooper's grounds of appeal in respect to denial of procedural fairness, on the basis of the matter having been pre-judged by the Panel. All that the Board will observe is that neither the Board, nor the appellant, have been provided with any evidence of how or when the Racing Integrity Committee considered the appellant's licence application or how the Committee determined their position.
22. In a written submission made to the Board prior to the hearing of the appeal, Mr Cooper made reference to the High Court case of *Kioa v West* (1985) 159 CLR 550. Mr Cooper referred to it as

*a seminal decision in Australian administrative law that established the modern common law duty to afford procedural fairness (natural justice) when an administrative decision affects a person's rights, interests or legitimate expectations.*

*The concept of "legitimate expectations" was significant. A person may have a legitimate expectation that they will be afforded a certain procedure (hearing) or*

*that a benefit will not be denied without a chance to be heard, based on past practice. I had all expectations that the licence hearing 05/09/25 would indeed follow the process and procedure afforded to me at my previous license hearing 28/03/25.*

23. As to the lack of recording, or available transcript, of the Licensing Panel interview, the TIU submitted to the Board a statement from Ms Angela Barrett dated 5 December 2025 detailing her recollection of the Licensing Panel interview of 5 September 2025. For context, it is noted that Ms Barrett was one of two members of the Licensing Panel who interviewed Mr Cooper on 5 September 2025. Ms Heidi Lester, the Chief Racing Integrity Officer, was the other member of the Panel.
24. Mr Cooper advised his disagreement with some of the statements made in the witness statement of Ms Barrett but agreed that it should be admitted as a relevant document in the appeal. In essence, Mr Cooper did not agree with the contention that he had been given the opportunity to put forward any additional information in support of his new application and said that rather than submitting the referee report from his outreach mental health worker of his own volition, he provided it to the panel after they asked him if he could provide a report stating he had continued his counselling with that person. Further, he stated that he was not given an opportunity to speak to any considerations of the Panel or to speak to anything he had done to modify his behaviour. It is worth noting that Ms Barrett confirmed in the statement that “the Panel did not revisit Mr Cooper’s previous history as those matters had been thoroughly canvassed during the earlier Licensing Panel interview”, which had occurred in May 2025 (when Mr Cooper had applied for Driver A and Trainer B harness racing licences – refer to paragraph 9 above).
25. As to what Mr Cooper would have submitted, had he been given the opportunity, he explained that upon reflection of his earlier Panel interview (in respect of his application for a Driver and Trainer’s licence in February 2025), he felt he had not represented himself well on that occasion when answering questions and on this occasion, wanted to present some of the more positive steps he had taken to address his behaviour. He said on this occasion, he attended the Panel interview with material in respect to this but was not given an opportunity to put it forward and was not asked any such questions. He also said that he would have liked to submit a copy of an email exchange between himself and the Racing Integrity Commissioner in which he had outlined his reasons for seeking a licence and what his response was to the reasons given by the Licensing Panel on that first occasion.

#### **TIU’s submissions regarding procedural fairness grounds**

26. On behalf of the TIU, Mr Deayton submitted that the TIU accepted that an obligation to provide procedural fairness existed, unless expressly abrogated by the relevant statute, but that the question was what was the content of the duty in the particular circumstances.
27. The TIU accepted and said it made no secret of the fact that the reasons for decision in this case incorporated and re-emphasised the reasons given in respect to the earlier application for Driver and Trainer’s licences by letter of 13 May 2025.
28. Mr Deayton submitted that whilst there is a duty to afford procedural fairness, that is to be read in the context of s60(2) of the Act, which fetters the decision maker’s decision making powers to grant a licence only if satisfied that the applicant is a fit and proper person to hold such a licence. He noted that this restriction was not present in the previous Act, which contained a general discretion to grant a licence.
29. Mr Deayton outlined how the TIU had adopted the Rules of Racing and how the Rules contain provision for the refusal of a licence, “without assigning any reason” (AHRR 90). He said that the Rules do not distinguish between the application requirements for different forms of licence. He referred the Board to AHRR 299, which provides that:

299. *All persons*

(a) *licensed under these rules;*

(b) *carrying on or purporting to carry on activities related to the harness racing industry; or*

(c) *who in some other way are affected by the rules, are deemed to have knowledge of and be bound by them and of all things done under them.*

30. Mr Deayton also drew the Board's attention to AHRR311, which provides

311. *The Controlling Body may –*

...

(b) *disregard the rights or privileges of anyone who has failed to comply with or complete rules, determinations or forms made under rules.*

31. As the Board understood it, Mr Deayton submitted the wording in that Rule demonstrates, in that instance, an intention that the principles of procedural fairness would not apply to decisions of the controlling body (TIU) and that any duty that exists in this case should be considered in the context of such provisions in the Rules.
32. As to the persons who made up the Panel, Mr Deayton submitted that it is entirely within the discretion of the TIU who would constitute the Panel and this was not something that could be considered to have denied the appellant procedural fairness in this instance.
33. Mr Deayton submitted that the appellant has misunderstood his rights in respect to the Licensing Panel's decision to hold an interview. He submitted that the appellant had expected the process to be closer in nature to a hearing in which he would have an opportunity to make submissions and present evidence. The TIU's position was that the interview was for the benefit of the Licensing Panel. He said the Panel reserves the right to make further enquiries upon the receipt of an application, which includes holding an interview. In essence, the position is that the appellant does not have an inherent right to an interview, or to be heard further on the application. He said this was different to, for example, the case of a disqualification, which would necessarily require a hearing process. He said this was a very different process, being an application process. The Panel may or may not offer an interview and when they make their determination, they are not required to give reasons for their decision. Mr Deayton urged the Board to consider the appeal on the grounds of denial of procedural fairness on that basis. He said that it is unrealistic to expect an opportunity for an oral hearing at all given the number of applications made each year and that sometimes natural justice "gives way to practical justice".
34. As to the fact that the appellant was advised in the outcome letter from the TIU that he could not make a further application in the current racing year, Mr Deayton said this was not a final decision on this point and, in fact, the appellant was entitled to make an application at any time.
35. As to the appellant's statement that he was not allowed to submit further material he had with him at the interview, Mr Deayton said it was incumbent on the appellant to submit all relevant material with the application. He said it is not the role of the Licensing Panel to substantiate the application. Rather, the onus is on the applicant to do that and the Panel may then elucidate further information as required. The Board asked Mr Deayton about wording in the Tasmanian Integrity Unit – Tasmanian Harness Licence Application Requirements – 2025/2026, which states, under the heading "How can I have my application processed as quickly as possible?"

*Before submitting an application, please make sure:*

...

- *Supporting documentation is attached (where requested);*

...

- *Requests for additional information may delay the assessment of the application.*

Specifically, the Board noted the words “where requested”. The Board further noted that the application itself does not invite any such further information. Mr Deayton submitted that would not necessarily preclude an applicant from providing further documentation. He said that additional information does not have to be provided but can be, and that, if offered an interview, that additional information can be submitted orally or in writing.

36. Mr Deayton said that the TIU rely upon Ms Barrett’s statement that Mr Cooper was given an opportunity to present further information but did not do so.

### **Principles of Procedural Fairness**

37. This Board has considered the issue of procedural fairness on a number of occasions in past determinations.
38. In the case of TRAB Appeal No. 17 of 2024/2025 (Mr Wayne Yole), the Board considered an appeal in respect to a restriction imposed upon a Trainers licence, and in which the appellant was not given any forewarning that conditions were being considered or were to be imposed.
39. The Board in that case observed that the lack of notice had the resultant effect that at no stage was the appellant given the opportunity to respond to any concerns held by the decision maker. The Board considered that the issues for consideration in respect to the ground of appeal based on denial of procedural fairness were whether the failure by the respondent in that case to advise the appellant of their concerns breached any tenets of natural justice or procedural fairness – and if so – were the breaches so egregious so as to justify upholding the appeal. The Board observed that within several past determinations, the Board has

*repeatedly expressed the importance of and how the tenets of natural justice and procedural fairness are enlivened within the processes in which a decision maker investigates, determines, imposes and notifies an interested party of their penalty or decision.*

40. The Board in that case cited with approval the case of *Day v Harness Racing NSW* [2-24] NSWCA 423<sup>1</sup>. In that case it was found that if a statutory power will prejudice or affect a particular person’s right or interests, there is a duty to accord procedural fairness to that person unless it has been excluded by plain words of necessary intentment.
41. Thus, as this Board has previously noted, a key principle of natural justice includes whether the person whose rights may be impinged has been afforded the opportunity to be heard. In this instance, the Board observes that would require not only holding a Licensing Panel interview, but advising the applicant what the decision maker’s concerns were, providing the applicant a copy of any information the decision maker had before it in the making of the decision and giving genuine and un-bias consideration to the application, the content of discussions at the interview and any further material provided at or following the interview.
42. In the case of Yole, the TRAB found that the actions of the respondent in that case fell short of the requirements of procedural fairness but stated that before conclusively determining the ground in its entirety, consideration was to be had as to what the appellant may have submitted if given such an opportunity. The Board continued “it is relevant to consider such submissions and consider a possibility that nothing the appellant could have submitted would have or could have possibly changed the actions taken by the respondent.” The question posited was whether the appellant was “in a position where he was in essence bowing to the inevitable and nothing the appellant could submit would materially change the inescapable outcome.” A broad range of factors were considered relevant in forming that view.

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<sup>1</sup> at [99]-[101] and [104] - [115].

## Licensing Panel determination

43. In the outcome letter of 25 September 2025, the TIU advised that the Licensing Panel had refused the Stablehand licence “for the same reason” as what had been advised of the refusal of the Driver A and Trainer B licence by letter of 13 May 2025. In that letter, the TIU had noted:

### Recent Licensing and Disciplinary History.

- 17 Jan 2021 *Disqualified for 12 months and fined for two individual prohibited substance breaches. Appeals were dismissed.*
- 23 May 2021 *Warned off before being issued a 2-year suspension for assaulting a Steward and a participant at Elwick Racecourse, an incident that led to your arrest and conviction in July 2021 (see Recent Police Record, below).*
- 31 Dec 2023 *Disqualified for 5 months for assaulting a participant. Appeal dismissed.*
- 19 July 2024 *Warned off for five years, varied to 6 months at appeal, for offensive Facebook posts.*

### Recent Police Record

- 25 Nov 2019 *Refuse to state name, guilty plea, conviction.*
- 25 Nov 2019 *Resist a police officer, guilty plea, conviction.*
- 25 Nov 2019 *Disturb the peace, guilty plea, conviction.*
- 26 July 2021 *Trespass, guilty plea, conviction.*
- 26 July 2021 *Resist a police officer, guilty plea, conviction.*
- 26 July 2021 *Common assault, guilty plea, conviction.*

*It is noted you have more than fifty (50) historic offences on your police record, including four assault charges, of which two were against police. The extensive list of offences both within and outside of the racing industry clearly demonstrates a lack of respect for officials, rules, and authority.*

44. The Licensing Panel then expressed their reasons for refusing the appellant’s trainer and driver licence, as follows:

*The Panel acknowledged that you are reapplying for licenses following a period of disqualification and warning-off. It was unanimously accepted that your physical capabilities and horsemanship expertise are not in question. You have stated that you have ceased alcohol consumption to support improved behavioural self-regulation. However, the Panel was compelled to assess your application against the broader “fit and proper person” criteria as prescribed under the Racing Regulation and Integrity Act 2024.*

*In reaching its determination, the Panel gave considerable weight to the following:*

- *Your recent and significant disciplinary history, including one breach involving the presence of permanently banned prohibited substance – namely stanozolol (a synthetic anabolic steroid) – as well as multiple incidents involving the physical assaults on fellow participants and a Steward;*
- *Your extensive and ongoing criminal history spanning a substantial period, which includes numerous convictions for offences involving violence and disregard for lawful authority;*

- *The absence of demonstrable remorse during your appearance before the Licensing Panel on 28 March 2025, particularly in relation to the social media posts that resulted in your most recent warning-off in July 2024;*
- *The animosity and hostility expressed by you during the Licensing interview toward participant Mr Ben Yole, which raised concerns regarding your capacity to engage professionally and respectfully with other licensed individuals;*
- *Your comment during the same interview suggesting that, while your record is poor, it is “no worse than Robert Walters”, which the panel considered an attempt to minimise or deflect personal responsibility;*
- *Your admission of engaging participants to sign a petition challenging the decision of the former Director of Racing of the former Office of Racing Integrity – an action perceived as an inappropriate and potentially disruptive attempt to undermine the regulatory process.*

*Collectively, these matters were interpreted as evidence of a lack of self-control, insufficient self-awareness, and a continuing disregard for the authority of officials and the integrity of the industry. The Panel therefore formed the view that you do not presently meet the statutory threshold of being a “fit and proper person” to hold a license under the Rules of Racing, and accordingly, your applications have been refused.*

#### **Ground of appeal relating to fit and proper person test.**

45. The appellant submitted, in summary, that the Licensing Panel erred in finding that he was not a fit and proper person by relying solely on evidence and testimony from a previous Panel interview, and by omitting evidence and testimony in respect to modified behaviour. Mr Cooper provided character references from persons involved with the Oatlands Golf Club in support of his character, which had been provided for the purposes of this appeal, as well as a referee report from Mr Steve Lukac, an A grade trainer, which had apparently been prepared for the purpose of the Licensing Panel interview (but not submitted).
46. Mr Cooper also submitted an email he had sent to the Racing Integrity Commissioner, which outlined his response to the Panel’s determination in May 2025 that he is not a fit and proper person. In that material, in short summary, Mr Cooper essentially explains that much of his recent disciplinary history (both in the industry and criminal charges) were the result of poor mental health, a clarification of comments he had made in the Licensing Panel interview about other participants in the industry and to acknowledge his prior lack of understanding of the Panel’s concerns around actions he took to start a petition which was perceived as a potentially disruptive attempt to undermine the regulatory process. He explained he had believed at the time that the petition was an appropriate way for him to “show cause” in respect to a notice he had received to show cause why a warning off notice should not issue. Mr Cooper also detailed the significant consequences of him being refused the opportunity to work in the industry, including financial hardship. He asked the Commissioner to reconsider the determination of the Panel. For full context, the Commissioner’s office responded, on 2 June 2025, to the effect that the appropriate channel to review the decision is an appeal to the TRAB. The email also included the words “You may also wish to apply for the stablehand licence to help with the immediate hardship”.
47. At hearing of the appeal, Mr Cooper stated that if he had been given the opportunity, he had intended to put forward more positive evidence and submissions about what he had done to address his behaviour, including the ongoing counselling he engages with through Rural Alive and Well (RAW) Tasmania. He said that the character evidence he had submitted to this Board was prepared on the basis of how those people have come to know him now, not so much on their knowledge of his history in the industry. He explained that he was wary of obtaining

character evidence from others in the industry given the Panel's stated concerns about the inappropriateness of the petition he had once started to obtain signatures of support from those in the industry about him being a fit and proper person.

48. In reference to some of his past history of breaches of his various racing licences or his criminal history, the appellant said that he had broken his own moral code. He has made mistakes and has worked hard to correct them and/or to accept his punishment. As to the incident involving assaulting a steward and participant in May 2021, he said that it was the result of a mental breakdown. He has since sought out counselling to address his mental health, and continues to engage with that counselling. In respect to offending related to social media posts, he said that what he had posted was improper, rather than malicious, intimidating or discriminatory. He said that he is working on being a more positive person and has not engaged with or posted on social media since. He further said that after the incident for which he was disqualified in 2023, he had a "good soul search". He said alcohol had been involved in that incident. He thought about how it had occurred and decided to stop drinking and he has "been clean of alcohol" since. He said that he has always tried to present the best of the racing industry and has always tried to be professional and respectful when engaging with other industry participants.
49. In order to consider that further ground, it is necessary to first consider the legal basis for that test arising. That involves a consideration of the TIU's power to grant or to refuse to grant a licence.

#### **The TIUs power to refuse to grant a licence**

50. Pursuant to section 59(2)(k) of the *Racing Regulation and Integrity Act 2024*, TIU is responsible for granting licences under the Rules of Racing. The Australian Harness Rules of Racing, at AHRR.90, provide broad powers to the controlling body (in this case, TIU) to grant licences for such periods or upon such terms and conditions as it thinks fit and may refuse a licence without assigning any reason.
51. Relevantly, that rule provides as follows:

AHRR.90:

  - (4) The Controlling Body [in this State the TIU] 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 Controlling Body without assigning any reasons.
52. Part 4 of AHRR further sets out particular requirements for certain licences. In respect to an application for a Stablehands licence, for example, the licence shall not be granted to a person younger than 14 years of age and the holder of a licence is to hold such licence under the supervision or instruction of a licensed trainer to: -
  - (a) Carry out track work;
  - (b) Assist with the training, management, care and control of horses;
  - (c) Assist with pre-race preparation of, and post race procedures affecting, a horse.<sup>2</sup>
53. Upon the commencement of the recent Act, there is now an explicit legislated requirement that the TIU may only approve an application for a licence if it is satisfied that the applicant is a fit and proper person. The particular wording at s 60(2) is:

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<sup>2</sup> AHRR90A(3.4)

(2) *Tasracing may only approve the following applications under the Rules of Racing:*

(a) *an application for a licence or for the renewal of a licence;*

(b) *an application for registration or re-registration –  
if satisfied that the applicant is fit and proper to hold such a licence or registration.*

54. In the past, this Board has determined that there were no particular criteria pertaining to either a driver licence or a stablehand licence category “that would give rise to the expectation that the meaning of fit and proper should be defined differently for each”.<sup>3</sup> However, this Board observes the specific reference in s60(2) to the words “fit and proper to hold such a licence...” (our emphasis). In the Board’s view that wording imports a requirement that the TIU must consider the specific licence, or category of licence, for which the applicant is applying and as a result, suggests that being a fit and proper person to hold one category of licence, such as a Driver licence may be a different test to being a fit and proper person to hold another category of licence, such as a Stablehand licence. The Board further observes that might only be the case where there is some identifiable difference in the duties permitted by each category that would lead to a different test applying. In this instance, it is noted that all of the licensed duties permitted of a stablehand are to be conducted under the direction and supervision of a licensed trainer. That said, the Board observes that the integrity of the industry must be given primacy in the consideration of every licence application, regardless of the category. If there is to be a different standard across different licence categories, as indicated by the words “to hold such a licence”, it would be a fine line and requires careful consideration to avoid undermining the high standards of integrity that are essential to the industry.

55. Section 59(2)(a), states that the TIU is responsible for developing policies, procedures and guidelines in respect of its functions, that are conducive to integrity, and animal welfare, in racing. The TIU 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 2025/26 (the Requirements).

56. Under the section “Licence Categories” and the heading “Stablehand (Driving)” the Requirements state:

*The holder of a Stablehand (driving) licence may, under the supervision or instructions of a licensed A or B grade trainer, carry out trackwork, assist with the training, management, care and control of horses and assist with pre-race preparation of, and post-race procedures affecting a horse.*

57. It is in this context that the test of fitness and propriety must be considered in this case, whilst bearing in mind our observations in paragraph 54 above.

58. Under the heading “Suitability of Licence Holders”, the Requirements provides guidance as to how an applicant is to be assessed as a fit and proper person to be granted or continue to hold a licence. The Requirements 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 demonstrate sufficient financial resources to maintain operations in line with the purpose of the licence.*

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<sup>3</sup> TRAB Appeal No 12 of 2015/16 (Mr Scott Ford) at 23

- *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 Tasracing Integrity Unit 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. The following will be taken into consideration when evaluating the applicant inclusive of:*

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

*Propriety will be assessed based on general behaviour and conduct by an applicant, or an executive officer of an applicant, including 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 Tasracing or a club and other licensed 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, an official or employee of Tasracing, a club or the racing industry as a whole;*
- *An ability of the applicant, or any executive officer of the applicant, to consistently operate within the requirements of the racing legislation, a standard, policies of 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;*
- *Unsatisfactory 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 or any state or territory of Australia or in any other country.*

### **Exclusion due to certain convictions**

*The Tasracing Integrity Unit may at any time, including on application, request that a licence holder or 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 certificates.*

*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 and applicant is “fit and proper” to be granted a licence.*

*The Tasracing Integrity Unit 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 Country which relates to:*
  - *Dishonesty, fraud, forgery, match fixing;*
  - *Animal welfare or cruelty to animals;*
  - *Trafficking and supply of drugs, illicit or illegal substances;*

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

### **TIU’s submissions regarding the Fit and Proper Person test**

59. On behalf of the TIU, Mr Deayton submitted that the decision made and advised in the letter of 25 September 2025 was the correct and preferable decision.
60. He said that the references provided by the appellant as to his character were largely from members of the Oatlands Golf Course and there was no evidence that the statements were made by persons who had knowledge of the appellant’s past conduct relevant to this decision (and in one case, it was stated that the person did not have such knowledge). He said another of the statements ought to be given no weight as the content of it, which included criticism of the TIU, necessarily lead to the view that the character evidence should not be considered independent. He also noted that the character evidence was not made available to the Licensing Panel in any event.
61. Mr Deayton said that the appellant had a significant disciplinary history, including an assault in December 2023. He said there was a general theme of hostility towards other participants in the racing industry. He said there have been other matters of recent, serious improper conduct, including conduct related to improper social media posts.
62. Mr Deayton submitted that the proper course for the Board was to accept that the decision made in respect to the earlier application, communicated by letter of 13 May 2025 was correct, and noted that decision was not appealed. He said it is appropriate that the decision maker, and now the Board, only consider what is different since the decision on that occasion.
63. Mr Deayton submitted that Mr Cooper should have addressed in this application what had changed since his last application and that the question was whether sufficient information had been provided. He said there was nothing in the Rules that required the Panel to take a fresh look at all of the circumstances.
64. Mr Deayton said the Board should follow the High Court case of *Australian Broadcasting Commission v Bond* (1990) 170 CLR 321 as it has done in the past, which is authority for the fact that “fit and proper person” carries no precise meaning but is dependent upon the circumstances. He said that given the commencement of the new Act, the fit and proper person test is now the paramount consideration for the TIU in considering licence applications.

### **The appeal**

65. This appeal before the Board is pursuant to s.77(1)(a) of the Act. The onus is on the appellant to demonstrate that the TIU’s decision to refuse him a licence was in error. In considering this appeal, the Board is not limited to the materials that were before the decision maker 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.
66. As noted, s60(2) provides that the TIU may only approve an application for a licence if satisfied that the applicant is a fit and proper person to hold such a licence.

67. In *Australian Broadcasting Tribunal v Bond*, 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.*

68. The context in which the appellant seeks to operate is the harness racing industry. He has applied for a Stablehand licence. If granted, the licence would permit the appellant to perform stablehand duties, as detailed at paragraphs 52 and 56 above.

### **Determination**

69. As to the appeal grounds submitted regarding a denial of procedural fairness, the Board is of the view that the actions of the Licensing Panel fell short of compliance with the appropriate and necessary principles that a modern approach to procedural fairness dictates. This included not being advised of, or provided with, the material the decision making body had before it when determining the matter, not being advised of the matters of concern to the Panel/matters that weighed against him and not being given an opportunity to respond to those matters, and not having his application (including the additional information and material provided in support of it) independently assessed as a separate and different application to the application he had made six months earlier for a different category of licence.
70. We have referred above to some of the principles of procedural fairness that have been considered by this Board in past determinations and, in particular the decision of this Board in the matter of TRAB Appeal No. 17 of 2024/2025 (referred to in paragraph 38 above). Similarly in this case, the importance of the decision of the Licensing Panel to Mr Cooper could not be understated – it affected his livelihood as well other significant aspects of his personal life. In this case, it appears that the Licensing Panel may have proceeded on the basis that it was obvious that it would be considering the same factors as it had considered in respect to the applicant’s earlier application for a Driver and Trainer licence. Whereas, on the other hand, the appellant has approached the interview on the basis of the expectation that he would be advised what factors were of concern and be asked to speak to those factors, as had been the case on past occasions. The appellant applied for a different category of licence, and more than six months after the earlier application which had been refused. He expected the Licensing Panel to consider his application afresh and, in the Board’s view, he had a right to that expectation.
71. As to the proposition that it is “unrealistic” for an applicant to expect to have the opportunity for an interview in respect to their application, the Board observes that the Requirements state that “A Stablehand licence is issued at the discretion of Tasracing Integrity Unit to a person who has: - ... Been interviewed to the satisfaction of the Stewards.” Putting aside the issue of whether the principles of procedural fairness would require Tasracing to offer the opportunity of an interview in instances where there is a risk they may not grant a licence, in fairness to participants in the industry, if the TIU develops a set of guidelines about how their powers and functions are carried out, the Board does not accept it is “unrealistic” that participants expect that those guidelines are followed by the TIU.

72. The Board also does not accept the proposition that the decision maker, in this case, the TIU, can adopt rules, in this case the Rules of Racing, which, either expressly or by implication, provide that the persons affected by decisions of the decision maker have no right to procedural fairness. For the benefit of any doubt, the Board does not accept that AHRR 311 provides the TIU with the discretion to disregard the rights and privileges of any person in any circumstances in which that person has failed to comply with any rule, determination or complete any form made under the Rules. There may be appropriate circumstances in which that Rule would apply, but this is not one of them.
73. On behalf of the TIU, it was submitted that the Board should first consider whether there had been a breach of the appellant's right to procedural fairness (necessitating a consideration of what that right was), before it could move to consideration of the ground of appeal that the TIU had erred in its finding that the appellant is not a fit and proper person. The hearing of this appeal was in the nature of a re-hearing. The Board does not accept that it is necessary that a denial of procedural fairness is found before the Board can consider whether the decision maker erred in its finding.
74. The Board does observe, however, that the fact that the Board has made a finding that the application, and relevant further information and material, was not adequately assessed as a fresh application, requires the Board to independently assess the application for a Stablehand licence on its merits, without weight being given to the original findings of the Licensing Panel.
75. Whilst the Board accepts that there are a wide range of factors relevant to that assessment, the Board is of the view that the most significant matters of relevance to the application are the recent disciplinary history and the criminal record, and, in order to assess what risks remain, what the applicant has done to take responsibility for and address such matters. There is no evidence before of the Board of criminal offending after May 2021 (for which convictions were apparently made in July 2021). That is more than four years before the application was made. The applicant was licensed by the predecessor to the TIU after those convictions. The recent disciplinary history detailed above were accepted as relevant by the appellant, and addressed in submissions to this Board. That history, taken as a whole demonstrated poor ability to operate within a regulated environment. The appellant has, of course, been penalised for each of those offences. Without recounting again here what the disciplinary offences were and what the appellant's response to them was, in short summary, the appellant has considered the root cause of each of those incidents and taken steps to address how he can improve his behaviour and mitigate the risks of such incidents occurring again. He has done this variously by engaging in counselling in respect to his mental health and engaging positively in his local community, ceasing to consume alcohol and by not engaging with social media recognising each of those as risk factors for him. Those are all appropriate actions to take, in the Board's view to demonstrate that he is a fit and proper person to be licensed in the industry.
76. The Board has considered these factors in light of the new statutory framework that requires the decision maker to be satisfied the person is a fit and proper person to hold such a licence. All of the work of a stablehand is conducted under the direction and supervision of a licensed trainer and largely occurs on the trainer's property or training facility. The appellant has demonstrated he has the full support of the trainer he intends to work for. In the Board's view, in the context of the nature of that licence category, the appellant has taken adequate steps to address the legitimate concerns of the Licensing Panel and ought to be given the opportunity to hold a Stablehands licence.
77. Consideration ought to be given also to whether it is appropriate for a refusal of licence to be used effectively as an alternative, or an extension to, a disciplinary decision in respect to particular past conduct. In the Board's view, and doubtless this is uncontroversial, the determination of a licence application is a separate regulatory power to the disciplinary sanctions available to the TIU in respect to specific conduct. An application for a licence requires a risk assessment based on broad factors, whereas a disciplinary action or decision may involve an element of punishment.

78. The Board has determined that the decision of TIU to refuse the appellant's application for a Stablehand licence, be quashed pursuant to s99(1)(a) of the Act. The Board orders that the appellant's application for a Stablehand licence be granted without conditions.
79. In accordance with section 99(4) and (5)(e) of the *Racing Regulation and Integrity Act 2024*, the whole of the appellant's prescribed deposit is to be refunded to the appellant.

**DATED: 2 MARCH 2026**