

## TASMANIAN RACING APPEAL BOARD

Appeal No. 15 of 2018/19

<b>Panel:</b>	<b>Kate Brown (Chair) Rod Lester (Member)</b>	<b>Appellant:</b>	<b>Troy McDonald</b>
<b>Appearances:</b>	<b>Anthony O'Connell of behalf of the Appellant Roger Brown on behalf of the Stewards</b>	<b>Rules:</b>	<b>AHRR 163 (c) (i)</b>
<b>Heard at:</b>	<b>Office of Racing Integrity 1 Civic Square Launceston, Tasmania.</b>	<b>Penalty:</b>	<b>Three race meeting suspension</b>
<b>Date:</b>	<b>23 March 2019</b>	<b>Result:</b>	<b>Upheld</b>

### REASONS FOR DECISION

1. On 23 March 2019 the Tasmanian Racing Appeal Board heard an appeal from Mr Troy McDonald. The appellant was found guilty of shifting inside the marker pylons in race two at Burnie on 3 March 2019, and suspended for three race meetings. Mr McDonald had pleaded not guilty at the Stewards' inquiry and appealed both conviction and penalty.
2. Mr McDonald was charged under the Australian Harness Racing Rule (AHRR) 163 (c) (i) which states:  
*A driver shall not –*  
*(c) allow the driver's horse or sulky or any part thereof to:*  
*(i) Shift inside the marker post*
3. The particulars of the charge were that:  
*As the driver of Im Page [he] directed [ his ] horse to an inside run when there was insufficient room thereby running over and going inside at least four marker pegs around the home turn.*
4. In his defence, the appellant argued essentially that he had gone over the marker pegs as he was forced to by Mr Barry Rattray; that essentially it was a matter of safety and he had no alternative. The Board had regard to all materials in the appeal file, the race film and the submissions of the appellant and respondent.
5. Stewards alleged that going into the back straight to the appellant, who was three back on the fence, got up in behind the leader and when Mr Rattray

moved off the fence “a little”, the appellant attempted to take a run that was not there. The evidence of Mr Rattray was that he was following the same line he had followed throughout the race: coming off the fence to work into the corners; by the time the appellant came up on the out on the inside, they were on the corner. He said that about  $\frac{3}{4}$  of the way through the corner he came off the appellant.

6. At the appeal, the appellant’s advocate took the Board through the race film, and argued that there was a run available to the appellant and the onus was on Mr Rattray not to shift back down thereby forcing or pressuring the appellant. He submitted that Burnie is a tight track and “you have got to take the opportunities where they come”. He further submitted that Stewards unreasonably disregarded the appellant’s evidence, particularly the following:

*I followed Mr Walters in the run Mr Walters come to the outside that was my intention down the back straight as I seen the leader getting ground and Mr Rattray sat one off the fence for some time and I waited for a long time for him to come back down but approaching the corner I felt I wasn't giving my horse its best chance if I didn't take that run and I took that run and as I felt there was clear room with that run and Mr Rattray's horse was approaching the bend... taken my room and I've got nowhere to go other than sit there restraining round the bend.*

7. It was further submitted that Stewards could quite properly have charged Mr Rattray with causing another runner to shift inside the marker posts, on the exactly the same evidence.
8. In considering all the material, particularly the race film and the evidence of the appellant, with Rattray, and Mr Waters, the Board was ultimately insufficiently satisfied of the guilt of the appellant, and preferred the submissions of the appellant. The Board accepted that while the appellant crossed the marker posts that was not done deliberately or consciously, but entirely as a response to Mr Rattray shifting down into the corner and taking the run. The Board was not sufficiently persuaded it was unreasonable for the appellant to attempt that run in all the circumstances as had been particularised.
9. The appeal against conviction was upheld and the decision of Stewards quashed; the whole of the prescribed deposit is to be refunded to the appellant and no transcript costs are payable.