

TASMANIAN RACING APPEAL BOARD

Appeal No 17 of 2024-25

Panel:	Mr Patrick O'Halloran (Chair)	Appellant:	Mr Wayne Yole
Adviser:	N/A	Rules:	
Appearances:	Mr Dominic Deayton on behalf of the Tasracing's CRIO		Mr Damian Sheales on behalf of the appellant
Heard at:	Via Microsoft Teams	Penalty:	Restriction on ability to nominate for races or lodge stable returns
Date:	10 February 2025	Result:	Conditional Stay Granted

STAY APPLICATION - REASONS FOR DECISION

1. In response to a request made by the Appellant in this matter - within a hearing listed on Monday 10 February 2025 - I as chairperson was asked to provide a stay or suspension in regard to impacts that are said to have occurred upon Mr Wayne Yole, as a result of the content of communication contained within a letter dated 3 February 2025, to Mr Wayne Yole from Mr John A Zucal, acting Chief Racing Integrity Manager ('the letter').
2. That letter is Annexed hereto to these reasons.
3. Not stated within the oral reason for decision but articulated within these reasons now is that it is observed that the power to issue such a suspension appears within s 85 of the *Racing Regulation and Integrity Act 2024* – such legalisation coming into force on 1 February 2025.
4. That section relevantly provides:

85. Suspension of penalties pending appeals

(1) *The chairperson, on the request of the appellant, may, unconditionally or on such conditions as the chairperson thinks fit, suspend the operation of a decision or a penalty pending the hearing and determination of an appeal.*

(2) *The chairperson must not suspend the operation of a decision or a penalty under [subsection \(1\)](#) in relation to a major or minor appeal if –*

(a) the decision was made, or the penalty imposed, because of a serious risk to –

- (i) the welfare or health of an animal; or*
- (ii) the safety of any person; or*
- (iii) the integrity of the Tasmanian racing industry; or*

(b) the appeal is intended to be heard within 7 days of lodgement, unless the chairperson considers that extenuating circumstances require otherwise.

5. Not stated within the oral reason for decision but articulated within these reasons now is the observation that the power to suspend or stay was previously provided for within the *Racing Regulation Act 2004* in s 33. That section provided

(1) The chairperson, on the request of the appellant, may unconditionally or on such condition as he or she thinks fit, suspend the operation of a penalty pending the hearing and determination of an appeal.

(2) The chairperson must not suspend the operation of a penalty under subsection (1) in relation to a major or minor appeal if

(a) The appeal is in relation to the penalty only, or

(b) The appeal is intended to be heard within 7 days of lodgement, unless the chairperson considers that extenuating circumstances require otherwise

6. Not stated within the oral reason for decision but articulated within these reasons now is that it can be seen that the types of matters for which a request (for stay or suspension) can be made has been changed from 'penalty' to 'decision or a penalty'

7. Not stated within the oral reasons for decision but articulated within these reasons now is the observation that previously within **Appeal No. 24, 25, 26 and 27 of 2023-24** – [a decision which was considering the issuing of Warning off notices (issued per s 54 of the *Racing Regulation Act 2004*)] Chair Cuthbertson observed at [2]:

The TRAB has previously determined that it has no power pursuant to s 33 of the Act to suspend the operation of an order made pursuant to s 54 of the Act pending the hearing and determination of an appeal. This gap in its powers has the potential to cause real injustice to a range of appellants seeking to appeal decisions that do not constitute a "penalty" within the meaning of the Act but which are attended with significant consequences.

8. One of the live issues within this application was a consideration of whether the letter was, for the purposes of s 85, 'a decision or a penalty' and whether the issuing of the letter had had any operative effects on Mr Wayne YOLE (i.e. that, if it was deemed to be a decision or penalty, needed to be suspended).
9. I have taken into account and listened carefully to submissions from both counsel, who the Chair extends his thanks for their attendance and meaningful submissions at short notice.
10. More broadly the very nature of stay applications is an interlocutory type hearing that involves short time frames, potentially complex issues and consideration of many factors of actual import at an early stage of any appeal litigation, (i.e. on day one). Further within the broader consideration is the appreciation that the submission made at this stage of proceedings aren't necessarily a firm framework or foundations on which the appeal may ultimately be argued and/or determined.
11. With the time available today and noting several aspects of the asserted prejudice made on behalf of Mr Wayne Yole by his counsel Mr Damian Sheales, for the purposes of section 85, (which as provided above is where in lies the power to stay or suspend aspects) the Chair's ruling is that the correspondence of 3 February 2025 ('the letter'), goes beyond a statement

of consequences on Mr Wayne Yole that have resulted or might have resulted or are a direct result of the decisions of the Independent Stewards Panel (ISP) made on Mr Ben Yole on 30 January 2025.

12. Clearly the letter refers to those decisions that the ISP have recently made pertaining to Mr Ben Yole and for the avoidance of doubt, the author of that letter sets out those restrictions and extracts Rule 259 in its entirety and highlights specific sub rules, (which I infer are the relevant restrictions that are said to be more readily enlivened as a result of the ISP decision re Mr Ben Yole on Mr Wayne Yole)
13. I make no comment as to that, however the letter also, on my ruling on the plain reading provides new action that the author seeks to take upon or activate against Mr Wayne Yole.
14. The relevant portions of the letter which I so characterise are as is contained within the following two sentences or paragraphs within that correspondence:

Effective immediately, you are therefore restricted from training from 119 Valley Road, SIDMOUTH 7270 being the property formerly registered to Mr Ben Yole.

Under these circumstances, forthwith no nominations will be accepted from you until such time your stables are approved by the Stewards.

15. Not stated within the oral reasons for decision but articulated within these reasons now is the observation that the use of the words '*Effective immediately*' clearly, in the context of this matter, provide
 - a. the commencement of something new and restrictive
 - b. a starting time point of restrictions that are to commence 3 February 2025 (as opposed to, with reference to the penalty on Ben YOLE a start point of 30 January 2025) and
 - c. also convey that separate to the starting time the restrictions are to be effected upon Mr Wayne YOLE.
16. It is my ruling therefore that in circumstances of considering of the word **decision**, as that word or phrase is use within section 85(1), that
 - a. notwithstanding that the word is not defined within the legislation,
 - b. giving the word *decision* its plain and ordinary meaning,

on a plain reading the letter is more than a statement of consequences expressed to Mr Wayne Yole of the impacts that will now flow onto him as a result of the penalties imposed on Mr Ben Yole. It does include a decision.

17. As such for the purposes of section 85(1) and not a determinative or definitive ruling in regards to section 81(2)(a) re jurisdiction, for the purposes of granting a stay or suspension and noting
 - a. that there has been no submissions made in relation to section 85(2) and
 - b. that the remedy sought at this stage is for a very short finite period and for only one aspect of the expressed intention of that correspondence relating to nominations only and
 - c. noting the prejudice that Mr Sheales asserts would exist upon his client, the appellants within the immediate following days and
 - d. noting the process by which Tasmanian Racing receives nominations only on Tuesday's and
 - e. noting the capacity, notwithstanding for scratching's to occur,

I grant a stay.

18. Such a ruling does not mean to impart that the letter is not and could not also be construed as a penalty.
19. Using the framework of section 85(1), I suspend the operation of the decision of 3 February 2025 on condition that such suspension relates only to the process of nominations.
20. This matter is adjourned for a finite period to Thursday 13 February 2025.

DATED: 13 FEBRUARY 2025