

**NEW SOUTH WALES  
HARNESS RACING  
APPEAL PANEL**

**APPEAL PANEL MEMBERS**

**Hon. W Haylen KC**

**B Skinner**

**R Higgins**

**THURSDAY 15 JUNE 2023**

**APPELLANT BRENT BERRY**

**RESPONDENT HRNSW**

**APPLICATIONS FOR OUT OF TIME APPEAL AND  
APPEAL BY BRENT BERRY  
INTERLOCUTORY DECISION**

**Proceedings Adjourned**

- 1 On 27 May 2021, Mr Brent Berry (a licensed participant) was disqualified under the rules of Harness Racing for a period of 2 years and 9 months. He had been found guilty of four charges under the Australian Harness Racing Rules. Charge 1 stated that he had abused and/or threatened the Integrity Manager of HRNSW following a Stewards Inquiry, contrary to the provisions of AHRR 231 (1)(a)&(b); Charge 2 stated that he had abused the Integrity Manager of HRNSW following a Stewards Inquiry and that he was deliberately obstructive of the Stewards during an Inquiry, contrary to the provisions of AHRR 187(5); Charge 3 stated that following a Stewards Inquiry he made obscene, offensive, threatening and abusive comments about the Integrity Manager of HRNSW, contrary to the provisions of AHRR 248; Charge 4 stated that following a Stewards Inquiry, he failed to comply with a direction of Stewards that he leave the Stewards Room and/or he failed to comply with a direction to leave the racecourse at the Club. Mr Berry alleged that during the meeting with Stewards, the Integrity Manager had elbowed him while trying to remove him from the room.
- 2 In February 2022 Stewards informed Mr Berry that an investigation of his betting activities had identified 393 parimutuel Australian Harness racing bets placed between 29 May 2021 and 5 February 2022 whilst he was a disqualified person. A further 66 fixed odd harness racing bets were placed by him between 2 June 2021 and 28 December 2021. Further, between 2 June 2021 and 17 August 2021 he had placed 72 Australian harness racing bets with BET 365. These bets were placed by him, contrary to the restrictions placed on betting by disqualified persons under the provisions of AHRA 259 and 259A. On 22 February 2022, Stewards informed Mr Berry that 3 charges had been laid against him under AHRR 259(1)(j)&(7) in relation to these bets. Mr Berry responded to the charges but did not enter a plea. He provided brief submissions on penalty. On 5 January 2023 the Stewards announced a further disqualification of 6 months for each charge to be served concurrent to and to commence at the conclusion of his then current disqualification. In addition, pursuant to the provisions of AHRR 259A, the Stewards ordered that the original period of 2 years 9 months disqualification be recommenced in full from 5 February 2022. It was pointed out that the current period of 2 years and 9 months disqualification would commence from 5 February 2022 and conclude on 5 November 2024. Following the conclusion of that disqualification, Mr Berry would serve a further 6 months disqualification to commence from 5 November 2024 and expire on 5 May 2025.
- 3 On 6 February 2023 Mr Berry filed a Notice of Appeal to the NSW Harness Racing Appeal Panel. The Notice of Appeal appeared to raise his disqualification in 2021 and his further disqualification in 2023. It was understood by the parties that the Appeal against the 2021 decision, was an application to be granted leave to appeal out of time. The Appeal against the 2023 decision was lodged within time.
- 4 At the beginning of the hearing of the appeals, the Panel indicated that it wished to firstly consider the question of whether or not the 2021 penalty was a matter that it could consider under the provisions of NSW Local Rule 181C (3) which provides: "The Appeal Panel may, in its discretion, extend the time required for the commencement of an appeal under the provisions of either subrules (1) or (2) above where it is satisfied that special or exceptional circumstances have been established that justify the granting of such an extension." Sub rules (1) and (2) are in the following terms: (1) Any appeal against a period of suspension incurred by a driver of 4 weeks or less must be lodged by the appellant within 1 day of becoming aware of the decision appealed against and any appeal must be heard and determined within 9 days of the date that the suspension was imposed (unless the Appeal Panel is unable to do so solely due to unavailability of the Appeal Panel members, in which case the appeal is to be heard and determined as soon as the Appeal Panel is able to do so). (2) All other appeals, being appeals

that are not captured by subrule (1) above, must be lodged by the Appellant within 2 days of the appellant being notified of the decision appealed against.”

- 5 In written submissions, HRNSW suggested that the terms of Local Rule 181C (3) were possibly wide enough to allow Mr Berry to lodge an out of time Appeal to this Panel, regardless of the fact that the decision being appealed had been handed down nearly 11 months before the Appeals Panel came into existence. At the time of that decision Mr Berry clearly had a right of appeal to the Racing Appeals Tribunal. Mr Berry made no submissions to the Panel about the matters raised by HRNSW but stated that he simply thought the Panel was now the right place to hear his out of time application and the appeal against the 2023 decision.
- 6 The Harness Racing Appeal Panel commenced to exercise its statutory powers on 16 December 2022. Industry participants were informed that, up until that date, appeals would need to be filed with the Racing Appeals Tribunal. That instruction is a clear indication that only matters occurring from 16 December 2022 would be heard by the new Appeal Panel. Further, there is nothing in these new provisions that clearly indicate that an “out of time” application to the Appeal Panel could include matters arising when the Racing Appeals Tribunal was the only venue of appeal after a stewards finding in Harness Racing. In this exercise, it would be expected that such an important step would be clearly spelt out in the new provisions governing Harness Racing and the establishment of the Appeals Panel, but they are not. Indeed, it would be extraordinary for the Harness Racing Appeal Panel to be given the power to hear appeals arising from events before, including well before the date that the Panel commenced its operation. In addition, the short and strict timelines for lodging appeals to the Panel is another indication that the new regime was looking to cases in the future rather than making provision for decisions made in the past. Consideration of the Second Reading speeches on the introduction of legislation establishing the Appeal Panel discloses no intention to allow out of time appeals prior to 16 December 2022. Significantly, the Second Reading speeches dealt in some detail as to how the new Appeal Panel would operate but no mention is made of what might otherwise be considered as a unique step in exercising a power to allow appeal out of time as in the present case of Mr Berry.
- 7 Having considered these matters the Panel concludes that Mr Berry’s out of time application dealing with matters decided in 2021 is beyond the jurisdiction of the Appeal Panel. The Panel accepts that Mr Berry may make a late out of time application to the Racing Appeals Tribunal regarding those matters.
- 8 In considering how this possibility may affect the second matter brought to the Appeal Panel by Mr Berry, it was brought to the attention of the parties that should he succeed in overturning the 2021 decision, the second disqualification could not stand as it rested on the prior finding of disqualification under the rules. The second round of penalties only applied because of prohibited betting activities of a disqualified person under the rules of Harness Racing.
- 9 In view of these considerations the proceedings were adjourned without objection from the parties. Mr Berry indicated that he proposed to file an out of time application with the Racing Appeals Tribunal in relation to his disqualification in 2021. The future course of these proceedings will therefore await the decision of the Racing Appeals Tribunal.

Hon Wayne Haylen KC – Principal Member

Mr B. Skinner – Panel Member

Mr R.Higgins – Panel Member

19 June 2023