# NEW SOUTH WALES

# HARNESS RACING

# APPEAL PANEL

## APPEAL PANEL MEMBERS
## Hon W Haylen KC
## D Kane
## J Moore

## RESERVED DECISION

## 4 November 2025

### APPELLANT JACK BROWN

### RESPONDENT HRNSW

### AUSTRALIAN HARNESS RACING RULES

### 250(1)(b), 187(2) x 2 & 250(1)(a)

### DECISION

**The Appeal Panel makes the following orders:**

**The Appeal brought by Mr Brown is dismissed and the orders of the Stewards are confirmed. The Appeal fee is forfeited.**

1. On 28 May 2025, Harness Racing NSW Stewards commenced an inquiry into the provision of urine samples to HRNSW Stewards at Goulburn on 21 October 2024 and Menangle on 19 November 2024 and the subsequent analysis of those samples. Mr Jack Brown was present and provided evidence to the inquiry and was assisted by a legal representative. A number of documents were entered into evidence in the inquiry including Racing Analytical Services, Victoria Urine Drug Screening Certificates and Victorian Institute of Forensic Medical Report of Scientific Testing. Mr Brown gave verbal evidence during the inquiry and stated that he had been provided with a urine sample by driver Mr Lucas Rando contained in a 20 ml syringe for the purposes of substituting as his own sample.

2. After taking evidence from Mr Brown, 4 charges were issued under Australian Harness Racing Rules (AHRR). Charge 1 arose under AHRR 250 (1) (b), namely that a driver commits an offence if: He refuses or fails to deliver a sample as directed by Stewards, or tampers with, adulterates, alters, substitutes or in any way hinders the collection of such sample or attempts to do any of those matters. The particulars of Charge 1 were that Mr Brown at Goulburn on 21 October 2024, after being directed to provide a urine sample by Stewards, did substitute a urine sample obtained from Mr Lucas Rando, in place of a sample that was directed to have been provided by Mr Brown.

3. Charges 2 and 3 arose under the provisions of AHRR 187(2), that a person shall not refuse to answer questions …or give false or misleading evidence or information at an inquiry or investigation. The particulars of charge 2 were that on 24 October 2024, Mr Brown, when interviewed by HRNSW Stewards gave false and misleading evidence in relation to an investigation, in that he denied on more than one occasion substituting a sample obtained from Mr Rando in place of a sample that was directed to have been provided by him. The particulars of charge 3 were that Mr Brown, on 19 November 2024, when interviewed by HRNSW Stewards, gave false and misleading evidence in relation to an investigation, in relation to DNA results from samples obtained at Goulburn on 21 October 2024. In essence, he did not accept that it was Mr Rando's sample, not his own , nor did he confess that it was agreed with Mr Rando to fake Mr Brown's sample.

4. Charge 4 arose from the requirements of AHRR 250 (1)(a): A driver commits an offence if (a) a sample taken from him is found upon analysis to contain a substance banned by rule AHRR 251. The particulars of this offence were: That Mr Brown, a driver engaged at Menangle on 19 November 2024, did provide a urine sample which was found upon analysis by two approved laboratories to have contained a banned substance in accordance with AHRR 251.

5. Mr Brown pleaded guilty to all 4 charges. His legal representative provided submissions relating to penalty and the personal circumstances of Mr Brown. Among the matters submitted were: there was remorse and shame for the situation he had created; the fact that he had undergone alcohol and drug rehabilitation and continues to utilise counselling services; that general deterrence should not apply; any penalty should take into account the period of

suspension already served; his first offence of this nature; his overall good driving record and involvement in the industry; his willingness to comply with any penalty and conditions applied by Stewards; the character references provided on his behalf; and precedent cases relied upon.

6. In relation to charge 1 the Stewards were of the view that Mr Brown was aware that if he provided a sample to Stewards, there was a chance that the sample could test positive to illicit substances. This was seen as his main motivator for substituting the sample rather than a medical condition. Further, Mr Brown concealed a syringe containing the urine of Mr Rando within his clothing to evade detection before presenting himself to Stewards to complete his obligation to provide a sample. The Stewards regarded the planning of such deceitful conduct displayed a level of premeditation.

7. The Stewards then drew attention to the decision of Mr Matthew Schembri (2020), where the NSW Racing Appeals Tribunal at para 18 dealt with objective seriousness: "The Stewards have reflected on many occasions, and various Tribunals, differently constituted, have reflected upon the gravity of noncompliance with the rules, the removal of level playing fields, the destruction of the integrity of the industry and the necessity for protective orders to be made by way of penalty to provide the necessary message to this appellant as to the consequences of acting in breach of the privilege of a licence, but more importantly, to make it very clear to all other participants that like conduct will lead to a loss of privilege of a licence. It is also important for the message that is sent out to be quite clearly one which will indicate to the public at large that the regulator will take all appropriate steps by removing privilege of a licence from those who transgress the rules."

8. In considering an appropriate penalty, the Stewards noted that they had to weigh up the subjective factors and other matters relevant to Mr Brown against the integrity and public image of the industry. In doing so it was stated that the only appropriate penalty for this type of conduct was a period of disqualification and at a starting point of 27 months. Mr Brown had entered a guilty plea when faced with charges in respect of his conduct, however, he continued to deny any wrong doing during the course of the Stewards investigation until such time as he was faced with insurmountable DNA evidence. Further, the Stewards did not see his pleas of guilt as an indication of remorse but as a grudging acceptance of the inevitable once faced with the weight of evidence against him. Thus he was not entitled to a full reduction of 25% as a result of his guilty pleas and 12.5% was appropriate in the circumstances. The Stewards considered the subjective factors of Mr Brown, and in particular the report of Dr Hudd who had prepared a psychological assessment of Mr Brown, reaching a further reduction of 20%. The appropriate penalty for Charge 1 was a disqualification for a period of 18 months.

9. In relation to Charges 2 and 3 the Stewards stated that they had given Mr Brown every opportunity "to come clean" about substituting Mr Rando's urine in place of his own. He was reminded of the rules and his obligation to answer the questions of the Stewards truthfully and honestly and acknowledged that he

understood those obligations before the interview commenced. He was aware that the samples had been sent for DNA evidence, and the results of the initial DNA testing showing that the donor samples were a match. Nevertheless Mr Brown continued to mislead the Stewards investigation.

10. Having made those findings, the Stewards considered that an appropriate starting point was a period of 8 months disqualification for each offence. He entered a guilty plea and was given a 12.5.% reduction. The Stewards considered his personal subjective factors and the particular circumstances that led to these breaches but determined that he was not entitled to the same reduction decided in Charge 1. The Stewards also noted significant submissions made by Mr Brown's legal representative that there was a clear link between the adverse experiences of Mr Brown in his childhood and teenage years to that of the offending. This submission was accepted by the Stewards as relevant to Charge 1 but not to Charge 2. As a result they determined that the appropriate reduction for Charge 2, was 12.5%. The Stewards then determined that the appropriate penalty for Charges 2 and 3 was a disqualification for a period of 6 months for each of the sentences.

11. Charge 4 dealt with a breach of AHRR 250(1)dealing with prohibited substances. It was considered to be objectively serious and that drivers could expect lengthy suspensions or disqualifications if they drive in races with illicit substances in their system. Importantly, this substance is considered to be illegal in society. It was noted that RNSW Penalty Guidelines outlined the appropriate starting point for such a charge by a driver, for a first offence, was 12 months suspension. Mr Brown entered a guilty plea at the first available opportunity and was afforded the full 25% reduction. The Stewards also considered his personal subjective factors, including that he had undergone drug and alcohol rehabilitation, and granted a further reduction of 25%. Thus, the appropriate penalty for Charge 4 was suspension for 6 months.

12. The Stewards then noted that where the offending comes from separate and distinct conduct, such periods of disqualification and suspension were to be served cumulatively. Therefore, Mr Brown's licences were to be disqualified for a period of 2.5 years (30 months) commencing from 20 November 2024, at which time his licence was suspended. The period of suspension following from Charge 4 was to be served at the completion of his disqualification. The Stewards would consider an application from Mr Brown to return to trackwork 2 months prior to the completion of the suspension, should he continue to undergo counselling with Dr Hudd, his consultant psychologist, during his time away from the industry.

13. At the hearing of the Appeal, HRNSW presented a detailed submission in support of the findings of the Stewards. It was noted that written submissions for Mr Brown propounded six grounds of appeal : (1) The penalties individually are too severe or not the correct or preferred design; and/or (2) the discount provided for the plea(s) of guilty are insufficient; and/or (3) the Stewards did not properly take into account the significant mental health issues of the Appellant; and/or, the stewards did not properly take into account the subjective factors of the

Appellant; and/or stewards imposed cumulative sentences when fully concurrent and/or alternatively partially concurrent sentences should be imposed; and that the principles of totality are offended.

14. In relation to Charge 1, the HRNSW submission observed that breaches related to deceitful conduct were regarded as particularly serious as they directly threatened the overall objectives of the harness racing industry, notably by damaging public perception and compromising integrity. Mr Brown was aware that if he provided a sample to Stewards, there was a chance that the sample could test positive to illicit substances. The Stewards believed that this was his main motivator for substituting the sample rather than a medical condition. This was not an error in judgement and Mr Brown's concealment of the syringe showed planning and a level of premeditation. Mr Brown continued to deny any wrongdoing during the course of the Stewards investigation until such time as he was faced with insurmountable DNA evidence. He was not entitled to a full reduction of 25% as a result of his guilty plea.

15. In relation to Charges 2 and 3, the Stewards gave Mr Brown every opportunity to come clean about substituting Mr Rando's urine in place of his own. Despite that opening, Mr Brown continued to actively mislead the Stewards investigation. Subjective factors were considered, namely the submission that there was a clear link between the adverse experiences of Mr Brown in his childhood and teenage years to that of offending. The Stewards accepted that matter as relevant to the offending in charge 1( being false and misleading evidence ,24 October 2024) but not for Charge 2 ( false and misleading evidence,19 November 2024).

16. In relation to relevant principles, HRNSW referred to four well known cases. In Wade v HRNSW (RATNSW 4 March 2025) it was said that the assessment of penalty by that Tribunal was a discretionary decision made in light of the circumstances of the individual case; the purposes which are intended to be served by such a penalty as set out in Pattinson and that such an approach must be one of instinctive synthesis in which all relevant matters are taken into account, the appropriate degree of weight is ascribed to each of them and all relevant matters are taken into account and a determination is then reached. In Australian Building and Construction Commissioner v Pattinson (2020) 274 CLR 450 at [9]-[10] and [15] it was noted in the context of a civil penalty that: " the purpose of a civil penalty is primarily, if not solely, the promotion of the public interest in compliance with the provisions of the Act by the deterrence of further contraventions of the Act…What is required is that there be 'some reasonable relationship between the theoretical maximum and the final penalty imposed'. The Tribunal in Turnbull v HRNSW, RATNSW (30 Sept 2022) at [114] referred to Pattison and noted the following: "The purpose of civil disciplinary penalty is primarily for the promotion of the public interest by the deterrence of others. Criminal law proportionality has no part in a civil disciplinary penalty consideration. A maximum penalty is not only for the worst case. A penalty necessary to reasonably achieve the primary purpose will deter repetition. Conduct should not be seen as an acceptable cost of doing business. Retribution has no part to play in the civil disciplinary penalty. A penalty must

only be at a level necessary to achieve its object otherwise it would be oppressive. It is ok to use principles of totality, parity and course of conduct because they are analytical tools. A maximim penalty is but one yardstick. The principle of deterrence must focus upon the future. Lastly, in NW Frozen Foods Pty Ltd v ACCC (1996) 71 FCR 285 at 293, Justices Burchett and Kiefel JJ agreed with the proposition that:"...the deterrent quality of a penalty should be balanced by insistence that it "not be so high as to be oppressive". Plainly, if deterrence is the object, the penalty should not be greater than is necessary to achieve this object; severity beyond that would be oppression.

17. In applying these principles it was noted that HRNSW did not dispute that Mr Brown has mental health issues and had experienced significant trauma in his life. However, the medical evidence he relied upon in this appeal, establishes a link between his conduct and his drug use, rather than excuse his repeated dishonesty. There was no cogent evidence that his mental health issues, mild intellectual disability or trauma caused a propensity to be untruthful, or that he had sufficiently addressed any such issues. Further, Mr Brown's conduct during approximately 3 months before his confession was also conscious, bold and unequivocal. His reliance on suffering from a medical condition and therefore having a difficulty in urinating was difficult to accept when it was clear that he was afraid that he would test positive for cocaine.

18. The following further matters were raised: Mr Brown's dishonest conduct was objectively serious; the issue of general deterrence had to be kept in mind and Mr Brown had acted with the clear intent to lie and deceive the Stewards; specific deterrence is also justified on the facts especially his continued inability to provide the whole truth; the penalty was not disproportionately excessive or oppressive; Section 2A of the Harness Racing Act 2009 deals with the objects of the Act which ensure the integrity of harness racing and associated wagering in the public interest, and to protect and promote the welfare of harness racing horses. The offences committed by Mr Brown directly undermined these protective purposes. The period of disqualification of Mr Brown was both reasonably necessary to protect the industry and is consistent with the objects of the Act.

19. In relation to subjective circumstances, Mr Brown's evidence was not substantial. He had elected not to swear a statement for the purposes of this appeal. His submissions relied on several factors but with very little elaboration of substantiation. The excuse given for the conduct was his health issues, prior trauma and lack of maturity. However, there had been insufficient evidence to satisfy HRNSW that this conduct would not occur again and that the penalty could be reduced anywhere near the period suggested by Mr Brown, being 12 months.

20. The Appellants submissions were filed on 7 October
and contained the grounds of appeal which are set out in para 13 above. The submissions were not to be read in any way to circumvent the seriousness of the offending. The seriousness of his conduct was not lost on the appellant.

21. It was submitted that the appellant entered pleas of guilty on the first possible occasion, thus showing remorse for his offending behaviour. The plea was said to be of utilitarian value and showed a willingness to facilitate the administration of justice. Therefore, the full 25% discount should be applied to the penalty given each individual charge and the aggregate penalty imposed. HRNSW was seeking to reduce this percentage for the guilty pleas for charges 1, 2 and 3 from 25 % to 12.5% on the basis that the appellant provided false evidence and that his plea was a grudging acceptance of the inevitable. The reduction to 12.5% was inappropriate due to the following: the strength of the case presented by HRNSW is not a factor that affects the value of the percentage given, citing three cases without indicating the relevant paragraphs. Further, it was argued that the providing of the "false evidence" was an element for charges 2 and 3. Where there are multiple offences, the elements of the other offences cannot be regarded as an aggravating factor for another offence, in this case, charge 1. Doing so was double counting, citing two cases. Therefore, it was argued that the total 25% discount should be attributed to charge 1. In relation to charges 2 and 3, the Stewards penalty included a percentage for a guilty plea of 12.5%. The reasoning was based on false evidence and was inappropriate because the "false evidence" and the "grudging acceptance of the inevitable" was again not a factor to be considered when applying the discount for a plea of guilty, citing 4 cases. It was then argued that an element of the offence cannot be an aggravating factor of the same offence, citing 2 cases. These passages revealed an erroneous quantification of the discount for the utilitarian value by taking into account the strength of the case brought by HRNSW, as pointed out by courts on several matters, the strength of the case of HRNSW being irrelevant in determining the percentage of the guilty plea and an element of the offence cannot also be an aggravating factor. Therefore the total 25% discount should apply.

22. The submission then turned to the mental health of Mr Brown. At the time of offending he was suffering from Complex PTSD and a mild intellectual disability. Such mental health issues were relevant to the objective seriousness of the contravention, citing a number of cases. The intellectual disability, coupled with the CPTSD, had led the appellant to substance use, as a means of coping with the stress of the traumatic memories and because of the emotional dysregulation. When faced with the issue, the appellant failed to have the intellect to grasp the gravity of the situation he was in, again leading him to making poor decisions both during the events at Goulburn and thereafter.

23. The significance of a mental health illness was said to be succinctly summarised in the matter of Director of Public Prosecutions (Cth) v De La Rose (2010 79 NSWLR 1, "When an offender is suffering from a mental illness, intellectual handicap or other mental problem the courts have developed principles to be applied when sentencing." Other cases were cited. The submission continued that the presentation of PTDS was a result of trauma that was out of the control of the appellant. He had been programmed to develop a drug habit clearly as a way of self -medication. A treatment plan had been provided, clearly an indication that the mental health issues that lead to the offending behaviour can be treated. Further, the appellant had provided

evidence that he had commenced this treatment, indicating rehabilitation. As such the mental health of the appellant provided for a significant reduction in the penalty imposed.

24. The submission then turned to the issue of totality. HRNSW had provided for a penalty without consideration being given to the penalty to be imposed if "just and appropriate". In this case the arithmetic accumulation of the offences has caused the sentence imposed to be unjust and inappropriate, again citing numerous cases. In considering the issue of totality, the penalty imposed being 30 months, is excessive and cannot be justified. It was noted that a number of the cases cited imposed a penalty significantly less than that of the offender.
25. In oral submissions a number of matters were raised. The 12.5% deduction for Chage 1 should have been 25% because the strength of the case was irrelevant to the guilty plea and the utilitarian value was there. However, the stewards did not see his pleas of guilt as an indication of remorse but as a grudging acceptance of the inevitable. The Stewards also considered the subjective factors of Mr Brown, in particular the report of Dr Hudd, and allowed a further reduction of 20%.

26. Charges 2 and 3 dealt with dishonest conduct but the Stewards could not use an element of the offence in one nature to aggravate the elements of the other offences. Because he was dishonest between those times, even though he was charged for it in matters 2 and 3, he was given more time on charge 1. There does not appear to be any evidence of this suggestion.

27. In submissions for HRNSW it was raised that Mr Brown was lying about when he took cocaine, allegedly before Goulburn. However, the Chairman was talking about the Menangle proceedings. This appears to be correct.

28. It was said that these proceedings are an appeal de novo. The imposition of a disqualification for 30 months has been imposed, however it should be 12 months. In the case of Mr Baverstock, he was found guilty of having cocaine in his horse's system but also with one of his staff leading to contamination. He received a 6 month suspension after taking a rehabilitation course. Mr Brown has already completed such a course. In 2016 Mr Lachlan Booth was given 6 months by HRNSW but 'did a runner'. He then came back, and tested positive . How does HRNSW justify other cases such as Mr Booth given 6 months and Mr Hewitt 12 months. Mr Brown gets 30 months. It was also argued that HRNSW needs to take parity into consideration. The difficulty with this approach is the absence of the circumstances in each case and the era in which the matters arose.

29. HRNSW operates on a different level to other States, yet referred to the Ford case, and misunderstood it. It was a case where there was testing of urine on the same day twice and was a second offence. There were not guilty pleas before the Stewards and on appeal. The first offence resulted in an 18 month disqualification. In this case, Mr Brown entered pleas of guilty on the first occasion and it is his first offence. The difficulty with the Ford case is the entirely different history of the Mr Brown case as shown by the decision of the Stewards.

30. HRNSW did not give due consideration to the trauma Mr Brown suffered throughout his life. He suffered from Complex PTSD and a mild intellectual disability. He was far from the person who can concoct a grand conspiracy. He was young and immature when the offending occurred. This submission ignores the fact that HRNSW specifically consider his subjective factors, in particular, the report of Dr Hudd, and provided a further reduction of 20%. That approach was not the action of a harsh or misunderstanding hearing panel.

31. Mr Brown's family history and his own difficulties were referred to but, at the same time, he had become a significant trainer and driver and appeared to be a member of a group of harness racing friends.

32. Having fully considered the evidence in this case, the Panel does not believe that an appropriate penalty is 11 or 12 months disqualification. Mr Brown appears to have family support and is engaged in the family business. He is continuing with treatment under Mr Hudd who observed that with support around him, his prognosis is encouraging and by psychologically reducing his symptomology the chances of him reoffending is greatly reduced. Mr Brown has told Mr Hudd that he wants to continue consulting him after the current matter is concluded and that he finds his interaction in sessions very helpful. In addition, HRNSW Stewards would consider an application from Mr Brown to return to trackwork two months prior to the completion of the suspension, should Mr Brown continue to undergo counselling with Dr Hudd during his time away from the harness racing industry.

33. The orders of the Appeal Panel are as follows: The Appeal brought by Mr Brown is dismissed and the orders of the Stewards are confirmed. The Appeal fee is forfeited.

Hon Wayne Haylen KC – Principal Member
Mr Darren Kane – Panel Member
Ms Jo Moore – Panel Member

4 November 2025