

IN THE RACING APPEALS TRIBUNAL

LUCAS RANDO

Appellant

v

HARNESS RACING NEW SOUTH WALES

Respondent

REASONS FOR DETERMINATION

Mr O Jones SC for the Appellant

Mr J Elks for the Respondent

DATE OF HEARING **2 February 2026**

DATE OF DETERMINATION **23 February 2026**

ORDERS

- 1. The appeal is allowed.**
- 2. The decision of the Appeal Panel of Harness Racing New South Wales is quashed.**
- 3. In lieu thereof, the Appellant is disqualified for a total of 18 months, commencing on 20 November 2024, and expiring on 20 May 2026.**
- 4. Any appeal deposit is to be refunded.**

INTRODUCTION

1. By a Notice of Appeal dated 10 November 2025, Lucas Rando (the Appellant) appeals against a determination of the Appeal Panel (the Panel) of Harness Racing New South Wales (the Respondent) to impose a disqualification of 21 months following his pleas of guilty to three charges contrary to provisions of the Australian Harness Racing Rules.
2. In light of the Appellant's pleas of guilty, the sole issue on this appeal is that of penalty. A Tribunal Book (TB) containing documentary evidence was provided for the purposes of the hearing.
3. The first charge against the Appellant alleged an offence contrary to r 245 which is in the following terms:

A person shall not direct, persuade, encourage or assist anyone to breach these rules, the Stud Book Regulations, or otherwise engage in improper practice.

4. The second and third charges each alleged offences contrary to r 187(2) which is in the following terms:

A person shall not refuse to answer questions or to produce a horse, document, substance or piece of equipment, or give false or misleading evidence or information, at an inquiry or investigation.

5. The charges against the Appellant were in the following terms:

Charge 1 – r 245

That [the Appellant] at Goulburn on 21 October 2024 did assist Mr Jack Brown to commit a breach of [the Rules] and/or otherwise engage in an improper practice by providing Mr Brown with a sample of [the Appellant's] urine for [Brown] to substitute as his own for the purposes of submitting such urine to [the Respondent's] Stewards for analysis.

Charge 2 – r 187(2)

That [the Appellant] on 24 October 2024 when interviewed by [the Respondent's] Stewards did give false and misleading evidence on multiple occasions in relation to an

investigation concerning a urine sample [he] provided to Mr Jack Brown at Goulburn on 21 October 2024.

Charge 3 – r 187(2)

That [the Appellant], on 19 November 2024, when interviewed by [the Respondent’s] Stewards, gave false and misleading evidence in relation to an investigation concerning a urine sample [he] provided to Mr Jack Brown at Goulburn on 21 October 2024 and the subsequent results of the DNA Analysis of that sample.

6. Following an enquiry, the Respondent imposed the following penalties:¹
 1. Charge 1 – a disqualification of 15 months
 2. Charge 2 – a disqualification of 6 months
 3. Charge 3 – a disqualification of 6 months

7. On the basis that the offending arose from “*separate and distinct conduct*”,² the Stewards determined that the penalties should be served cumulatively, commencing on 20 November 2024.

8. The Appellant appealed to the Panel, who determined that:
 1. The penalty imposed by the Stewards in respect of Charge 1 was appropriate.³
 2. The penalty in respect of charges 2 and 3 should be reduced to 6 months in total.⁴

9. A total penalty of 21 months disqualification was imposed by the Panel, to date from 20 November 2024.

¹ TB 112 – 113.

² TB 113.

³ TB 38.

⁴ TB 39. Although not expressly stated, it is to be assumed that the penalty for each charge was one of 6 months disqualification, to be served concurrently with each other, but cumulatively upon the penalty imposed in respect of charge 1.

THE FACTS OF THE OFFENDING

10. The Respondent's submissions⁵ included a helpful summary of the facts of the offending with which counsel for the Appellant agreed.⁶ That summary is generally in the following terms.

11. On 20 October 2024, the Appellant and Jack Brown (Brown) attended a bucks party cruise on Sydney Harbour. The Appellant said that he "*thought he had two beers*" and that he observed Brown consume "*a shot of Sambuca*".

12. On 21 October 2024, Goulburn Harness Racing Club held a meeting at which the Appellant participated. He said that when he arrived at Goulburn, he was informed by Mr Jasprizza, a Steward, of the requirement to undergo a breathalyser test. He was later informed by Mr Moy, a Steward, of the requirement to provide a urine sample. Urine samples were subsequently provided by both the Appellant and Brown.

13. On 24 October 2024, the Appellant was interviewed by another Steward, Mr Sharwood, and the following conversation took place:

MR SHARWOOD: Okay. Did you provide your urine to anyone else?

APPELLANT: I did not, no.

MR SHARWOOD: You didn't provide your urine for anyone else to provide a sample to?

APPELLANT: No, I did not, no.

...

APPELLANT: The only thing I will say is I did down, like, four bottles of water, or two bottles of water. When I use public toilets, I don't flush public toilets.

MR SHARWOOD: Okay. So ----

APPELLANT: I don't like the germs from touching the button. But I didn't give him no urine, no.

MR SHARWOOD: So you only - so let me get this straight. You provided no urine to anybody else?

APPELLANT: Nuh. But if I go to the toilet in public, I don't flush the toilet in public unless it's a number two.

⁵ Commending at [11]; TB 14.

⁶ Transcript 2.37.

14. On 15 November 2024, the Respondent received the results of analysis of the urine samples. The expert opinion was that it was “100 billion times more likely” that the urine samples provided had originated from the same individual.

15. When the Appellant was interviewed by Mr Bentley, a Steward, about those results, the following exchange took place:

MR BENTLEY: It's 100 billion times more likely that those samples originated from the same person.

APPELLANT: I don't understand the mathematics, but okay.

MR BENTLEY: Is there any reason why that would be the case?

APPELLANT: Not to my knowledge, no.

MR BENTLEY: All right. You don't wish to make any further comment in relation to that at this stage?

APPELLANT: Not without consultation with my own forensic scientist that I am in touch with, no.

16. Mr Bentley then requested a further urine sample from the Appellant, which was provided. Brown also provided a further urine sample.

17. On 20 November 2024, the respondent advised the Appellant that a decision had been made to invoke r 183(b) and (d) until further notice. On or about 26 November 2024, the Appellant provided written submissions to the Respondent in which he asserted that there were “gaps and defects” in, and “significant issues” with, the analysis. Those submissions were supported by a report of Dr Helen Roebuck, which had been obtained by the Appellant.

18. On 3 December 2024, having considered that evidence, the Respondent determined that the interim decision of the Stewards made in accordance with r 183 should remain in place until such time as the inquiry was concluded.

19. On 12 December 2024, the Appellant signed a statement on the letterhead of ‘Circle Bridge Legal Lawyers and Advisors’ in which he stated (inter alia) the following:

After race seven, I spoke to Mr. Jack Brown. This was the first time that day that I had any contact with him that day. The conversation went to the following effect:

Him: "Have you given a urine sample yet?"

Me: "Yes I have."

Him: "Ok."

Me: "Why what's up?"

Him: "I cannot piss."

I agreed to provide my urine to Mr Brown. At the time I was very concerned for him looked pale, distraught, frightened, and anxious. I cannot explain why I provided the urine, but to say that I was not thinking at the time is an understatement. I was just thinking about Jack's well-being at the time.

...

After the discussion with Jack, I was at the stabling area and I went thought my colour bag to see if there was anything I could urinate into. I found a 20ml syringe in my colour bag that I use to wash my eyes out if I get a rock in my eye after driving. I walked into the toilets near the stables and urinated into the syringe, and then put it back into my pocket and walked back out. I put the syringe back into the driver's bag at the stabling area that was in front of Jack's horse that was racing that day.

20. An Inquiry was conducted on 28 May 2025 in the course of which the following relevant exchanges took place:

THE CHAIRMAN: So Mr Brown approached you?

APPELLANT: Yes, sir.

...

APPELLANT: He approached me somewhere in the stabling area and he asked me whether I'd given a sample yet, to which I replied yes. And I asked him why he was asking and he, um, he just – is this the part where I touch on what I was thinking when he asked?

...

I've known Jack a really long time, and I don't like him, but I've known him a really long time. And he's always this, and mind my language, but he's this cocky little shit. He's unbearable.

...

But he asked me for it. And I was just concerned what was going to happen to him if I didn't help him because he seemed like he needed help.

I said – well, I hesitated and then I just relented and said, "Yeah, I can. I can do that for you." And then I knew that I had a syringe in my bag at all times, which had nothing to do with this, I just always have one in there, to get a rock out of my eye or get a cut, so I can wash it out with water, concentrate it.

...

So, after I spoke to Jack, he disappeared and I went and shuffled through my bag and I found the syringe. And after I found the syringe, I went into the bathroom down in the stabling area, just those metal ones, I went in there, urinated in the syringe, and then I come out and there was a bag out the front of where his horse was stabled and just left it in there.

...

I can't stress enough that in that moment I was never really thinking about myself. At the time, it didn't feel serious to me.

...

MR PRENTICE: Mr Rando, you mentioned that when Mr Brown was speaking to you and the way that he looked, that was what your concern was focused on, that this person you'd known since they were five looked like they were going to cry. In relation to him, you know, not being able – I think the term you use in your statement is that he came up and said, "I cannot piss." Did you not turn your mind to that at all as to why he was saying that?

APPELLANT: Honestly, sir, not really. No. I asked him why and he just kept saying he couldn't go. He never expanded on it too much.

MR PRENTICE: And at the time that you then provided your urine to Mr Brown by leaving it in his bag, did you turn your mind to the fact that as to why Mr Brown may have wanted your urine?

APPELLANT: I was curious about it the whole time thereafter. Once I'd done it, on the car ride home I was thinking, "That's such a strange thing to do." But I never – I never asked him. It didn't feel like it was any of my business, when in reality it was. I can see looking at this now, I can assume why he wanted it. But at the time I had no idea.

...

MR PAUL: Sure. Just in respect to the day in question, I'll take you back to that, there is obviously a conversation when Mr Brown approaches you and asks you to assist him, or explains that he can't go to the bathroom. You didn't press him on to the reasons why he couldn't go?

APPELLANT: Honestly, sir ----

MR PAUL: How many times he had tried?

APPELLANT: No, sir, honestly.

MR PAUL: How much fluid he'd taken in that day?

APPELLANT: No, sir.

MR PAUL: You didn't offer him a bottle of water?

APPELLANT: No, sir...

...

MR PAUL: So immediately you just went, "Sure, I went straight" – you're saying to us that you went straight to your gear bag, or your driving bag, and grabbed out a 20ml syringe – how big was the syringe?

APPELLANT: I don't actually remember.

21. The Appellant went on to further describe his relationship with Brown:

...I lived with him and I hated him when I lived with him. I've (inaudible) physical

fighters in my life and he was the person I hit in the face...

22. The Appellant then sought to explain the reasoning behind his conduct:

... I'd always sort of had the principle to help people in need, whether you like them or not. And he was in need....

23. The Appellant's also said that he had engaged in deception because he was "in panic mode" and that he "just kept carrying on trying to pretend it wasn't happening."

THE APPELLANT'S SUBJECTIVE CASE

24. The Appellant provided a lengthy statement (about which he was not cross-examined) concerning both his background and the offending. In fairness to him, that statement should be set out in full:⁷

To the appeals committee, the stewards, my friends, family, and Chloe.

My name is Lucas Stephen Peter Rando. I am a twenty-three-year-old resident of Mount Annan, NSW.

I have spent my entire life as part of the harness racing industry, something that I am incredibly proud of. Harness racing is unlike any other sport, industry, or form of racing in that it is a grassroots industry that is powered wholly and solely by the community of participants. This is undoubtedly my favourite component of the sport, and I can attest that most of my compatriots would say the same thing. All of my friends are part of the harness racing industry.

My background

I grew up in North-Western Sydney in the suburb of Oakville as part of a non-nuclear household. My story in harness racing begins with my great-grandfather Giacomo Rando. He was an Italian migrant that lived in Sydney and dabbled in harness racing part-time alongside a busy career as a taxi-driver and inside the market scene of the late 1950s and early 1960s. He was a trainer-driver in his own right and had a degree of moderate success in the industry. His passion for racing was passed down to my grandfather Stephen, who had a more serious approach to the industry. He had a long, prosperous stint as the Mitavite representative for Sydney, and many say the feed brand would not be what it is today without the assistance of my grandfather in the popularisation of the product. Stephen had encouraged both my father and uncle to pursue racing as a hobby, with my uncle ultimately deciding to engage in racing as a full-time career, still training

⁷ Commencing at TB 245.

successfully to this day as part of the inaugural training partnership established in Australia alongside my aunty Mary. To say my family is entrenched in the sport is putting it lightly. Although I loved the horses, it was racing itself that caught my attention. I grew up spending my childhood watching horse racing of both codes, harbouring a preference for the thoroughbreds much like my grandmother Shirley. In early primary school my teachers suggested that as an ailment to my learning difficulties when it come to reading, my parents encouraged me to read something I found interesting. So they handed me a copy of *The Trotguide* and off I went. I spent every single day of my childhood completely and utterly obsessed with racing.

When I turned 16, I spent eighteen months working alongside my father, graduating to the race driving ranks in this time. I was fortunate enough to drive a winner early on in my career, going winless for nearly twelve months thereafter.

Just shy of my eighteenth birthday my grandmother Shirley passed away due to a stroke, leaving the household a haunted shell of the home it once was to me. I had never experienced loss in my life and unsure of how to handle it and knowing that I wanted to experience working in different stables, I moved out of home to work for the legendary Paul Fitzpatrick, an honour I am still immensely proud of to this day. Working for Paul and the Fitzpatrick family was something that I cannot express the true extent of my gratitude for. As a kid, Gavin, Blake, and Cameron were true idols of mine, and getting to work alongside the former pair was beyond incredible. Gavin and Paul were the greatest mentors, both in racing and in life, a freshly turned eighteen-year-old could have ever hoped for.

I worked for the Fitzpatrick family for over three years, spending just over half of this time living in a shared house in Camden. As a five-bedroom house, we had various other tenants move in and out of the home, including Jack Brown. Jack was someone I had known my entire life. I know that he has had some really difficult times in his life, including when his sister died. However I have to say that I do not like Jack and we are not friends. We fought a lot during the time we lived together, including one physical altercation. I felt that Jack got better opportunities than me and I was jealous of him. This fight led me to move out of the shared house and I went to live with Cameron Fitzpatrick.

During the time living in the share house, my passion for racing grew even more, but limited success on the track meant that I was unsure of whether racing would be a viable option for me long-term. I feel I have always had a talent for writing and I had always considered a career in racing media, following in my cousin's footsteps, as a back-up option to driving. I had always taken my form seriously and had learned how to intricately analyse a race and frame markets as a child, something my grandfather Sylvio had taught me. As an adult, I had dabbled in gambling without taking it too seriously, more so focusing on thoroughbred racing as a wagering entity.

After moving in with Cameron, I stayed at Paul's for another eighteen months and saw some better success in my life, both on and off the track. I finally built some momentum driving as part of the new NR handicapping system. I left Paul's just after the winter of 2023, leaving to go work for other stables and spend time driving as a freelancer. I had spent scattered spells helping my aunt and uncle, also assisting Robert and Kerry-Ann Morris in interim during the spring and summer after leaving Paul's.

Approaching the end of 2023, I was offered a job working for Jarrod Alchin. I had struggled with my mental health through both high school, and more significantly following the passing of my grandmother, something that I had tried to avoid dealing with through my time working for Paul. I had scattered therapy sessions through HRNSW in 2022 and 2023. In February 2024 I experienced my first mental breakdown on course following a racing incident at Menangle on a Tuesday. The following day at work, I experienced another breakdown and was fortunate enough to have Jarrod console me through this episode. In March 2024, Chloe Formosa and I started dating. Chloe was my best friend and I experienced true love for the first time. At around the same time, I started to work at Lucky Lodge. Lucky Lodge allowed me to build one of the strongest relationships in my life with Joshua Gallagher, someone I am proud to call one of my best friends to this day, and someone who without, I would not be sitting here writing this.

My career had started to build traction around this time, with my career highlight of driving four winners at one meeting in Newcastle taking place during this tenure. As is the case in life, this was a reward for hard work. Lucky Lodge is a phenomenal environment that does harbour success and sees the best come of their workers, but it is also an intense, gruelling job. I elected to take a job with the Sloys Company in August of 2024. Dylan Xerri and Peter Hanson took me on as their second-choice driver. I had the most successful tenure of my career during the three-month window at Sloys prior to the incident at Goulburn and I was truly happy. I was secure in my career and my future

The incident at Goulburn on 21 October 2024

The day prior to what happened at Goulburn, on 20 October 2024, I had attended Josh Gallagher's bucks party, an event also attended by Jack Brown. I do not drink, smoke, or consume drugs, and I did not directly see anyone doing the latter at this party. The day was spent on a harbour cruise through Sydney, where I sat in the corner of the boat talking to a few friends. On 21 October 2024, I arrived at Goulburn prior to driving in the first race, winning the fourth race on the card. I was approached by Jack Brown later in the day. Jack was in a frenzied state. Jack never did say why he could not provide a urine sample to me, but when he approached, he was clearly distressed. Jack looked anxious, fretful, and unwell. He was fixated on not being able to provide a sample. To see someone I had known since they were a child in this state was frightening. Even more so when Jack and I were not friends and he did not normally approach me and ask me for help.

When Jack asked I provide a sample to him, I should have said no. I can see now that there were people around us that could have helped Jack tell the stewards his issue and handled the situation in a proper way. I can see my decision to provide Jack a sample was wrong, and to say it is one of the biggest regrets of my life is a genuine understatement. I know the trauma Jack had experienced and the way he handled the loss of his sister was the same way I had handled the loss of my grandmother. I feared what may happen to Jack and was worried for his wellbeing. I also think that in some way in giving him that sample and helping him I was seeking his approval. One thing I cannot stress enough is that there was no element of premeditation in these circumstances at all. There was a syringe in my drivers' bag because I use it to wash my eyes out, not for any other reason.

I told Chloe what had happened in the car on the way home. She urged me to tell my parents, which I did. They were overwhelmingly angry and frustrated. They told me not to tell anyone. I felt ashamed and humiliated. When approached by the stewards two days later at Sloys, with what I had been told in mind, I made the second biggest mistake of my

life by lying to them. I could feel inside that what I was doing was wrong, but I was terrified what may happen to both myself and Jack if I told the truth.

After the incident

The next month of my life after the incident was as stressful as I have ever experienced. I knew what I had done was wrong and that lying had made things worse. I initially elected to follow my parents' advice, with them engaging a legal team to organise various avenues to potentially get off the charges on a technicality. Getting stood down ruined me. I had lost my passion and career and I did not know how to handle myself. After ten or twelve days of being stood down, I decided to take things into my own hands and finally do the right thing. At this time, my solicitor and I issued a formal statement to HRNSW Stewards revealing what had happened and exactly how it had happened. As a result of what I did my relationship with my parents has been ruined.

It had dawned on me through this time that I would have to find work during the New Year and as someone who had no experience outside of racing, this felt like an imposing task. I got a fantastic opportunity to work for Bloodstockauctions.com as their description writer and between this and the money I was making gambling again through this time, I was initially making a comfortable living. Through the initial stages of my suspension, things were good. I made a profit between January and March, and I was doing just okay mentally. As much as everything was stressful, I think handling the situation in the same way as when I lost my grandmother (throwing myself into something else) allowed for me to keep going forwards. However, from April onwards I started losing money gambling. I was under immense financial pressure. I had consistently been searching for a full-time job throughout the year, applying to over 2,000 jobs. I only got one interview at a pet store. I didn't get the job.

At this time my mental health issues started to rear their head again and it started to set in that things were not okay. I began therapy again through HRNSW at this time. I found out my sentence on 19 June. I was devastated - having officially lost my career, knowing I was no longer to go to the races to see my friends, knowing that I could no longer gamble even for fun, knowing that I had brought shame to those around me, and knowing that the thing I held dearest (Chloe) was in a position of peril too. I had a job interview a few days after. It felt like a flunk and I came home absolutely deflated. I elected to head back to Sydney for three days that night. Chloe broke up with me that Friday. I think she knew that what I was about to go through was too much for her to handle, and she elected to end our relationship. I can't blame her.

The past three months have been the worst of my life. I have lost everything I held dearest to me, including my partner and my career. Me getting disqualified has ended my life as I knew it and I have been in a depressive state ever since. I have been unsuccessful in finding employment in Sydney despite applying to thousands of jobs, meaning I have been surviving on the money I make from two days casual work. I am financially and mentally incapacitated at present and at an absolute loss as what to make of my life. Cameron, Bailey, and Josh, have been the only things keeping me going and I am forever indebted to them. I have been in consistent therapy through HRNSW and I am grateful for them allowing me to continue this course.

I am under no false pretences; I understand what I did was wrong and I cannot put my remorse or regret into words for what I have done and how I have affected not only myself and those around me, but the industry as a whole. I have lost my partner through this and I have had my relationship with my parents completely destroyed. At the moment I feel

like I am at rock bottom. I have been fortunate enough to have a strong support network of friends nurturing me through this time and I have also been seeking extensive support in therapy to both get through this time and make sure that my actions are not repeated. I feel like I have gained insight about what I have done and I am adamant that if the appeal tribunal and stewards can afford me a second chance, I will never reoffend in any capacity. My therapist and I have worked tirelessly to ensure that I do not put myself or anyone else in the position I have again.

To the stewards, my friends, family, the committee, and the wider harness racing community, I cannot say sorry enough for what I have done. I feel like the growth I have made from these incidents has been monumental. I beg of you a second chance.

25. The Appellant also provided a written apology at the hearing of the appeal which should also be set out in full:

Dear Harness Racing NSW,

I am writing to formally apologise for my conduct and the circumstances that led to my disqualification. I accept full responsibility for my actions and acknowledge that they fell well below the standards expected of a licensed participant. I recognise the importance of integrity, professionalism, and respect for the rules that govern harness racing, and I regret the impact my behaviour had on the sport and on the confidence placed in me by Harness Racing NSW.

Since the commencement of my disqualification, I have had significant time to reflect on both my actions and their consequences. This period away from the industry has been sobering and has reinforced to me the seriousness of my misconduct and the responsibility that comes with holding a licence. I understand that penalties are imposed not only as punishment, but as a deterrent and as an opportunity for reflection and reform. Through this period of exclusion, I have learned lessons about accountability, self-control, and professional responsibility that I would not have learned without facing the consequences of my actions. Being removed from the industry I value has forced me to confront the impact of my behaviour in a way that words or warnings alone could not have achieved. I genuinely believe that the time already served has achieved the objectives set out in the penalty principles, including specific deterrence, protection of the integrity of the industry, and the opportunity for rehabilitation. I have gained a clearer understanding of the standards required, the importance of compliance, and the need to conduct myself in a manner that upholds the reputation of the industry at all times. This experience has had a profound effect on my perspective, and I am committed to ensuring that nothing similar occurs again. If permitted to return to the industry, I will do so with a renewed respect for the authority of Harness Racing NSW, the rules of racing, and the privilege of being involved in the sport. I am focused on demonstrating this commitment through my conduct, not merely through words. I sincerely regret my actions and the need for disciplinary proceedings, and I thank Harness Racing NSW for considering this acknowledgement and apology.

26. The Appellant, who has no relevant history of offending, relied upon a series of character references, the authors of which variously described him as “exemplary

in all manner of conduct,”⁸ a “*good hearted individual*” for whom this experience would prove a “*valuable life lesson*” and from whom harness racing “*can benefit*,”⁹ a “*person of integrity, reliability and purpose*,”¹⁰ a “*well respected and very well accomplished horse person*,”¹¹ “*enthusiastic, willing and ethical*,”¹² “*trustworthy, virtuous and respectful*,”¹³ and “*a competent driver and cherished member of the harness racing community*”.¹⁴ Clearly, on this occasion, the Appellant did not act in a manner which was exemplary or ethical. I have construed such views as amounting to the proposition that in the opinion of those who have expressed them, the present offending is out of character.

27. Finally, there is evidence that on 26 September 2025, the Appellant had enrolled in various modules of study generally directed to the issue of integrity in sport.¹⁵

SUBMISSIONS OF THE PARTIES

Submissions of the Appellant

28. Accepting that the objectively serious nature of the Appellant’s conduct warranted a period of disqualification, the ultimate submission of Senior Counsel for the Appellant was that the appropriate penalty was a disqualification of a total of 15 months.¹⁶ Whilst accepting that a purely arithmetical approach to determining penalty was not appropriate, and that the critical question centred upon what penalty was necessary to protect the harness racing industry, it was submitted that:¹⁷

⁸ David Aitken at TB 239 – 240.

⁹ Robert Morris at TB 241.

¹⁰ Hugh Paul at TB 242.

¹¹ Graham Ross at TB 243.

¹² Paul Fitzpatrick at TB 244.

¹³ Paul Fitzpatrick at TB 295.

¹⁴ Joshua Gallagher at TB 296.

¹⁵ TB 255 – 260.

¹⁶ Written submissions at [5]; TB 9.

¹⁷ Written submissions at [6]; TB 9.

- (i) Charge 1 was appropriately regarded as the “main offence”, in circumstances where Charges 2 and 3 arose from the Appellant not admitting guilt after the offending came to light.
- (ii) The appropriate penalty for Charge 1 taking all relevant factors into account was 11.25 months.
- (iii) The appropriate penalty for each of Charges 2 and 3 was 3.75 month to be served concurrently with each other but cumulatively upon the penalty for Charge 1.
- (iv) The total penalty, was therefore a disqualification of 15 months.

29. The submissions advanced by Senior Counsel in support of that position included the following:

1. The Appellant was a young man who had committed an unethical and immature act.¹⁸
2. He had, as a consequence, suffered various forms of extra-curial punishment, including the loss of personal relationships with his parents and his former partner, a perilous financial position, an equally perilous state of mental health, and a forced exclusion from the harness racing industry.¹⁹
3. No further period of disqualification was necessary to protect the industry.²⁰
4. The imposition of a disciplinary penalty should not be more than is reasonably necessary to execute the protective purpose of the relevant legislation.²¹
5. A penalty of 15 months disqualification sufficiently addressed any need for personal deterrence, particularly in light of the Appellant’s statements.²²

¹⁸ Submissions at [7]; TB 9.

¹⁹ Submissions at [7]; TB 9.

²⁰ Submissions at [7]; TB 9.

²¹ Submissions at [21]; TB 12.

²² Submissions at [11] – [12]; TB 10.

6. The Appellant had gained insight through his involvement in courses directed to the issue of integrity in sport, to the point where I could be comfortably satisfied that he would not reoffend.²³
7. General deterrence, whilst relevant, would be appropriately addressed by a penalty of 15 months, to the point that “*no person in the industry would think that the Appellant has got off lightly*”²⁴ were that the end result, particularly given his mental health issues.²⁵
8. The Appellant’s youth (being aged 22 at the time of the offending) was relevant, particularly in circumstances where the evidence supported a finding that one of the driving factors behind the offending was emotional immaturity.²⁶
9. Although the Appellant had initially lied to Stewards, he had admitted his guilt since December 2024 and for all intents and purposes had entered pleas of guilty at the first available opportunity, such that he was entitled to the benefit of a discount of 25%.²⁷

30. Senior counsel referred to a number of authorities in support of these various propositions.

31. At the hearing, Senior Counsel expanded upon his written submissions. He highlighted, in particular, the Appellant’s statement (as opposed to the written apology) the entirety of which, he submitted, should be accepted as truthful²⁸ and which, he submitted, constituted “*an honest, detailed and insightful recognition that what [the Appellant] did was wrong, and an honest account of the very significant impact that [his] wrongdoing has had on him*”.²⁹

²³ Submissions at [13] – [14]; TB 10 – 11.

²⁴ Submissions at [17]; TB 11.

²⁵ Submissions at [19]-[20]; TB 12.

²⁶ Submissions at [18]; TB 11.

²⁷ Submissions at [23]; TB 12.

²⁸ T 6.33 and following.

²⁹ T 8.19 – 8.22.

32. Senior Counsel took particular issue with what he submitted were apparent suggestions made by counsel for the Respondent that the Appellant's conduct was premeditated, and that his account ought not be regarded as truthful.³⁰ It was submitted that I would not accept either proposition.

Submissions of the Respondent

33. The written submissions of the Respondent advanced the following propositions:

1. An inquiry into penalty is a two-step process, involving the determination of a starting point, followed by the application of any discount for subjective features.³¹
2. The purpose of a civil penalty is primarily, if not solely, the promotion of the public interest in compliance with the provisions of the relevant legislation by the deterrence of further contraventions.³²
3. The determination of penalty involves a discretionary exercise in which all relevant factors are taken into account.³³ In a case such as the present, such factors include (but are not limited to) general and specific deterrence, and maintaining community trust and public confidence in the harness racing industry.³⁴
4. A review of the evidence supported the conclusion that the Appellant had "*struggled to give the Respondent the simple and precise truth of what happened*", to the point that there was "*an air of unreality*" surrounding his account which included assertions which were "*difficult to understand.*"³⁵
5. The Appellant's conduct was:
 - (a) objectively serious;
 - (b) dishonest; and

³⁰ Commencing at Transcript 12.41.

³¹ Submissions at [36]; TB 25.

³² Submissions at [37]; TB 25 citing *Australian Building and Construction Commissioner v Pattinson* (2020) 274 CLR 450 at [9] – [10].

³³ Submissions at [41]; TB 26.

³⁴ Submissions at [42]; TB 26.

³⁵ Submissions at [43] – [53]; TB 26 – 28.

(c) worthy of severe critical censure.³⁶

6. There was a particular necessity for any penalty to reflect specific deterrence³⁷ as well as general deterrence.³⁸
7. The Appellant should not be afforded the full discount of 25% for his plea, given that it came after he was faced with “*clear and cogent evidence of his guilt*”.³⁹
8. The Appellant’s youth was of limited significance, given that he had engaged in adult-like behaviour.⁴⁰
9. The imposition of a penalty equating to the period of “*time served*” ran the risk of encouraging others in the industry to offend in the same way.⁴¹
10. The extra-curial punishment relied upon by the Appellant was “*hardly novel nor extra-curial*”.⁴²
11. The Appellant’s subjective case was generally unremarkable.⁴³

34. In oral submissions at the hearing, counsel reiterated the Respondent’s position that I could not be satisfied that the Appellant’s account of the offending was full and frank.⁴⁴ That said, any suggestion that the Appellant’s conduct should be regarded as pre-mediated in any sense was withdrawn.⁴⁵

35. In terms of the discount to be applied in respect of the Appellant’s plea of guilty, counsel for the Respondent accepted that, once charged, the Appellant entered pleas of guilty quickly.⁴⁶ However, he submitted that this did not entitle the Appellant to a discount of 25%, and that in the light of the history of the matter,

³⁶ Submissions at [60]; TB 30.

³⁷ Submissions at [61]; TB 30.

³⁸ Submissions at [62] [[63]; TB 30.

³⁹ Submissions at [61]; TB 30.

⁴⁰ Submissions at [64]; TB 30.

⁴¹ Submissions at [66]; TB 31.

⁴² Submissions at [70]; TB 32.

⁴³ Submissions at [78] – [81].

⁴⁴ Commencing at T 21.39.

⁴⁵ T 22.41.

⁴⁶ T 24.33.

including challenges made by the Appellant to the reliability of the scientific analysis of the samples, the appropriate discount was 12.5%.

36. Counsel reiterated the submission advanced in writing that the matters relied upon by the Appellant as constituting extra-curial punishment did not properly fall into that specific category. However, he appeared to accept that even if I were to accept that proposition, such matters remained a part of the Appellant's subjective case and could be taken into account, the real issue being what weight should properly be attached to them.⁴⁷

CONSIDERATION

37. In considering the competing positions of the parties, it is appropriate to make some preliminary observations.

38. First, and contrary to the submission advanced on behalf of the Respondent, the assessment of penalty by this Tribunal does not involve the application of the “two-step process” to which reference was made. In *Hart v Harness Racing New South Wales*⁴⁸ I made the following observations in respect of that proposition:⁴⁹

It was effectively submitted on behalf of the Appellant that there is a requirement for this Tribunal, when assessing penalty in a matter of this kind, to adopt a starting point. It appeared to be suggested, in particular, that such a requirement arose, at least in part, from the Respondent's penalty guidelines. It has been said on many occasions that the guidelines are just that – a guide. Whilst those guidelines may well be adopted by Stewards, I am not bound by them. An assessment of penalty which is made by this Tribunal is not a process which is akin to a mathematical calculation. On the contrary, an assessment of penalty by this Tribunal is a discretionary decision which is made in light of firstly, the circumstances of the individual case, and secondly, the purposes which are intended to be served by such a penalty as set out in Pattinson.⁵⁰ To the extent that Mr Morris sought to argue that the adoption of a starting point was a necessary (or perhaps even mandatory) step in that process, I am unable to agree. Such an approach has the clear tendency to advocate the undertaking of an almost purely mathematical exercise in which there are increments to, or decrements from, a

⁴⁷ T 25.9 – 25.34.

⁴⁸ 4 March 2025.

⁴⁹ Commencing at [22].

⁵⁰ See *R v Engert* [1995] NSWCCA, 20 November 1995 unreported; *Markarian v The Queen* (2005) 79 ALJR 1048 at [27].

*predetermined starting point or range. It has been observed that such an approach is apt to give rise to error, is and is one which departs from principle.⁵¹ Whilst those observations were made in the context of criminal proceedings, it seems to me that they necessarily have some role to play in the approach which is to be taken when this Tribunal is assessing penalties. Such 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 a determination is then reached. Some general support for that approach, and for the proposition that I am not bound by any guidelines, is to be found in the decision of Walton J in *McCarthy v Harness Racing New South Wales*.⁵²*

39. I have adopted the approach of instinctive synthesis set out in *Hart* in the present case. To the extent that anything said by a differently constituted Tribunal advocates some other approach, it should not be adopted.

40. Secondly, extra-curial punishment may be defined as “*punishment that is inflicted upon an offender otherwise than by a Court of law*”.⁵³ The weight to be given to factors relied upon as constituting extra-curial punishment will depend on the circumstances of the case. Some may attract little or no weight.⁵⁴ In the present case, the Appellant relies upon a number of factors in this regard including the financial detriment resulting from his offending, the deterioration in his mental health, and the breakdown of relationships with those closest to him. Those matters clearly fall within the scope of what constitutes extra-curial punishment. They should be taken into account in that way, although the weight to be attached to them will vary. For example, the deterioration in the Appellant’s financial state is something which, whilst relevant, is deserving of limited weight. It is a not uncommon consequence of offending of this kind. However, that could not be said of the other matters upon which the Appellant relies, to which greater weight should be attached.

⁵¹ *Wong v The Queen* [2001] HCA 64 at [74]; *Markarian v The Queen* [2005] HCA 25 at [30] – [34].

⁵² [2024] NSWSC 865 at [216]

⁵³ See *R v Wilhelm* [2020] NSWSC 378 at [21].

⁵⁴ See *R v Daetz* [2003] NSWCCA 216 at [62].

41. Thirdly, it has been the practice for some time for this Tribunal to afford a discount of up to 25% to reflect a participant's plea of guilty. That, it would seem is a practice which stemmed from the decision of the Court of Criminal Appeal in *R v Thomson; R v Houlton*.⁵⁵ The adoption of the practice of applying a discount should necessarily incorporate the adoption of the rationale behind that practice. That rationale includes the proposition that although what might be regarded as an early plea will vary according to the circumstances of the case, and although the assessment of the value of the discount to be applied remains a discretionary determination for the decision maker, the primary consideration in determining the value of the plea is its timing. It follows that as a general proposition, a discount at the top of the identified range of 10% to 25% may be applied to a plea entered at the earliest available opportunity.⁵⁶

42. In the present case, the Appellant admitted his guilt in a statement made on 12 December 2024. That was some 5 months before the Respondent's Inquiry at which the Appellant was present, and at which his admissions were tendered.⁵⁷ In these circumstances, consistent with what was said in *Thomson*, the Appellant is entitled to a discount of 25%.

43. Fourthly, a number of the submissions advanced on the part of the Respondent urged me to reject various aspects of the account advanced by the Appellant. Those submissions were made in circumstances where, although the Appellant made two lengthy statements which form part of the evidence, he was not cross-examined in respect of either of them. Needless to say, that does not compel me to accept everything that the Appellant has said. However, giving full weight to the fact that the Tribunal is not a Court, and that the rules of evidence do not apply, there is an obvious difficulty in advancing the proposition that aspects of the Appellant's account should not be accepted when those aspects were not

⁵⁵ (2000) 49 NSWLR 383.

⁵⁶ Per Spigelman CJ at [154] – [155]; [160](iii).

⁵⁷ TB 129; Exhibit 17 at the Inquiry.

challenged, despite there having been an opportunity to do so. I have carefully reviewed the Appellant's statements, and I accept them.

44. Finally, I was referred to a number of decisions, including decisions in other States, for parity purposes. The Tribunal's approach to that general issue is well known, and consistent with authority. I have been able to reach a determination in this matter without resorting to a consideration of those decisions.

45. Those specific matters having been addressed, I turn to consider the remaining issues relevant to penalty.

46. The Appellant's conduct involved blatant and repeated dishonesty. For that reason alone, it must be regarded as objectively serious to a significant degree. I am necessarily mindful of the proposition that a subjective case, regardless of how strong it might be, cannot be allowed to result in the imposition of a penalty which fails to reflect the objective seriousness of the offending.

47. I have taken into account the Appellant's mental health. However, in his own statement, the Appellant effectively stated that his mental health issues started to "*rear their head again*" when he was not able to find employment. In other words, they arose after the offending. That tends against a conclusion that there was any causal connection between such offending and the Appellant's mental health. Whilst the Appellant's mental health remains relevant, and should be taken into account as part of his subjective case, it does not diminish the need for any penalty to reflect considerations of general deterrence.⁵⁸

48. I am unable to accept the submission advanced on behalf of the Respondent that there is a need for the penalty in this case to reflect specific deterrence. Quite apart from the Appellant's lack of history of offending, his unchallenged statements unequivocally demonstrate a level of insight and expressions of

⁵⁸ See for example *Director of Public Prosecutions v De La Rosa* (2010) 79 NSWLR 1 at [177] and following.

remorse which, in my view, render specific deterrence of little or no significance. Moreover, the testimonials upon which he relies (which are also not challenged) support the conclusion that he is unlikely to reoffend. Such a conclusion also runs contrary to the proposition that specific deterrence has a role to play in the present case.

49. For the reasons I have stated, I have taken into account the matters relied upon by the Appellant as constituting extra-curial punishment. However, I am not persuaded that the Appellant's youth has much, if any role, to play in determining penalty. True it is that he was a young man at the time of the offending. However his offending was, in many ways, adult-like. That necessarily moderates the significance of his youth.⁵⁹ As was pointed out in the related determination of *Brown*,⁶⁰ youth is not a convenience behind which an offender can seek to protect himself or herself from the just consequences of their conduct.⁶¹

CONCLUSION AND ORDERS

50. Taking all of these factors into account, I have come to the conclusion that appropriate penalties are as follows:

Charge 1 – a disqualification of 13.5 months.

Charge 2 – a disqualification of 4.5 months

Charge 3 – a disqualification of 4.5 months

51. The penalties in respect of charges 2 and 3 should be served concurrently, and that concurrent period of 4.5 months should be served cumulatively on charge 1. That gives rise to a total disqualification of 18 months. That is, on any view, a significant penalty.

⁵⁹ See for example *R v Tran* [1999] NSWCCA 109 at [9] – [10]; *R v Uwenait* [2021] NSWSC 1256 at [71] – [72].

⁶⁰ At [57].

⁶¹ See *R v Mastronardi* [2000] NSWCCA 21 at [56].

52. I make the following orders:

1. The appeal is allowed.
2. The decision of the Appeal Panel of Harness Racing New South Wales is quashed.
3. In lieu thereof, the Appellant is disqualified for a total of 18 months, commencing on 20 November 2024, and expiring on 20 May 2026.
4. Any appeal deposit is to be refunded.

THE HONOURABLE G J BELLEW AM SC

23 February 2026