IN THE RACING APPEALS TRIBUNAL

BEN SARINA
Appellant

v

HARNESS RACING NEW SOUTH WALES
Respondent

REASONS FOR DETERMINATION

DATE OF HEARING	**8 July 2025**
DATE OF DETERMINATION	**29 August 2025**
APPEARANCES	**Mr P Morris for the Appellant**
	Ms C Chua for the Respondent

ORDERS

1. **The appeal is upheld.**
2. **The decision of the Appeal Panel of Harness Racing New South Wales of 17 March 2025 is quashed.**
3. **The charge against the Appellant alleging an offence contrary to r 231(1)(e) of the Australian Harness Racing Rules is dismissed.**
4. **The appeal deposit is to be refunded.**

INTRODUCTION

1. In December 2011, Harness Racing NSW (the Respondent) charged Ben Sarina (the Appellant) with an offence contrary to r 187(2) of the *Australian Harness Racing Rules* (the Rules). That charge alleged that the Appellant had given false evidence to Stewards who were investigating corruption and improper practices in harness racing in this State.

2. In a decision handed down in December 2012, a Special Panel of Inquiry found that the charge was made out. The Special Panel subsequently concluded that the Appellant should be warned off permanently pursuant to r 265(2)(d) of the Rules. An appeal to this Tribunal (differently constituted) was dismissed.

3. Michael Hurley was previously a Steward with the Respondent. He has long since retired from that position. On 27 February 2020 he was delivering marketing material, in association with his employment as a real estate agent, to homes in the town of Cessnock. In the course of doing so, he was approached by the Appellant, who assaulted him. Mr Hurley sustained serious injuries as a result.

4. The Appellant was charged with an offence of recklessly inflicting grievous bodily harm contrary to s 35(2) of the *Crimes Act 1900*. He pleaded not guilty, but was found guilty by a Magistrate following a hearing in the Local Court. He was sentenced to 12 months' imprisonment, to be served by way of an Intensive Corrections Order.

5. Following the determination of the proceedings before the Local Court, the Respondent charged the Appellant with an offence contrary to r 231(1)(e) of the Rules which is in the following terms:

> ***231 Assault and interference***
> *A person shall not:*
> ...
> *(e) assault ... anyone employed, engaged or participating in the harness racing industry,* ***or otherwise having a connection with it*** (emphasis added).

6. The particulars of that charge were in the following terms:

> *That [the Appellant] … did assault Mr Michael Hurley, a person having a connection with the harness racing industry as a former Harness Racing Steward*.

7. The Appellant pleaded not guilty to the charge. He was found guilty by Stewards who imposed a disqualification of 7 years, commencing on 9 January 2025. An appeal to the Appeal Panel of the Respondent (the Panel) was dismissed on 17 March 2025.

8. By a Notice of Appeal dated 19 March 2025 the Appellant has appealed to this Tribunal against the Panel's determination. He has maintained his plea of not guilty. The appeal was originally listed for hearing on 24 June 2025 but could not proceed on that day. It was heard on 8 July 2025, following which judgment was reserved. The entirety of the documentary evidence relied upon by the parties was contained in a Tribunal Book (TB) and, as summarised below, I had the benefit of comprehensive written and oral submissions from the representative of each party at the hearing.

9. The meaning of the phrase *'having a connection with'* as it appears in the terms of the charge, and the reference to Mr Hurley *'having a connection with the harness racing industry'* as it appears in the particulars, are material to the issues before me. It is accepted that at the time of the assault, the Appellant had been warned off, and Mr Hurley had retired as a Steward.[1]

THE FACTS OF THE OFFENDING

10. In the absence of any appeal by the Appellant against the finding of guilt recorded against him in the Local Court, I draw the following summary of the facts from the determination of the Magistrate.[2] I should emphasise that what follows is a *summary*. There was, obviously, evidence before the Magistrate over and above

[1] Transcript 4.30 – 4.34.
[2] Commencing at TB 175.

that to which I have referred. However, the Appellant does not deny the assault. His plea of not guilty to the charge contrary to r 231(1)(e) is based upon issues of construction. In these circumstances, it is simply not necessary to address the circumstances of the assault in any greater detail than what appears below.

11. The Magistrate found that when Mr Hurley was delivering marketing material, he noticed the Appellant approaching him. When the Appellant was approximately 2 metres away, he said to Mr Hurley:

> *Do you remember me?*

12. Mr Hurley then described being punched by the Appellant, feeling blood in his mouth, and thinking that his jaw had been broken. At that point, the Appellant said to him words to the effect:

> *That's for being a cunt when you were a Harness Racing Steward.*

13. The Magistrate noted that there was evidence that Mr Hurley had been a Steward with the Respondent up to 2006.

14. Mr Hurley called triple 0 in the course of which he said:

> *I apparently must have known him back when I was a racing steward. He's just walking out and I was just doing a letterbox drop and he said 'Do you remember me'? and I said 'Ah yeah, maybe'. And then he just king hit me and I think he's broken my jaw.*

15. Mr Hurley did, in fact, suffer a broken jaw which required fixation.

16. In finding the offence proved, the Magistrate concluded that the Appellant was not an impressive witness. He rejected his account of events and, in particular, rejected his assertion that he had acted in self-defence. Inferentially, he also

rejected the Appellant's denial that he had made the statement attributed to him in [12] above.

17. I do not have the Magistrate's remarks on penalty. However, all that needs to be said is that the Magistrate sentenced the Appellant to 12 months' imprisonment, to be served by an Intensive Correction Order in the community. That will give some indication of what the Magistrate viewed as the high level of objective seriousness of the Appellant's offending.

18. For the purposes of this appeal the Appellant continued to deny saying the words attributed to him in [12] above. I am satisfied for a number of reasons that he did so.

19. First, that was the conclusion reached by the Magistrate who had the benefit of seeing and hearing the Appellant give evidence.[3] In those circumstances, there is no warrant to go behind that conclusion. Secondly, with that advantage the Magistrate concluded that the Appellant generally was not an impressive witness. Thirdly, the Magistrate rejected the Appellant's assertion of self-defence, an issue to which his denial of the words was inextricably linked.

THE APPELLANT'S CASE ON APPEAL

20. As I have noted, the Appellant's case on this appeal does not challenge the proposition that he assaulted Mr Hurley. In maintaining his plea of not guilty to the charge contrary to r 231(1)(e) of the Rules, the Appellant advances two propositions:

    1. The offence cannot be established because at the time of the assault, Mr Hurley did not have a *connection with* the harness racing industry and thus an essential element of the offence cannot be made out (the connection argument).

[3] See generally *Fox v Percy* (2003) 214 CLR 118; [2003] HCA 22

2. Alternatively, even if the requisite connection is established, the Appellant, as a person who was warned off, was not bound by the Rules, and the Respondent had no jurisdiction to charge or penalise him (the jurisdiction argument).

21. In the event that the charge is established, the Appellant argues that the penalty imposed was too severe.

SUBMISSIONS OF THE APPELLANT

The connection argument

22. The Appellant's submissions in support of the connection argument may be summarised as follows:

1. As at 27 February 2020, that being the date of the assault, Mr Hurley had no connection with the harness racing industry because he was:

   (a) not employed, participating, or otherwise engaged, in the industry;
   (b) not otherwise doing anything related to the industry.[4]

2. The absence of a connection between Mr Hurley and the harness racing industry was supported by the fact that there was no contractual relationship between them, any relationship having ceased in 2006. Such contractual relationship was essential to the existence of, and was in fact a pre-requisite to, establishing the necessary connection for the purposes of r 231(1)(e).[5]

3. Bearing in mind the terms of s 9 of the HRA, in order to have jurisdiction over the Appellant it was necessary for the Respondent to establish that he was *'associated with'* harness racing.[6] For a person to be *'associated with'* harness

[4] AWS at [5].
[5] AWS at [21].
[6] *Pedrana v State of New South Wales* [2014] NSWSC 462 at [41] – [44].

racing, it was necessary for the person to be associated with, or undertaking work in, the harness racing industry in a way which amounted to *'engaging in harness racing'* or which otherwise directly affected integrity-related issues.[7] For these purposes, an '*association'* should be equated with a *'connection'*.

23. During the hearing Mr Morris, who appeared for the Appellant, emphasised the absence of a contractual relationship between the Appellant and the Respondent, and repeated his submission that such a relationship was an essential pre-requisite to the necessary connection being established. He pointed out that at the time of the assault Mr Hurley had had no involvement in the harness racing industry for a significant period of time.[8] He further submitted that the lack of connection was supported by the fact that the Respondent was not on risk at the time for any workers compensation or related insurance cover in respect of Mr Hurley in respect of his injuries.[9]

The jurisdiction argument

24. The Appellant's written submissions in support of the jurisdiction argument may be summarised as follows:

    1. As at 27 February 2020, the Appellant was not employed, participating or otherwise engaged in, the industry, and was in fact doing nothing which was in any way industry-related.[10]

    2. In these circumstances, the Appellant was not bound by the Rules, and the Respondent had no jurisdiction to charge (or penalise) him.[11]

    3. Even if I found that the words attributed to the Appellant were in fact said by him (as I have done), those words were *'insufficient to form the necessary*

[7] AWS at [19] – [20].
[8] Transcript 8.30 – 9.21.
[9] Transcript 10.23 – 10.27.
[10] AWS at [5].
[11] AWS at [8].

contractual relationship between the [Appellant] and [the Respondent]'[12] so as to confer any jurisdiction on the Respondent over the Appellant's conduct.

4. Section 9 of the *Harness Racing Act 2014* (the HRA), which confers powers of control and regulation of the harness racing industry on the Respondent, did not, in the circumstances of the present case, extend to the conferral of jurisdiction on the Respondent to deal with the Appellant in respect of disciplinary matters. [13]

5. There was a need to establish the existence of a contractual relationship between the Appellant and the Respondent in order for the Appellant to be bound by the Rules, and for the Respondent to have jurisdiction over him:[14] The necessity for the existence of a contractual relationship in order to ground jurisdiction over the Appellant was fortified by Local Rule 1A.[15]

6. The Rules should be viewed as constituting a contract between the Respondent *'and any other person who takes part in any manner within the Rules, who thereby agrees to be bound by them'*. No such contract existed with the Appellant.[16]

25. In oral submissions at the hearing, Mr Morris emphasised what he submitted as the fundamental necessity for a contractual relationship to have existed between the Appellant and the Respondent at the time of the alleged offence in order for the Appellant to be bound by the Rules. He further submitted that the powers conferred on the Respondent under the HRA were not unfettered and did not apply to every person.[17]

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[12] AWS at [12].
[13] AWS at [15].
[14] AWS at [22]; *New South Wales Thoroughbred Racing Board v Waterhouse* (2003] 56 NSWLR 691 (Waterhouse); *Golden v V'Landys* (2016) 339 ALR 610; [2016] NSWCA 300 (Golden); *Commissioner of Taxation v Queensland Racing Board* (2019) 374 ALR 241 (Commissioner of Taxation).
[15] AWS at [24].
[16] AWS at [25] [26].
[17] Transcript 7.15 – 7.36.

Submissions of the Respondent

The connection argument

26. The written submissions of the Respondent advanced the following propositions in respect of the connection argument:

    1. Sections 4, 9 and 10 of the HRA combined to support the proposition that Mr Hurley had the requisite connection with harness racing for the purposes of r 231(1)(e).[18]

    2. That conclusion was fortified by what the Appellant had said to Mr Hurley at the time of the assault, and his specific reference to Mr Hurley's previous position as a steward. The Appellant's words made it clear that the incident arose from the mutual association between he and Mr Hurley within the harness racing industry.[19]

    3. The reference in s 21(1)(b) of the HRA supported the proposition that a person *"associated with"* harness racing may or may not be a current industry participant.[20]

    4. The terms of r 231(1)(e) did not require the *assault* to be connected, but required that *the person* (i.e. Mr Hurley) have that connection.[21]

27. In oral submissions Ms Chua, who appeared for the Respondent, emphasised that on any view of the evidence, the context of the offending arose from the involvement of both parties in the harness racing industry.[22] She further submitted that for the purposes of r 231(1)(e), a relevant connection can stem from a past association with the harness racing industry.[23] She pointed to the fact

[18] Respondent's written submissions (RWS) at [31] – [35].
[19] RWS at [49].
[20] RWS at [37].
[21] RWS at [45].
[22]Transcript 15.25; 15.45.
[23] Transcript 16.25 – 16.30.

that at the time of the assault, Mr Hurley's connection was as a former steward.[24] Put another way, Mr Chua submitted that the rule was sufficiently broad to encompass both past and present connections.[25] Ms Chua emphasised the necessity to bear in mind, when interpreting the Rules, that they were not drafted by legislators,[26] and that any infelicities were to be addressed by a purposive approach.[27]

The jurisdiction argument

28. The written submissions of the Respondent advanced the following propositions in respect of the jurisdiction argument:

    1. The authorities cited by the Appellant, properly understood, did not support the proposition that the Respondent lacked the necessary jurisdiction.[28]

    2. A contractual agreement between the Appellant and the Respondent was not a pre-requisite to the conferral of jurisdiction.[29]

    3. The Appellant was previously a licenced participant and agreed to be bound by the Rules which, in their terms, contemplated that persons who were warned off would continue to be bound by the Rules during any period in which they did not participate. This, it was submitted, was particularly reflected by the provisions of r 256(2)(d).[30]

29. Ms Chua emphasised these submissions at the hearing. She also raised an additional argument in oral submissions, namely that even if the Appellant's position on r 231(1)(e) was accepted, he would still face the operation of r 267 which confers a power to disqualify a person on conviction for a period at least

[24] Transcript 17.9.
[25] Transcript 17.30.
[26] Transcript 17.42.
[27] Transcript 18.8.
[28] RWS at [39].
[29] RWS at [41] citing *Racing New South Wales v Fletcher* [2020] NSWCA 9 at [42] – [45].
[30] RWS at [42].

equivalent to the sentence imposed.[31] It was submitted that in the circumstances of this case, it would be appropriate for me, in the exercise of the power conferred under r 267, to impose the same disqualification imposed by the Stewards.[32] It was submitted that properly read, r 267 applied to persons generally, not just industry participants.[33] It was Mr Morris' position that for r 267 to apply, the necessary contractual relationship would have to be established.

STATUTORY AND REGULATORY PROVISIONS

30. It is appropriate at this point to turn to set out some statutory and regulatory provisions which may bear upon my determination.

Relevant statutory provisions

31. The objects of the HRA are set out in s 2A. They include to:

    (i) provide for the efficient and effective regulation of the harness racing industry;[34]

    (ii) protect the interests of the industry and its stakeholders;[35] and

    (iii) to ensure the integrity of the industry.[36]

32. The Respondent is a body corporate constituted under s 4 of the HRA. Its functions are prescribed by s 9 and include the control, supervision and regulation of harness racing in New South Wales.[37]

33. The Respondent's powers set out in s 10 of the HRA include the power to:

[31] Transcript 24.31 – 24.45.
[32] Transcript 25.20.
[33] Transcript 26.12.
[34] Section 2A(a).
[35] Section 2A(b).
[36] Section 2A(d).
[37] Section 9(2)(a).

- supervise the activities of harness racing clubs, persons registered by it, and all other persons engaged in or associated with harness racing; [38]
- impose a penalty on a person registered by it or on an owner of a harness racing horse for a contravention of the Rules;[39] and
- take such steps and do such acts and things as are incidental or conducive to the exercise of its powers and the performance of its functions.[40]

34. Section 21 confers a power to take disciplinary action and provides (inter alia) as follows:

> ***21 Disciplinary and work health and safety action may be taken by HRNSW***
> *(1) HRNSW may, in accordance with the rules, do any of the following:*
>
> *(a) cancel the registration under this Act of –*
> *...*
> *(iii) any owner, trainer or driver of harness racing horses, or bookmaker or other person associated with harness racing;*
> *(b) disqualify, either permanently or temporarily, any owner, trainer or driver of harness racing horses, or bookmaker or other person associated with harness racing;*
> *(c) prohibit any person from participating in or associating with harness racing in any specified capacity.*
>
> ...
>
> *(3) HRNSW may only take action under this section for disciplinary purposes or for the purposes of work health and safety.*

Relevant regulatory provisions

35. Local Rule 1 of the Respondent provides as follows:

> ***NSWLR 1*** *The [Rules] and the Local Rules of Harness Racing New South Wales (including the Rules of Betting) shall be read, interpreted and construed together and as so combined shall by known as the Rules of Harness Racing New South Wales and such Rules apply to the administration, supervision and control of*

[38] Section 10(2)(b).
[39] Section 10(2)(i).
[40] Section 10(2)(r).

Harness Racing throughout New South Wales. Insofar as there is any consistency between the Australian Harness Racing Rules and these Local Rules, these Local Rules shall prevail.

36. Local Rule 1 has the effect of (amongst other things) applying the Rules to the governance of the Respondent. A number of the Rules are relevant for present purposes.

37. To begin with, the term *'disqualification'* is defined in the Dictionary to the Rules as follows:

> ***'Disqualification'*** *means a penalty that imposes the restrictions contained in Part 16.*

38. The term '*person'* is defined in the Dictionary as follows:

> ***"Person"*** *includes an individual, a syndicate, a corporation, a body corporate and an unincorporated association.*

39. Rule 256 of the Rules deals with penalties and is in the following terms:

> ***256 Penalties***
> *(1) One or more of the penalties set out in sub rule (2) may be imposed on a person, club or body guilty of an offence under these rules.*
> *(2) (a) A fine within the limits fixed by legislation or by the Controlling Body,*
> *(b) conditional or unconditional suspension for a period;*
> *(c) disqualification, either for a period or permanently;*
> *(d) warning off, either for a period or permanently;*
> *(e) exclusion from a racecourse, either for a period or permanently;*
> *(f) a bar, either for a period or permanently, from training or driving a horse on a racecourse, track or training ground;*
> *(g) conditional or unconditional suspension of registration for a period or cancellation of registration;*
> *(h) conditional or unconditional suspension of a licence for a period or cancellation of a licence;*
> *(i) a severe reprimand;*
> *(j) a reprimand or caution.*
> *(3) Should a rule of its own terms impose a penalty in respect of an offence created by that rule then, subject to any contrary intention expressed or otherwise*

apparent in that rule, that penalty is the only one which can be imposed in respect of that offence.

(4) Penalties, whether under this or any other rule, attach from the time they are imposed, except that the Controlling Body or the Stewards may postpone such attachment.

(5) (a) Penalties other than a period of disqualification or a warning off under this or any other rule may be suspended for a period not exceeding two years upon such terms and conditions as the Controlling Body or Stewards see fit;

(b) If the offender does not breach any term or condition imposed during the period of suspension, the penalty shall be waived;

(c) If the offender breaches any term or condition imposed during the period of suspension then, unless the Controlling Body or Stewards otherwise order, the suspended penalty thereupon comes into force and penalties may also be imposed in respect of any offence constituted by the breach.

(6) Although an offence is found proven a conviction need not necessarily be entered or a penalty imposed.

(7) Before an offence is found proven, the following conditions shall be satisfied:-

(a) the offender shall be afforded reasonable opportunity to cross examine witnesses, make submissions, present evidence to the Controlling Body or the Stewards as the case may be;

(b) those submissions or evidence shall be taken into account;

(c) evidence relied upon in establishing the offence shall be identified;

(d) in a matter before the Stewards, those Stewards who finally determine that an offence has been committed shall be present during the whole of the proceedings.

40. Part 16 of the Rules includes r 259 which provides as follows:

259 Restrictions

(1) A disqualified person or a person whose name appears in the current list of disqualifications published or adopted by a recognised harness racing authority ***or a person warned off*** *cannot do any of the following -*

(a) associate or communicate with persons connected with the harness racing industry for purposes relating to that industry;

(b) be a member or employee of the Controlling Body;

(c) be an office holder, official, member or employee of a club;

(d) enter a racecourse or any place under the control of a club or Controlling Body;

(e) race, lease, train, drive or nominate a horse;

(f) conduct breeding activities;

(g) enter any premises used for the purposes of the harness racing industry;

(h) participate in any manner in the harness racing industry.

(i) permit or authorise any person to conduct any activity associated with the harness racing industry at his/her registered training establishment;

(j) place, or have placed on their behalf, or have any other interest in, a bet on any Australian harness racing race.

(k) associate with licensed persons connected with the thoroughbred or greyhound racing industry including but not limited to entering any premises owned or occupied by such licensed persons.

(2) A licence or other authority held by a disqualified person to do any of the things mentioned in sub rule (1) automatically lapses upon disqualification.

(3) The prohibitions mentioned in sub rule (1) come into effect immediately upon disqualification, subject to any contrary directions which might be given by the Stewards.

(4) If during a period of disqualification the Stewards form the opinion that the circumstances relating to the disqualified person have materially changed, they may remove one or more of the prohibitions set out in sub rule (1) either permanently or for a time.

(5) The power conferred by sub rule (4) does not empower the Stewards to remove the prohibition on an activity which can only lawfully be carried on under licence.

(6) Notwithstanding the foregoing provisions of this rule the Controlling Body may make determinations waiving, varying or qualifying the prohibitions set out in the rule.

(7) A disqualified person who fails to comply with this Rule is guilty of an offence and is liable to a penalty (my emphasis).

41. Rule 267 of the Rules is also relevant and is in the following terms:

Disqualification by conviction
267. *(1) Subject to sub-rule (2) the Stewards may for such period and on such conditions as they think fit, disqualify a person who is found guilty of a crime or offence in any State or Territory of Australia or in any country which is punishable by a term of imprisonment. conditions as they think fit.*

(2) Where a person is found guilty of a crime or offence in any State or Territory of Australia or in any country and sentenced to a period of imprisonment the Stewards shall disqualify that person for a period that is at least equivalent to the actual sentence imposed.

(3) Sub-rule (2) shall apply where either part or whole of the period of imprisonment is suspended.

42. Rule 299 of the Rules is in the following terms:

299 Scope of rules and related matters

All persons

(a) licensed under these rules;
(b) carrying on or purporting to carry on activities related to the harness racing industry; or
(c) who in some other way are affected by the rules,
are deemed to have knowledge of and be bound by them and of all things done under them.

43. Finally, r 309 of the Rules provides as follows:

> ***309 Regard to be had to purpose***
> *In the interpretation of a rule a construction that would promote the purpose or object underlying it, whether expressly stated or not or which would facilitate or extend its application, is to be preferred to a construction that would not promote that purpose or object or which would impede or restrict its application.*

CONSIDERATION

The connection argument

44. In order for the offence contrary to r 231(1)(e) to be made out, I must be satisfied that Mr Hurley was a person "*having a connection"* with the harness racing industry at the time of the assault. Mr Hurley was not employed, engaged, or a participant, in the industry at the time of the assault. Any connection with the industry stemmed from his previous position as a Steward. That connection had long since ceased at the time of the assault.

45. Neither the HRA nor the Rules define the words *"connect"* or *'connection'*. The Oxford Dictionary defines the term *'connected*' (as an adjective) as meaning:

> *'associated or related in some respect'.*

46. The term 'a*ssociated'* is defined as:

> *'connected with [an organisation or business]'.*

47. One of the primary submissions advanced by the Appellant was that, absent a contract between Mr Hurley and the Respondent, the relevant connection between Mr Hurley and the industry could not be made out. Whatever the

arrangement may have been when Mr Hurley was a Steward (about which there is no evidence) I accept that there was not, at the time of the assault, any contractual relationship between he and the Respondent. However, there is nothing in the terms of r 231(1)(e) which imposes a requirement that such contractual relationship must exist before a connection with the harness racing industry can be established.

48. That fact that a connection (in the sense contemplated by r 231(1)(e)) between a person and the harness racing industry is not dependent upon a contract can be demonstrated by a simple example.

49. Persons are appointed as Members of the Respondent pursuant to s 5 of the HRA. The appointment is Ministerial. There is nothing in the HRA which suggests that it is contractual. It could not seriously be suggested that despite the absence of a contract, a person appointed by the Minister under s 5 as a Member of the Respondent has no connection with the Respondent, or with the harness racing industry more broadly.

50. For all of these reasons, I am satisfied that the requisite connection is made out.

51. However, the charge against the Appellant pursuant to r 231(1)(e) makes reference to (in this case, Mr Hurley) *"having"* a connection with the harness racing industry, as opposed to *"having had"* such a connection. That gives rise to a further question, namely whether the connection that I am satisfied is made out must have existed at the time of the offence, or whether a past connection is sufficient. In considering that question, I am mindful of the fact that the Rules were not drafted by Parliamentary Counsel. As a consequence, it is legitimate to have regard to the fact that at the time of being implemented, they were less keenly scrutinised than legislation is scrutinised at the time of being passed.[41] It is also necessary to emphasise that:

[41] *Day v Harness Racing New South Wales* (2014) 88 NSWLR 594; [2014] NSWCA 423 at [79].

(i) the Rules are be construed purposively;

(ii) a construction which gives a rule no operation at all is inconsistent with its purpose; and

(iii) it is legitimate to correct obvious drafting errors.[42]

52. With these matters in mind, the following conclusions may be reached in relation to the terms of r 231(1)(e).

53. First, the obvious purpose of r 231(1)(e) is to protect (amongst others) those who have a connection with the industry.

54. Secondly, whilst it could not be said that the construction urged by the Appellant would give the rule no operation at all, it would certainly restrict the operation of the rule to the protection of those whose connection with the industry was current as opposed to past. There is nothing in the terms of the rule which would support that construction. In fact, such a construction would run contrary to the fact that one of the objects of the HRA is to protect the interests of the industry. An assault of Mr Hurley, the obvious catalyst for which was the fact that he *was* a former Steward, is generally antithetical to the protection of the interests of the industry.

55. I am not persuaded that the decision in *Pedrana* upon which the Appellant relied is of any material assistance. In that case, Rothman J essentially cited[43] the same definitions as those I have set out above,[44] before saying the following in a passage upon which Mr Morris specifically relied: [45]

> *It seems to me properly construed, the term 'another person associated with racing' includes, at least, a person connected, directly or indirectly, with racing, whose conduct affects the integrity of racing meetings and thereby public interest as it relates to horse racing.*

[42] *Day* at [77] – [78].
[43] At [42].
[44] At [45] – [46].
[45] At [48].

56. Mr Morris relied on this passage as authority for the proposition that in order to establish a connection between a person and the harness racing industry, it was necessary that the person be someone whose conduct affects the integrity of racing meetings, and thus the public interest. I am unable to accept that submission. It is clear from his Honour's use of the word '*includes'* that he was not attempting to be exhaustive, so as to exclude persons in the position of Mr Hurley as amongst those who might have a relevant connection or association.

57. For all of these reasons, I am satisfied that Mr Hurley had the requisite connection to the harness racing industry for the purposes of r 231(1)(e).

The jurisdiction argument

58. Mr Morris's principal submission in support of his position on the jurisdiction argument was that a person becomes bound by the Rules only when that person becomes a participant, or becomes otherwise engaged in, the harness racing industry. He submitted that the Appellant was warned off at the time of the assault, and was thus prohibited from participation or engagement in the industry. He submitted that, as a consequence, the Appellant was not bound by the Rules.

59. In support of that position, Mr Morris placed particular reliance on the decisions of the Court of Appeal in *Waterhouse* and *Golden*. In *Golden*, Payne JA (McColl and Leeming JJA agreeing) said the following (citing *Waterhouse*)[46]:

> *The parties accepted as a correct statement in this Court about an earlier version of the relevant rules of racing in Thoroughbred Racing Board v Waterhouse* (2003) 56 NSWLR 691; [2003] NSWCA 55 at [35]:
>
> > *The Rules of Racing are rules to which participants in racing* ***become contractually bound*** ... (my emphasis).

60. In my view, that passage of his Honour's judgment supports the conclusion that a person becomes bound by Rules *upon becoming a participant in the harness*

[46] At [60].

racing industry. In other words, whilst the existence of a contract is not a pre-requisite, or condition precedent, to a connection with the industry, a person becomes bound by the Rules as a consequence of participation.

61. Further support for that proposition can be found in *Commissioner of Taxation v Racing Queensland* Board.[47] In that case, it was observed[48] (citing the decisions in *Golden* and Waterhouse) that generally speaking, persons engaging in sporting pursuits under the general control of established sporting bodies are taken to be bound by the rules of the sport in which they engage.

62. Viewed in the context of the present case, the corollary of that proposition is that if, like the Appellant, a person does *not* engage in the sport of harness racing or matters related thereto (which are under the general control of the Respondent), that person will not be taken to be bound by the Rules. In the present case, r 259 had the effect of prohibiting the Appellant from engaging in any of the activities set out in r 259(1)(a) – (k). Rule 259 thus prohibited the Appellant from any involvement in the harness racing industry at all. That has been the position since he was warned off. It follows that at the time of being charged and penalised, the Appellant was not, in any sense, a participant, or otherwise engaged, in the harness racing industry. He was a disqualified person having regard to the definitions of *"disqualification"* and *"person"* in the Rules. The penalty of a warning off which was imposed on the Appellant pursuant to r 256(2)(d), became operative upon its imposition, pursuant to r 256(4). It follows that, as the Appellant was not a participant, or engaged in, the harness racing industry, he was not, bearing in mind the authorities cited above, bound by the Rules.

63. I am not persuaded that r 299 supports the Respondent's position. Clearly, at the material time, the Appellant was not licenced,[49] nor was he a person carrying on,

[47] At [93] – [100] per Griffiths and Derrington JJ; Steward J dissenting.
[48] At [100].
[49] Rule 299(a).

or purporting to carry on, any activity related to the industry.[50] This was due to the fact that as a disqualified person, he was prohibited from having any participation, engagement or involvement in the industry at all. Further in my view, the Appellant was not a person *"who in some other way [was] affected by the rules"*[51]. To suggest that he was a person affected by rules which were implemented to govern an industry in which he was prohibited from participating, defies common sense. In all of these circumstances, r 299 has no work to do. The same reasoning precludes resort to r 267.

64. I am also unable to accept the submission advanced on behalf of the Respondent that the Rules should be construed as reflecting an agreement on the part of former participants that they would continue to be bound by them even after they have been prohibited from participating or engaging in the harness racing industry. I am unable to find any provision in the Rules which might support that proposition. Whilst my attention was drawn to r 256(2)(d) in this regard, that tule simply incorporates a power to impose a penalty of a warning off. It says nothing at all about a former participant continuing to be bound by the Rules after his or her participation has ceased.

65. Moreover, the submission that the Rules should be construed as reflecting an agreement on the part of disqualified persons that they would continue to be bound by them, runs contrary to s 10 of the HRA. As I have noted above, s 10 confers powers on the Respondent to (inter alia) *'supervise the activities of .... **persons registered** by [the Respondent]'*. In other words, the fact of registration of a participant enlivens the exercise of the Respondent's supervisory power. The Appellant is not a person registered as a participant by the Respondent, and was not registered at the time of the assault. As a consequence, the Respondent does not have, and did not have at the relevant time, any supervisory jurisdiction over

[50] Rule 299(b).
[51] Rule 299(c).

the Appellant at all. The absence of such jurisdiction supports the conclusions I have reached in respect of the jurisdiction argument.

66. Finally, r 309 has no work to do in the present case. Rule 309 is engaged when more than one construction or interpretation of a rule might be open. For the reasons given, that is not the position in the present case. It is clear that the Appellant was not bound by the Rules.

CONCLUSION

67. For the reasons given I make the following orders:

1. The appeal is upheld.

2. The decision of the Appeal Panel of Harness Racing New South Wales of 17 March 2025 is quashed.

3. The charge against the Appellant alleging an offence contrary to r 231(1)(e) of the Australian Harness Racing Rules is dismissed.

4. The appeal deposit is to be refunded.

THE HONOURABLE G J BELLEW SC

29 August 2025