

DECISION

Racing Integrity Act 2016, sections 252AH, 252BM

Review application number	RAP-122	
Name	Justin Huxtable	
Panel	Mr K J O'Brien AM (Chairperson) Ms J Maiden (Panel Member) Mr J McCoy OAM (Panel Member)	
Code	Thoroughbreds	
Rule	<p>Australian Rules of Racing AR 23(a)</p> <p><i>Without limiting any other rules or Stewards' powers, if a person has been charged with a breach of the Rules or with the commission of an indictable criminal offence, and if the 34 Stewards are of the opinion that the continued participation of that person in racing might pose an unacceptable risk of prejudicing the image, interests, integrity or welfare of racing, the Stewards may pending the hearing and determination of the charge:</i></p> <p><i>a) suspend any licence, registration, right or privilege, granted to that person under these Australian Rules</i></p>	
Penalty Notice number	N/A	
Appearances & Representation	Applicant	Mr J Jacob instructed by Cullen Lawyers
	Respondent	Mr S McLeod KC instructed by Queensland Racing Integrity Commission
Hearing Date	21 November 2024	
Decision Date	21 November 2024	
Decision	Pursuant to 252AH(1)(b) the Racing decision is Varied <i>(delivered ex tempore)</i>	

Reasons for Decision

- [1] This is an application brought pursuant to Section 252AB of the *Racing Integrity Act 2016* ("The Act") by licenced jockey Justin Huxtable for the review of a decision made by Stewards pursuant to Australian Rule of Racing 23 to suspend his licence pending the hearing and determination of a criminal charge brought against him on the 25th of October 2024.
- [2] The grounds upon which the Applicant has sought this review are set out in his application as follow:

The decision of the stewards to suspend my licence indeterminately is unwarranted.

The decision of the stewards to suspend my licence for an indeterminate period is disproportionate and too severe in the circumstances.

The decision of the stewards is based on an allegation that is personal in nature rather than conduct that brings the integrity or image of racing into disrepute.

There are adequate conditions that can be imposed on my licence to reduce any perceived (prejudice) to the industry

- [3] He adds that the suspension has the impact of a full suspension without the ability for him to earn any income, that he has only ever worked with thoroughbred horses, and that the decision of the Stewards seems to be based on the charge itself and a media article. He intends contesting the matter the subject of the charge and has no knowledge of when the matter will ultimately be heard in court.

Background

- [4] On the 25th of October 2024, the Applicant was charged by police with an offence against Section 227A (1) of the Criminal Code which is headed "Observation or Recordings in Breach of Privacy". The particular charge against the Applicant¹ alleges that on the 25th of August 2024, he had visually recorded another person without that person's consent when she was engaging in a private act and that the recording was made at a time when a reasonable adult would expect to be afforded privacy.
- [5] An offence against Section 227A is an indictable offence and if convicted, the Applicant would face a potential maximum penalty of three years imprisonment. It is an offence classified as a misdemeanour, and one which falls within the jurisdiction of the Magistrates Court.
- [6] The Applicant's bail undertaking² includes a special condition that "you have no contact or attempted contact of any kind with the complainant". That it should be said, is not an uncommon condition where charges of this nature are involved.
- [7] On the 25th of October 2024, the Respondent wrote to the Applicant, requiring him to show cause why his licence should not be suspended under AR 23 pending the hearing and determination of the criminal charge³.

¹ Document #2 in Respondent's Index of Documents

² Document #4 in Respondent's Index of Documents

³ Document #1 in Respondent's Index of Documents

- [8] On the 7th of November 2024, the Applicant provided his response to the show cause notice⁴. Essentially the response set out the Applicant's background describing the conduct and subject of the charge as "a personal matter" and submitting that the Applicant should be allowed to continue to ride and earn an income until the determination of his criminal charge.
- [9] On the 11th of November 2024, the Respondent, having considered the Applicant's submissions determined that his continued participation in the racing industry posed an unacceptable risk to the image of racing.
- [10] The reasons given by the Respondent included the following⁵:

We are of the opinion that your continued participation in racing poses an unacceptable risk of prejudicing the image of racing. In particular:

a. your name and photograph appear in media articles and associate you as a licensed racing participant. It is reported in the media articles that have been charged under section 227A of the Queensland Criminal Code.

You have previously been convicted of:

a. Brisbane Magistrates Court, 18/10/2022, Sexual Assault, Section 352(1)(A), The Criminal Code.

b. Brisbane Magistrates Court, 22/04/2024. Contravention of Domestic Violence Order, Section 177(2)(B), Domestic & Family Violence Protection Act.

c. Brisbane Magistrates Court, 22/04/2024, Offence of Buy or Possess S4 or S8 Medicines or Hazardous Poisons, Section 34, Medicines & Poisons Act.

It is understood that as part of your bail conditions, you have been ordered not to contact a licensed racing participant who resides in Queensland.

The nature of the alleged charge and conduct in relation to your previous criminal convictions are matters of a serious nature in particular the 2024 conviction of Contravention of a Domestic Violence Order and the 2022 conviction of Sexual Assault. These offences are prejudicial to the image of racing.

- [11] It is to be noted at this point that notwithstanding those other charges referred to in the suspension notice and notwithstanding that the Applicant was apparently called upon to show cause in respect of the 2022 matter, no action was taken against him in respect of those matters. Presumably the Respondent did not consider that those matters, whether considered individually or collectively and notwithstanding that they involved convictions, warranted any disciplinary action under AR 23. It appears that it was simply the fact of the charge brought against him in October of this year and the reporting of that charge in the media that prompted the Respondent to take the action which it took. As the Applicant observed in responding to the Show Cause Notice, there was no information available as to the detail of the charge, and no material before the Respondent upon which any assessment of the Applicant's criminal culpability (if at all) could properly be made.

⁴ Document #7 Applicant's Index of Documents

⁵ Document #6 Respondent's Index of Documents

Discussion

- [12] The essence of the Respondent's argument before this Panel is that the nature of the alleged charge and the Applicant's previous criminal matters demonstrate a lack of integrity or want of character that is prejudicial to the interests of racing. S3(1) (b) of the Act identifies one of the main purposes of the Act as being "to ensure the integrity of all persons involved with racing" and AR 3 stipulates that any person who takes part in any matter coming within the Rules agrees to be "bound by and comply with them."
- [13] The Respondent contends that the nature of the conduct giving rise to the Respondent's decision outweighs the Applicant's personal circumstances and that there is no warrant to set aside the decision.
- [14] The Applicant makes several arguments in support of his case, the first being that the suspension causes financial hardship to him by depriving him of his means of earning an income. He has been involved in the racing industry since the age of 14, he is now 24. He is a professional race rider who has enjoyed considerable success in his career and has no other qualifications or work experience outside racing.
- [15] It is contended that to prevent him from working as a jockey pending determination of this charge is an excessive penalty, given that the offending is not said to be directly related to his work or to thoroughbred racing. There is no suggestion, it is argued, that the alleged offending occurred in the course of his employment. Although the conduct the subject of the charge need not necessarily be related to racing to attract the attention of AR 23, the fact that it is not so related or connected is relevant to the severity of any sanction imposed under the Rule.
- [16] It is further argued that the Applicant has a legal right to receive and consider evidence against him and to make a free choice as to how to proceed in answer to the charge. To date, no particulars of the charge have been provided to him and no brief of evidence is available. His inability to work until that occurs impacts upon his ability also to fund his defence to the charge
- [17] The material before this Panel indicates that it will likely not be until the second half of next year that the matter ultimately comes before a Magistrate's Court in North Queensland. On the material, that could mean to the Applicant the difference between his ability to earn something in the order of \$400,000 compared with his ability as a track rider, to earn perhaps something in the order of \$40,000 over a 10-month period. Those are mere estimates, but there is clearly a significant amount involved.
- [18] Mr Jacob, who appears for the Applicant, argues that the suspension is inconsistent with the presumption of innocence referred to in section 32(1) of the *Human Rights Act 2019*. The Applicant has not only been suspended prior to any proof of guilt, but the decision has been made on the basis of a charge sheet and media articles without reference to any evidence relating to the facts or circumstances of the alleged offence. The Panel recognises that there are cases in which a suspension, pending determination of a charge is appropriate. However, Mr Jacob contends that, absent any brief of evidence, all that is known about the alleged offending is that the applicant has been charged with an offence under section 227A of the Criminal Code.
- [19] This Panel must form its own view of these matters. A charge under Section 227A of the Criminal Code is accepted as being a serious matter, carrying it does a potential maximum penalty of three years imprisonment.

- [20] A charge under 227A can cover a variety of factual circumstances and, as with all criminal charges, there will necessarily be degrees of criminality involved in any conduct that can be proven. There is no real detail of the allegations before this Panel, and it is not possible to attempt any definitive assessment of the merits or strength of any allegation against the Applicant.
- [21] However, based on the limited material that is before the Panel it would appear that the Applicant may have, and it can be put no higher than that, an arguable defence to the charge, or at least can identify circumstances which might impact upon the degree of criminality involved.
- [22] The principal difficulty confronting the Panel is the length of the suspension which has been effectively imposed. The viability of the allegations contained in the charge, assuming it is proceeded with at all, will not be tested until the until the second half of 2025. Almost three months have now elapsed since the commission of the alleged offence. The charge was not laid until 25 October of this year and the matter seems to have proceeded nowhere. It is next due for mention only in January of 2025.
- [23] This Panel must have regard to the considerations of the *Human Rights Act 2019*. That Act imposes an obligation to act in a way that is compatible with human rights when making a decision.
- [24] Compatibility with human rights requires that a decision should not limit a human right, or limit a human right only to the extent that is reasonably and demonstrably justifiable.
- [25] A suspension necessarily has the effect of limiting or preventing the Applicant from earning a living from the racing industry by limiting his human right to own property, namely a licence. In the case of this Applicant, that is a very significant limitation, The situation would be less troubling if the period of suspension were less than the indeterminate period involved here.
- [26] AR 23 obviously recognises that there are a range of options open aside from that of a complete suspension of licence. In this case, where there is no detail of the alleged offending and where the period of suspension is so uncertain and the consequences so significant for the Applicant, the Panel considers there are other ways in which the purposes of AR 23 can be appropriately achieved with a conditional suspension. Were it only for a short period of time, then a different view may well have been taken.
- [27] One such option is to utilise AR 23(d), which enables the making of any direction or order thought fit in the interests of racing.
- [28] The Panel considers that it is possible here to impose conditions which would serve to preserve the interests of the racing industry and to minimise the risk of prejudicing the image, interest, integrity or welfare of racing without the necessity for a complete and unlimited licence suspension.
- [29] Pursuant to section 252AH(1)(b) of the *Racing Integrity Act* our orders are that the conditions of the suspension the subject of this review should be varied as follows:
- A. To limit the suspension to any location north of the city of Rockhampton;
 - B. The Applicant is required to continue to attend upon Awakened Lifestyles for counselling at least once a fortnight until the completion of the Immersion program, proof of which completion is to be supplied to the Respondent;
 - C. The Applicant is required to attend upon the Stewards each fortnight to provide an update with respect to his counselling and to provide results of urine analysis testing for the presence of alcohol and drugs;

D. The Applicant is required to not engage in any pre or post-race interviews; and

E. To otherwise not engage in any conduct assessed to be detrimental to the interests of racing.

[30] We would add that if the Applicant is ultimately convicted of the charge, the situation may well be different. He may well be back before the stewards, if not this Panel in respect of the matter.

[31] Finally, it is appropriate in this case that we give leave to apply to the parties in the event that there is some issue with compliance with the conditions for one reason or another. So, leave for either party to apply within five business days' notice to the other.

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