

DECISION

Racing Integrity Act 2016, sections 252AH, 252BM

Review application number	RAP-87	
Name	Dale Evans	
Panel	Mr K J O'Brien AM (Chairperson) Mr M Einfeld KC (Panel Member) Mr J McCoy OAM (Panel Member)	
Code	Thoroughbreds	
Rule	Australian Rules of Racing 115(1)(c) <i>A jockey or apprentice jockey must not bet, or have any interest in a bet, or facilitate a bet, on any race</i>	
Penalty Notice number	PN-009613	
Appearances & Representation	Applicant	Self represented
	Respondent	Queensland Racing Integrity Commission W Kelly instructed by E Ballard
Hearing Date	19 March 2024	
Decision Date	19 March 2024	
Decision	Pursuant to 252AH(1)(a) the Racing decision is confirmed <i>(delivered ex tempore)</i>	
Case References	<i>Ben Melham & Karlie Dales v Racing Victoria</i> , Victoria Racing Tribunal, 24 December 2020 <i>Chris Caserta v Racing Victoria Stewards</i> , Racing Appeals and Disciplinary Board Victoria, 13 March 2019 <i>Racing Victoria Stewards v Daniel Schmitt</i> , Racing Appeals and Disciplinary Board Victoria, 28 March 2019 <i>Racing NSW v Hyeronimus</i> , Racing Appeal Panel of NSW, 8 April 2021	

Reasons for Decision

- [1] The Applicant in this matter is licenced jockey, Mr Dale Evans. In February 2024, Stewards had commenced an inquiry in relation to betting activities on accounts which bore the Applicants name.
- [2] On the 29 February 2024, following an interview with the Applicant, Stewards charged him with an offence against Australian Rule of Racing 115(1)(c), which so far as it is relevant to these proceedings prohibits a jockey betting on any thoroughbred race in any jurisdiction anywhere in the world.
- [3] The Applicant entered a plea of guilty to the charge and by way of penalty received a licence suspension of six months.
- [4] Pursuant to section 252AB(1)(a) of the *Racing Integrity Act 2016*, he now seeks a review of that decision on the ground that the penalty imposed was excessive.
- [5] The Applicants offending involved a total of 2042 individual bets placed over a period of about 5 months between the 22 July 2023 and the 25 December 2023.
- [6] The total amount involved with those bets was considerable being of the order of \$81,224. Of the total number of 2042 bets, forty-seven were placed within Australia (\$1,718), the remainder (\$79,506) being on overseas thoroughbred racing events.
- [7] The Queensland Racing Integrity Commission penalty guidelines do not provide a starting point penalty for this particular offence, but they do expressly recognise that the purpose of penalty under the rules is essentially threefold:
 - to maintain standards of integrity and animal care within the thoroughbred code
 - to provide general deterrence for the industry by ensuring that the penalty imposed on an individual is sufficiently serious to discourage other participants from breaching the rules, and
 - to provides specific deterrence to the individual by ensuring that the penalty imposed is of such a nature as to discourage that individual from engaging in similar conduct.
- [8] The Guidelines recognise that all situations must be addressed on their individual merits and proceed to list a number of matters of relevance to the determination of penalty. Relevantly, these include the circumstances of the offending, the degree of culpability, the disciplinary record of the offender, and whether there has been an early plea of guilty.
- [9] It is obviously desirable that there should be some degree of consistency between jurisdictions so far as penalties for breaches of the rules are concerned and the Panel has been referred to a number of comparable decisions from Victoria and from New South Wales.
- [10] *Racing Victoria v Melham*¹ involved some six charges of placing bets or being involved in the placing of bets over a two-month period. Melham had pleaded guilty and had no prior offending of a like nature, although an additional offence of providing false information raised issues of totality and an effective penalty of 5 months disqualification was imposed.
- [11] In *Chris Caserta v Racing Victoria Stewards*² the charge involved 6 bets, 3 placed in Australia and 3 overseas with a modest outlay of about \$50 over some 4 weeks. The Board considered that specific

¹ *Ben Melham & Karlie Dales v Racing Victoria*, Victoria Racing Tribunal, 24 December 2020

² *Chris Caserta v Racing Victoria Stewards*, Racing Appeals and Disciplinary Board Victoria, 13 March 2019

deterrence was not a factor of relevance in the circumstances of that particular case and imposed a suspension order of 4 weeks. That case is obviously much less serious than the present.

- [12] *Racing Victoria Stewards v Daniel Schmitt*³ involved some 71 bets over about 32 months with the bets totalling \$2,050. A penalty of 4 months suspension was imposed, although it would seem that Schmitt's personal circumstances may have spared him a more severe penalty, such as a disqualification. In the course of delivering his decision in that matter, Judge Bowman made the following comments:

*"Jockeys must not bet on Thoroughbred races and must not be seen to be so doing. It gives a very poor impression of the honesty and integrity of racing. A significant penalty must be imposed and must be seen to be imposed. Both the impression given to the public and to participants in the racing industry must be to the effect that this sort of behaviour will not be tolerated and attracts a stiff penalty."*⁴

- [13] Reference should also be made to the decision of the NSW Racing Appeals Panel in *Racing NSW v Hyeronimus*⁵, the appellant there was charged with some 23 betting offences contrary to AR115(1)(c) and two offences of "in race betting" contrary to AR115(1)(e).
- [14] Those latter 2 offences attracted penalties involving mandatory disqualification, for which a total of 2 years and 1 month was imposed. For the offences against AR115(1)(c), the presiding Member indicated that ordinarily, depending on the extent of the betting activity and the individual circumstances a suspension of 3 to 9 months would be appropriate if the circumstances also involved a plea and cooperation with Stewards.
- [15] Given the issues of totality that arose in that case in that case a period of 6 months disqualification was imposed for the AR 115(1)(c) charges, though given the issues of totality that arose with the AR115(1e) charges it was ordered to served concurrently with the 25-month disqualification.
- [16] It scarcely needs to be said that betting by jockeys is harmful to the image of racing. It is the view of this Panel that, depending upon the circumstances of the particular case, a suspension period of between 3 and 9 months as suggested by the presiding Member in *Hyeronimus* would provide the appropriate penalty range for most offences against AR115(1)(c). There will, of course be cases in which a lesser penalty is appropriate and the possibility of a higher penalty, even one involving disqualification, cannot be discounted in a more serious case.
- [17] Although there was an element of evasion in the Applicants initial response to the Steward's questioning, he did ultimately plead guilty to the offence. He has a lengthy disciplinary history, but he has no previous entries for betting offences. The offence itself involved a large number of bets with the amount involved being considerable. Offending of this nature, as the Panel has observed, has a clear potential for harm to the industry of thoroughbred racing.
- [18] As counsel for the Respondent has submitted, the purpose of the rule is to ensure public confidence in the propriety of the sport and the efforts of all the competing participants.
- [19] Specific deterrence is an important consideration here, but so too is the issue of general deterrence.

³ *Racing Victoria Stewards v Daniel Schmitt*, Racing Appeals and Disciplinary Board Victoria, 28 March 2019

⁴ *Racing Victoria Stewards v Daniel Schmitt*, Racing Appeals and Disciplinary Board Victoria, 28 March 2019, Decision, Page 3

⁵ *Racing NSW v Hyeronimus*, Racing Appeal Panel of NSW, 8 April 2021

- [20] The Applicant contends that he was unaware of the prohibition on overseas betting and that, he submits, should entitle him to greater leniency. He also says that it is relevant that he had had only 47 bets within Australia after his barrier trial jockey's licence was approved on the 21 July 2023.
- [21] It is important to note in this regard, however, that the licence application process established by the Queensland Racing Integrity Commission requires that a person applying for a licence must, *inter alia*, acknowledge that the person is aware and understands his or her obligations and responsibilities as prescribed by the Rules of Racing.⁶
- [22] Moreover, in his application dated 13 May 2023 for the renewal of his licence, the Applicant deposed that he had *inter alia* read those Standards of the Queensland Racing Integrity Commission, available at <https://qric.qld.gov.au/licensing-and-ownership/thoroughbred/standards-and-rules/> and that he agreed to be bound by those policies.
- [23] More importantly he signed a document indicating the following. "I understand that as a licenced jockey I am not allowed to bet on thoroughbred racing in Australia or overseas and have read and understood the rules of racing regarding betting, betting restrictions and offences for jockeys, including but not limited to AR83D and AR196(5)." This Document headed Jockey's Licence Application is before this Panel⁷, and it is clearly signed by the Applicant and declared by him as being true and correct on the 13 May 2023. His declaration deposes that he acknowledges that he has read and understood the application in full and that he agrees to be bound by the declarations and acknowledgements set out in that form.
- [24] Beyond this, there is the provision of AR3 which clearly provides that any person who takes part in a race meeting within the Australian Rules agrees to be bound by them and to comply with them.
- [25] In these circumstances, the matters of Rule ignorance raised by the Applicant can afford him little entitlement to any degree of leniency.
- [26] The Panel must have regard to the requirements of the *Human Rights Act*. One such matter raised in that Act is a right to earn income. The Panel notes that the Stewards did in fact, properly consider that obligation in reaching their determination and although a period of disqualification was considered by them, having regard to the requirements of the *Human Rights Act*, they imposed the lesser onerous penalty of a suspension.
- [27] It is the view of this Panel in the circumstances that no less restrictive penalty than a period of suspension is appropriate in the circumstances of this case if the purposes of penalty are to be achieved.
- [28] This Panel, which must of course form its own view of the matter, is satisfied that the period of 6 months suspension, as it has been imposed upon the Applicant, is appropriate.
- [29] The Panel therefore orders pursuant section 252AH(1)(a) of the *Racing Integrity Act 2016* that the decision of the Stewards should be confirmed.

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⁶ QRIC Licensing Standard – Thoroughbreds, Licence Application Process, paragraph B 1.1

⁷ Document No. 18- Dale Evans Jockey Licence Application 13.05.2023