

DECISION

Racing Integrity Act 2016, section 252AH, 252BM

Review application number	RAP-97	
Name	Paige Bevan	
Panel	Mr Kerry O'Brien AM (Chairperson) Mr Peter O'Neill (Deputy Chairperson) Mr Daryl Kays (Panel Member)	
Code	Harness	
Rule	Australian Harness Racing Rules AHR165(1)(b) <i>From the start through the first turn, and until reaching the next straight, a driver shall - not move the driver's horse towards the inside running line unless the rear of the driver's sulky is at least one metre clear of the extended front legs of the horse racing in the next position closer to the inside running line.</i> Australian Harness Racing Rules AHR149(2) <i>A person shall not drive in a manner which in the opinion of the Stewards is unacceptable.</i>	
Penalty Notice number	PN-010083 PN-010084	
Appearances & Representation	Applicant	Self-represented
	Respondent	David Farquharson
Hearing Date	1 July 2024	
Decision Date	1 July 2024	
Decision	Pursuant to 252AH(1)(a) the Racing decision is confirmed <i>(delivered ex tempore)</i>	
Case References	<i>Australia Building Construction Commissioner -v- Pattinson</i> [2022] 96 ALJR 426 <i>Briginshaw v Briginshaw & Anor</i> (1938) 60 CLR 336	

McMullen v Racing Queensland Limited [2012] QCAT 286 *Misfud v Racing Victoria Stewards* [2007] VRAT 6

Dixon v Queensland Racing Integrity Commission [2018] QCAT 183

Elkins v The Queensland Racing Integrity Commission [2021] QCAT 161

Garrard v QRIC The Queensland Racing Integrity Commission [2024] RAP-78, 31 January 2024.

McMullen v The Queensland Racing Integrity Commission [2021] QCAT 202

Ison v Harness Racing NSW, Unreported, NSW Harness Racing Appeals Panel 6 September 2023

Turnvell v Harness Racing NSW, Unreported, Harness Racing Appeals Panel 1 April 2016

Reasons for Decision

- [1] This is an Application for Review, pursuant to section 252AB of the *Racing Integrity Act 2016*.
- [2] The Applicant in this matter is Ms Paige Bevan. Ms Bevan is a licenced harness racing driver.
- [3] On 22 June 2024, Ms Bevan was the driver of the horse SHEZ NOTORIOUS in Race 11 held at Albion Park.
- [4] Following the race, a Stewards' Inquiry was convened into the running of Race 11 and the Applicant was found guilty of two charges under the Australian Harness Racing Rules (` AHRR').
- [5] Firstly, under AHRR 165(1)(b) which relevantly provides:
- From the start through the first turn, and until reaching the next straight, a driver shall not move the driver's horse towards the inside running line unless the rear of the driver's sulky is at least one metre clear of the extended front legs of the horse racing in the next position closer to the inside running line.*
- [6] The particulars of that charge as contained in Penalty Information Notice PN-010083 were:
- Paige Bevan, driver of SHEZ NOTORIOUS pleaded guilty to a charge pursuant to AHR Rule 165 (1)(b) for causing interference to DIAMOND SHOOZ near the 1400 metres when failing to give sufficient room to DIAMOND SHOOZ when attempting to cross on the first turn.*
- [7] Secondly, under AHRR 149(2) which relevantly provides:
- A person shall not drive in a manner which in the opinion of the Stewards is unacceptable.*
- [8] The particulars of that charge as contained in Penalty Information Notice PN-010084 were:
- Paige Bevan was found guilty of a charge under AHR Rule 149 (2) for driving SHEZ NOTORIOUS in an unacceptable manner. The particulars of the charge being Paige Bevan placed excess exertion on her mare in an attempt to gain the lead in the early stages of the race which resulted in SHEZ NOTORIOUS being uncompetitive in the concluding stages of the race, weakening to finish in seventh position beaten 30.6 metres. Furthermore, Paige Bevan's handling of SHEZ NOTORIOUS and the abrupt reduction of pace in the home straight which contributed to interference which the Stewards found unacceptable.*

- [9] By way of penalty, the Applicant received a licence suspension of three weeks for the charge pursuant to AHRR 165(1)(b) with the suspension commencing on 2 July 2024 and ending on 22 July 2024. For the charge under AHRR 149(2) the Applicant received a licence suspension of four weeks commencing on 2 July 2024 and ending on 29 July 2024. The Stewards ordered that the suspensions were to be served concurrently.
- [10] Pursuant to section 252AB of the *Racing Integrity Act 2016*, the Applicant now seeks a review of those racing decisions.
- [11] In relation to the charge pursuant to AHRR 165(1)(b) the Applicant seeks a review of the penalty imposed. In relation to the charge pursuant to AHRR 149(2) the Applicant seeks a review as to both the finding of guilt and the determination of penalty.
- [12] In her application for review, the Applicant sets out the detail of her application as follows:

When talking about the matter to drivers both drivers put forward that my mare was hanging in seen in footage with her head faced towards outside fence in result of us hitting the corner so quickly and the stewards got quiet (sic) defensive saying it was up to them to decide if she was hanging or not also when mister Hutchinson tried to speak as a representative for myself he was told he wasn't aloud (sic) to put anything forward on my behalf he was only aloud to talk to me outside the stewards room

...

The penalty is excessive

...

Also this was my first offence under this rule and even though there was tightening to the runner inside me I corrected it and the runner was not inconvenienced and was able to maintain it position in the race as leader.

The Stewards' Inquiry

- [13] At the outset of the Inquiry, the Stewards received evidence from one of the Stewards, Mr Torpey who gave the following version regarding what occurred at the first turn:

As stated, I was at the 400 metres tower, [this is 1,660] metres, Diamond Shooz, Layne Dwyer's horse from barrier two, Paige Bevan on Shez Notorious, barrier four. Both horses began well from the mobile barrier. You can obviously see that both drivers were endeavouring to hold the forward position or a lead position.

Ms Bevan had urged her horse forward on Shez Notorious and was all but clear of Diamond Shooz. However, I didn't feel that she was sufficiently clear of the required parameters as per approaching the first turn and it appeared that Shez Notorious has shifted in, tightening the running of Diamond Shooz, causing that horse to become unbalanced and race roughly.¹

- [14] The driver of DIAMOND SHOOZ, Mr Layne Dwyer was then questioned and provided the following version:

¹ Audio 1, Transcript of Stewards Inquiry, 22 June 2024, page 1, lines 7-17.

Layne Dwyer: So obviously we hit the corner pretty high speed and we've had Shez Notorious in the past and from what I remember of her she can hang in under pressure. So, I think that's to take into a bit of account. But it just doesn't help that the first quarter was 25.8 and we were both going into that corner so quick.

David Farquharson: We'll work out what's hang in and what's not. All we wanted from you is was your horse tightened on the first turn?

Layne Dwyer: Yes.

David Farquharson: Okay, and was there contact to your mare?

Layne Dwyer: Yes, sir.²

- [15] The Applicant was then afforded the opportunity to provide her explanation to the Stewards Inquiry and she provided the following version:

Paige Bevan: Well, basically the evidence put forward by both Layne and...

David Farquharson: Mr Torpey.

Paige Bevan: ...Mr Torpey was basically what happened. Layne and I were both trying to get into the same position. I thought I had crossed when I was out wider and when I crossed down coming into the corner my mare did hang in and I did try to correct her, at the same time trying to still drive her forward to get the position that I wanted. But I just come close on that corner.³

- [16] The Inquiry then considered the driving tactics adopted by the Applicant during the race. The following discussion occurred:

Paige Bevan: No, similar to what Layne said. The tactics were to try and land on Tay Tay's back as it was the best horse that was in that field and it just didn't work out.

David Farquharson: I mean, we all know that Shez Notorious is a brilliant beginner, has great speed out of the gate, but there's others who also have good speed and sometimes you have to reconsider. I know that you've both got the same tactics. You want to be behind Tay Tay when it comes eventually and hand up, but it can't be done at the expense of gassing your horse to a point where it's not going to be competitive at the finish. ...⁴

- [17] The Stewards found the Applicant guilty of both charges and proceeded to impose the penalties set out above.

- [18] The Applicant pleaded not guilty to the charge under AHR 149(2) and submitted to the Stewards' Inquiry that prior to that night SHEZ NOTORIOUS' best rate was 153.7 and in the race that night she had run 153.4, that is, better than her previous best time. The Applicant further maintained that she was trying to put her horse in the best position that night and the time of 153.4 represented the horse's capability.

- [19] In relation to the findings of guilt and penalty the Stewards' Inquiry found as follows:

David Farquharson: In regards to the breach under rule 165 part 1 in sections (a) and (b), Paige Bevan, the stewards believe that you have infringed the rule. Whilst you pleaded guilty to the charge,

² Audio 1, Transcript of Stewards Inquiry, 22 June 2024, page 2, lines 22-31.

³ Audio 1, Transcript of Stewards Inquiry, 22 June 2024, page 2, lines 33-40.

⁴ Audio 1, Transcript of Stewards Inquiry, 22 June 2024, page 4, lines 78-87.

*the standard penalty and starting point for an incident of that nature is a three week suspension and that will apply in tonight's race.*⁵

...

Now, in regards to your breach of rule 149 part 2 the stewards find, Ms Bevan, that that charge can be sustained and the reason for that is that the exertion that you placed on the mare in the first stages of the race in an attempt to gain the lead was beyond the capabilities for that mare to be competitive in the finish and finish in its best possible placing.

Further to that, when you were restraining the horse in the front straight there was significant interference that was caused at that point also when you were grabbing hold. Horses that were racing in the one wide position had nowhere to go and they had to move to the inside and horses ran into the back. So, you don't grab hold and you don't abruptly reduce the pace like that. Your overall drive of Shez Notorious in this race was unacceptable and thus we find you guilty.

*Now, we must consider what, if any, penalty is to be imposed for your breach of the rule. Is there anything that you would like to put forward?*⁶

- [20] The Stewards ultimately imposed a four-week suspension for the charge under AHR 149(2) with both penalties to be served concurrently.

Liability

The Rule AHR149(2)

- [21] AHR149(2) is contained within Part 8 of the Australian Harness Racing Rules. Part 8 is headed 'Required Racing Standard and consists of AHR 147, 148, 149 and 150. Rules 147 and 148 deal with Racing on Merits and Rule 150 deals with the imposition of penalties under that part of the Rules.

- [22] Rule 149 bears the subheading "Race to win or for best position" and provides, in full, as follows:

Race to win or for best position

149.

(1) A driver shall take all reasonable and permissible measures during the course of a race to ensure that the horse driven by that driver is given full opportunity to win or obtain the best possible placing in the field.

(2) A person shall not drive in a manner which in the opinion of the Stewards is unacceptable.

(3) A person who fails to comply with sub-rule (1) or (2) is guilty of offence.

(4) The connections of a horse shall not give a direction or instruction to the driver of a horse if in the opinion of the Stewards that direction or instruction may prevent the driver from giving the horse full opportunity to win or obtain the best possible placing.

(5) A person who fails to comply with sub-rule (4) is guilty of an offence.

(6) If a driver receives a direction or instruction that infringes sub-rule (4) he shall prior to the race notify the Stewards.

(7) A driver who fails to comply with sub-rule (6) is guilty of an offence.

⁵ Audio 3, Transcript of Stewards Inquiry, 22 June 2024, page 1, lines 1-5.

⁶ *Supra*, at pages 1-2, lines 15-30.

[23] As noted in the decision of this Panel in *Garrard v The Queensland Racing Integrity Commission*⁷ at [17], although AHR149(2) makes reference to the “opinion of the stewards” as constituting an element of the offence, the approach to the application of the Rule should be as set out by the Queensland Civil and Administrative Appeals Tribunal in *McMullen v Racing Queensland Limited*⁸:

“We would make the general point that any offence which is committed if someone forms the opinion that it has been committed needs to be approached with some caution. There is a distinct danger that a driver can be convicted of an offence on the subjective view of the particular stewards involved, when if other stewards had been involved there would be a different result.

It is important therefore for the stewards making a decision to endeavour to be as objective as possible. Whilst there is no requirement in the Rules for the stewards to give reasons for their decision, it is preferable for them to demonstrate this objectivity by doing so. If such reasons are given for an offence under rule 149(2), they would explain why the stewards formed the opinion that the drive was unacceptable.”

[24] The test to be applied when considering AHR149(2), has been accepted as that set out by Judge Williams, sitting as the Victorian Racing Appeals Tribunal in *Misfud v Racing Victoria Stewards*.⁹ His Honour there said:

The rule in question is as I have stated, a person shall not drive in a manner which in the opinion of the Stewards is unacceptable. This rule is not intended to penalise what might be described as mere errors of judgment or split-second mistakes. The Tribunal is well aware of the authority constituted by the previous decision in 1983 by Judge Goran in a case of Honan where it was thought desirable to bring into focus the sort of considerations that lie behind rules such as Rule 149(1) and (2) and Judge Goran made a number of observations.

It is certainly relevant to restate here that the first, second and fourth of the observations that he made apply. I will read those:

"(a) the rule does not permit the mere substitution of the Stewards' view as to how a particular horse should have been ridden for the view of the rider;"

Of course in the harness racing world we would substitute "driven for the view of the driver":

"(b) the rule does not seek to punish a mere error of judgement during the race on the part of the driver; and

(d) the driver's conduct must be culpable in the sense that objectively judged it is found to be blameworthy."

I will not include (c) here because it is more relevant to a breach of Rule 149(1) and we are dealing with 149(2) ...

Perhaps to throw my own interpretation into the mix I might view it this way, that the sort of culpable action that is required to amount to a breach of this rule might be such that in normal circumstances a reasonable and knowledgeable harness racing spectator might be expected to

⁷ *Garrard v QRIC The Queensland Racing Integrity Commission* [2024] RAP-78, 31 January 2024 at [17].

⁸ *McMullen v Racing Queensland Limited* [2012] QCAT 286 paragraphs 13 to 14.

⁹ *Misfud v Racing Victoria Stewards* [2007] VRAT 6

exclaim with words to the effect, "What on earth is he doing?" or "My goodness look at that" or some such exclamation.'

[25] Once again, as noted by this Panel in *Garrard v The Queensland Racing Integrity Commission*¹⁰, the observations of Judge Williams and Judge Goran have been expressed with approval in a number of decisions in this state and elsewhere.¹¹ Furthermore, it should be noted that the Rule is focused expressly upon the "manner" of driving. It is not the result or consequence of the driving which itself creates the offence. There can be no offence unless the "manner" of driving is shown to be unacceptable.

Evidence and submissions before this Panel

[26] The Panel has had the opportunity of viewing the race footage of the relevant race from multiple angles and on numerous occasions.

Applicant's oral submissions

[27] The Applicant provided submissions in relation to both charges under the AHRR.

[28] Dealing firstly with the three-week suspension for the charge pursuant to AHRR 165(1)(b) where she challenges the severity of the penalty, the Applicant submitted that a three-week suspension was excessive. She noted that she had participated in 932 races over four years as a driver without being previously suspended.

[29] The Applicant confirmed that she had allowed her mare to hang too closely to Mr Dwyer but submitted that it had no impact on the race as Mr Dwyer had been able to continuously drive his horse out which resulted in the 25.8 second first quarter time.

[30] The Applicant submitted that her limited drives on the horse had not prepared her for the horse to shift in like it did. The Applicant noted that SHEZ NOTORIOUS had not previously had the benefit of a better draw and previously had to be driven more conservatively.

[31] The Applicant submitted that her good driving record should have been taken into account and that 23 of the 29 people charged under this rule had received a suspension of fourteen days.

[32] The Applicant has made submissions in which she contended that there had been some inconsistencies in the manner in which Stewards had charged drivers for similar incidents and the penalties received by those drivers.

[33] The Applicant contended that in similar incidents the drivers had been charged under AHRR 163(1)(d) rather than AHRR 165(1) and had generally received a suspension of fourteen days. The Applicant provided the following examples:

- 17.03.2024 Ms Veivers was fined \$300.00 for shifting in approaching the turn after the start causing One Last Role (Pete McMullen) to be tightened for room. She noted that One Last Role also raced roughly.

¹⁰ *Garrard v The Queensland Racing Integrity Commission* [2024] RAP-78, 31 January 2024 at [19] and [20].

¹¹ *McMullen v Queensland Racing and Integrity Commission* [2012] QCAT 286; *Dixon v Queensland Racing Integrity Commission* [2018] QCAT 183; *Elkins v The Queensland Racing Integrity Commission* [2021] QCAT 161; *McMullen v The Queensland Racing Integrity Commission* [2021] QCAT 202; *Ison v Harness Racing NSW*, Unreported, NSW Harness Racing Appeals Panel, 6 September 2023; *Turnvell v Harness Racing NSW*, Unreported, Harness Racing Appeals Panel 1 April 2016

- 01.11.2023 driver Trent Hodges was charged under AHRR 163(1)(a)(iii) for tightening Lady Anthiea causing the horse to fall. The Applicant noted Mr Hodges only received a fourteen-day suspension.

- [34] The Applicant submitted that given those matters she was not sure why she was not charged under AHRR 163(1) rather than AHRR 165(1). The Applicant submitted that the charges covered essentially the same conduct.
- [35] In relation to the charge pursuant to AHRR 149(2), the Applicant submitted that she should not have been found guilty because SHEZ NOTORIOUS was racing to her usual pattern, utilising her high gate speed to gain forward positioning with the intention of handing up to Tay Tay. The Applicant noted that these were the instructions of the trainer of SHEZ NOTORIOUS.
- [36] The Applicant noted that SHEZ NOTORIOUS on 22 June 2024 ran a time of 153.4 with her previous best winning mile rate being 153.7. The Applicant also provided the panel with the results of SHEZ NOTORIOUS' most recent five performances.
- [37] The Applicant contended that if SHEZ NOTORIOUS was running a personal best time, was that not the best the horse could have performed? The Applicant submitted that she was just outclassed by a better horse.
- [38] The Applicant provided the Panel with the times that SHEZ NOTORIOUS had run for the last quarter in recent outings, and she noted that these were not significantly different to the 29.00 she achieved for the last quarter on 22 June 2024. The Applicant submitted on 22 June 2024 SHEZ NOTORIOUS had got home as well as she does on average.
- [39] The Applicant also noted that the horse was not vetted to confirm if she had been over-exerted. The Applicant submitted that the horse was not over-exerted with her heart rate coming back at 87.
- [40] In relation to the penalty of a four-week suspension, the Applicant contended that this was severe given that the Applicant drove to the horse's usual racing patterns, and SHEZ NOTORIOUS got home as well as what she usually does. The horse raced to the best of its abilities, and it was outclassed by Tay Tay, as was the rest of the field.

Respondent's oral submissions

- [41] The Respondent firstly addressed the charge pursuant to AHRR 165(1)(b). The Respondent submitted that the rule is of paramount importance to the safety of, and welfare of horses and drivers.
- [42] The Respondent noted that the rule covers the early positioning of the horses when they are at maximum speed and when the drivers are endeavouring to find the best position for their horse. For this reason, AHRR 165 is made up of two parts, 165(1)(a) and 165(1)(b).
- [43] The Respondent contended that with the tolerances that are on a driver who is attempting to cross another runner in changing position and the Applicant was charged because those tolerances were not adhered to by the Applicant.
- [44] The Respondent conceded that SHEZ NOTORIOUS has good early gate speed, but she is not the only horse that possesses good gate speed and there will be horses that will have similar gate speed, as was the case on 22 June 2024 in relation to DIAMOND SHOOZ.

- [45] The Respondent submitted that the obligation was on the driver changing positions and rightfully so to ensure the safety of drivers and the welfare of horses. The Respondent contended that the reason for those tolerances is that if there is contact that presents a very substantial risk when a horse is travelling at those fast speeds.
- [46] The Respondent further submitted that if a horse was put off balance it could cause the horse to break stride, and if the horse was to fall at those type of speeds, the injuries to the driver or horse could be catastrophic.
- [47] The Respondent contended that the lead time and the first sectional of the race was run extremely quick.
- [48] The Respondent noted that there was evidence of the horse hanging in and the Respondent acknowledged that SHEZ NOTORIOUS was wearing gear to prevent it from doing so.
- [49] The Respondent contended that the obligation is on the driver of that horse that if commences to run untruly, that is being inclined to shift in, the obligation is on that driver to take corrective action required to provide safe racing room for the driver who is racing to the inside. The Respondent submitted that on this occasion, this was not done by the Applicant and there was contact to the offside foreleg of Mr Dwyer's horse. As a result of that contact, DIAMOND SHOOZ did race roughly.
- [50] The Respondent submitted that it was more good luck than good management that DIAMOND SHOOZ did not fall, with the rest of the field following.
- [51] It was submitted that the incident could have been avoided by the Applicant taking proper action and that was to cease driving the horse forward and rightfully provide Mr Dwyer with the racing room that he was entitled to.
- [52] In relation to the charge pursuant to AHRR 149(2) the Respondent noted that in this race there was another horse (DIAMOND SHOOZ) that was able to match it with SHEZ NOTORIOUS for speed and the Applicant was not in a position legally to take a position in advance of that horse.
- [53] The Respondent contended that the exertion placed on SHEZ NOTORIOUS in an attempt to lead was too much and a 25.8 time for the first quarter for these mares was unacceptable.
- [54] The Respondent noted that the average of all of the sectionals run on that evening at Albion Park, the average not including Race 11 (the race in question in this review) was 28.6 seconds for the first sectional, and that equated to a 155 mile rate. The Respondent further noted that the 25.8 quarter that was recorded in this race represented a mile rate of 143, and that was world record time.
- [55] It was then submitted by the Respondent that if it was taken just on the races conducted over the same distance, the average for all of those races over 1660 metres was 27.5 normal speed for a first sectional. The Respondent contended that the exertion placed on both horses was substantial.
- [56] The Respondent noted that SHEZ NOTORIOUS was an outsider with odds of 100-1, however the Respondent contended that there may be punters who form their analysis based on the fact that the mare had great early speed and it might get into a position without being exerted too hard and be a good chance to place in the race.
- [57] The Respondent noted that whilst SHEZ NOTORIOUS may have recorded a personal best time, that was not what the punters invest their money to see a horse run its personal best. The punters expect the horse to be driven to its best advantage to finish in the best possible position.

- [58] The Respondent noted the submission by the Applicant that SHEZ NOTORIOUS at her previous start was able to come off the second line and get a trail, with the horse finishing the last quarter in 26.9 and the start before that in 27.0. The Respondent contended that this demonstrated that the mare can get home in quick time if she was given an opportunity to conserve for the finish. In the race in question, the horse got home in 29 seconds which indicates that the horse has been exerted beyond its ability to be competitive.
- [59] The Respondent also noted that the Applicant had gone from a position of being a half-length in front of DIAMOND SHOOZ and by the time the interference occurred close to 100 metres from the winning post with a lap to go, SHEZ NOTORIOUS was back at the wheel of DIAMOND SHOOZ. The Respondent submitted that the marked reduction in the pace of SHEZ NOTORIOUS had caused interference to the following horses.
- [60] The Respondent confirmed that the Stewards considered that the Applicant's handling of SHEZ NOTORIOUS was unacceptable:
- (a) in that the mare was driven beyond her ability to be competitive at the finish by the early exertion.
 - (b) By the abrupt reduction in pace in the home straight.
- [61] The Respondent contended that the overall driving performance of the Applicant was below that of what is expected of a driver with A grade licence.
- [62] In relation to the penalties imposed by the Stewards for both charges, the Respondent noted that the Penalty Guidelines confirmed a starting point of a three-week suspension for a charge pursuant to AHRR 165(1)(b) and four-week suspension for the charge pursuant to AHRR 149(2).
- [63] The Respondent noted that the Stewards had reflected on the Applicant's disciplinary records and that she had seven previous charges for careless driving offences receiving four reprimands and three fines.

In response to a question from the Panel, the Respondent confirmed that the conduct of the Applicant in this matter went beyond a mere misjudgement and was in fact a significant misjudgement. The Respondent noted that SHEZ NOTORIOUS did not suddenly just abruptly turn in. It was a matter that Mr Dwyer's horse was placed in restricted room for some time and the required tolerances were not afforded to Mr Dwyer. There was a continued tightening until eventually there was contact with DIAMOND SHOOZ and that contact was unacceptable.

Respondent's Written Submissions

- [64] In the submissions provided on behalf of the Respondent, the following matters are raised in relation to the question of the Applicant's culpability under the charge pursuant to AHR 149(2):
- a. ***The rule does not permit the mere substitution of the Stewards' view as to how a particular horse should have been driven.*** *The Respondent submits that the unacceptable drive charge is not merely the Stewards' view as to how SHEZ NOTORIOUS should have been driven for the reasons outlined below.*
 - b. ***More than a mere error of judgment on the Applicant's behalf.*** *The Applicant knew the form of the horse, and therefore knew the physical capabilities of the horse. ...*

Every race is run differently, and the Applicant is required to adapt to the many variables that unfold throughout a race that impact speed and positioning to an acceptable standard that provides the horse the full opportunity to obtain the best possible placing in the field. The Applicant's driving manner was not appropriate in the context of the strength of the field, noting that SHEZ NOTORIOUS was a \$101.00 chance in the race. The Applicant should have planned her drive accordingly. Drivers are expected to not only attempt to win but to also secure the best finishing place.

c. *If objectively judged, the Applicant's conduct would be blameworthy.*

... The Applicant is an A Grade driver.¹² She is expected to, and required to, drive to the highest standards. The speed and exertion applied to a horse in the early stages of any race, are vital components to determine a drive to be acceptable or not. The Applicant ought to have considered the physical capabilities of the horse in the context of the field of horses. The Applicant overexerted her horse in the beginning stages of the race, which impacted on the horse's ability to run its best race and was, in the opinion of the stewards, unacceptable. Further, the Applicant's handling of SHEZ NOTORIOUS and the abrupt reduction of pace in the home straight contributed to interference which the Stewards found unacceptable.

[65] The Respondent further submits¹³ that the Panel can be satisfied on the available race footage that:

- a. From the commencement of the race, SHEZ NOTORIOUS was urged forward and landed a position leading before the first turn;¹⁴
- b. Before reaching the first turn, the Applicant exerted SHEZ NOTORIOUS forward vigorously;¹⁵
- c. SHEZ NOTORIOUS was overexerted to the point where it was non-competitive in the closing stages of the race;
- d. The abrupt reduction of pace in the home straight contributed to interference.¹⁶

The Respondent contends that the manner in which the Applicant drove the horse constituted driving in a manner that was blameworthy, and objectively viewed, unacceptable.

Discussion

[66] This Panel, of course, is required to form their own view of the circumstances of the race.

[67] In the course of the race footage, the Panel notes the race caller specifically notes the early speed of SHEZ NOTORIOUS. The race caller then goes on to note 'That first quarter, oh that's eye watering, 25 and 8'.

[68] This appears to be consistent with the Respondent's suggestion that in the first quarter of the race the Applicant over-exerted SHEZ NOTORIOUS.

[69] At about 02:30 of the race footage¹⁷ and thereafter, it is palpably clear that SHEZ NOTORIOUS is spent from the earlier exertions in the race and the horse progressively falls back in the field.

¹² Document 14: Licence History – Paige Bevan.

¹³ Paragraph 20 of the Respondent's submissions dated 27 June 2024.

¹⁴ Document 8: Race Footage – Albion Park – Race 11_1 – from approximately 0:01:40 to approximately 0:02:01.

¹⁵ Document 8: Race Footage – Albion Park – Race 11_1 – from approximately 0:01:40 to approximately 0:02:01.

¹⁶ Document 8: Race Footage – Albion Park – Race 11_1 – at a 0:02:16.

¹⁷ Document 8: Race Footage – Albion Park – Race 11_1 – at a 0:03:00.

- [70] The Panel has accepted the submissions made by the Respondent as accurate that SHEZ NOTORIOUS was urged forward on the night in question and urged forward vigorously by the Applicant in the first quarter of the race. The Panel further accepts that as a consequence of the decisions made by the Applicant that SHEZ NOTORIOUS was over-exerted.
- [71] The Panel is satisfied that the 25.8 sectional time, what has been described as being a 'world record time' has resulted in SHEZ NOTORIOUS becoming uncompetitive in the closing stages of the race.
- [72] From viewing the race footage, the Panel is satisfied that the abrupt reduction in pace of SHEZ NOTORIOUS in the home straight caused interference to other competitors in the race positioned behind the Applicant's horse.
- [73] It follows from those findings that the Panel is satisfied to the *Briginshaw*¹⁸ standard that the charge pursuant to AHRR 149(2) had been established and that the Applicant was guilty of that charge.

Penalty

Relevant Principles

- [74] The Panel notes that the majority decision of the High Court in *Australia Building Construction Commissioner -v- Pattinson*¹⁹ confined civil penalties to the encouragement of compliance i.e., specific and general deterrence. Civil penalties are free of notions of retribution and denunciation. The Panel accepts this as an accurate summary of the relevant sentencing principles for civil penalties.

Interpretation of the Guidelines

- [75] The Penalty Guidelines²⁰ confirm that they were effective from 31 March 2023.
- [76] Clause 3 of the Guidelines confirms that the purpose of the Guidelines is to provide:
- transparency to all stakeholders on decision-making relating to breaches of the Australian Harness Racing Rules (AHRR); and
 - licensed participants in the harness code of racing of the penalties they may incur for breaching the AHRR: and
 - a deterrent for stakeholders to consider prior to undertaking any actions which may breach the AHRR.
- [77] Clause 4 of the Guidelines confirms that Schedule 1 prescribes the penalty starting points for certain offences committed against the AHRR.
- [78] Clause 5 of the Guidelines relevantly provides:

5 How decisions are made under the Guidelines

Subject to the Penalty and Human Rights considerations' below (see B1.1 and B1.2) the Commission will apply the penalty starting point contained in Schedule 1 of these Penalty Guidelines to the licensee who is found to have breached an AHRR rule covered by these guidelines. The penalty issued to the licenced participant may include a monetary fine, suspension, or disqualification.

¹⁸ *Briginshaw v Briginshaw & Anor* (1938) 60 CLR 336.

¹⁹ [2022] 96 ALJR 426 per Kiefel CJ, Gageler, Keane, Gordon, Steward and Gleeson JJ. at paragraphs [9], [10], [14], [15], [38], [39] and [42].

²⁰ QRIC Harness Racing Penalty Guidelines 2023.

It must be understood that the penalty starting point identified in this document are a guide only. The Commission's Stewards will review and assess each case on its own merits, taking into account the penalty considerations below and any human rights considerations.

[79] Under the heading of 'B1.1 Penalty Considerations' the Guidelines relevantly provide:

Imposing a penalty in any given instance involves a balance between the severity of the offence, the need for deterrence (for both the individual concerned and industry participants generally) and any mitigating factors. All situations are assessed on their individual merits. In addition to undertaking an assessment of any human rights impacts, the Commission's Stewards' considerations may include, but are not limited to, the following:

- **Circumstances of offence including any mitigating or contributing factors:** ...
- **Degree of culpability:** the degree of personal or moral blameworthiness of the person accused of the breach. The more culpable the conduct, the more severe the penalty should be, from both a general and specific deterrence point of view.
- **Early guilty plea:** an early guilty plea is a mitigating factor that may result in a lesser penalty being imposed.
- **Frequency of participation:** the frequency in which a licensed individual participates in racing.
- **Offence record:** a record of breaches of the same or similar rules by a licensed individual including the circumstances and penalty imposed for each offence. A good offence record with few offences is a mitigating factor and a poor offence record with regular breaches is an aggravating factor.
- **Race status:** race status is relevant to penalty so an offence that occurs at a high-status race such as a feature race that represents the top-level of competition in the sport will be an aggravating factor in determining penalty. Group races, metropolitan races and events with higher prize money are regarded high-status races.

Respondent's Submissions

Charge under AHRR 149(2)

- [80] Regarding the charge pursuant to AHR 149(2) the Respondent submits that Clause 4 of the Penalty Guidelines confirms that Schedule 1 prescribes the penalty starting points for certain offences committed against the AHRR.
- [81] The Respondent submits that the starting penalty for a breach of AHRR 149(2) is four weeks' suspension. The Respondent fairly concedes that the penalty starting point identified in the Penalty Guidelines is a guide only.²¹
- [82] The Respondent submits that it is necessary to consider the nature of the offence and specific and general deterrence. The Respondent submits as follows:

Nature of the offence

28. Racing integrity is subject to public scrutiny during an actual race. The rule is designed to protect and uphold the integrity of the harness racing industry.

²¹ Document 17: QRIC Penalty Guidelines – Harness, page 3.

29. Harness racing is a sport that relies upon wagering. Maintaining the integrity and confidence within the harness racing industry is paramount to ensure the wagering public and participants can bet with confidence and obtain a fair run for their investment.

Deterrence

30. Such conduct during the course of a race must be the subject of a penalty that deters others from taking decisions during the course of a race that cannot be supported by the circumstances that arise or the ability of the horse.
31. It is submitted that a four-week suspension appropriately marks the seriousness of the offence and sends a message to other drivers that instructions and tactics are one thing, but they have to yield to the particular circumstances of the race. It is incumbent on drivers to make decisions in the best interests of the horse they are driving and with the view to obtaining the best possible place.

Charge under AHRR 165(1)(b)

- [83] Regarding the charge under AHRR 165(1)(b) the Respondent again notes that clause 4 of the Penalty Guidelines confirms that Schedule 1 prescribes the penalty starting points for certain offences committed against the AHRR. The starting penalty for a breach of AHRR 165(1) is a 21-day suspension.
- [84] The Respondent notes the same factors of the nature of the offence and specific and general deterrence.

Circumstances of the Offence

- [85] The Respondent submits that the race footage reveals that the Applicant contravened AHRR 165(1)(b).
- [86] The Respondent notes that the Applicant invites the Panel to mitigate penalty on the basis that she took remedial measures post incident, and DIAMOND SHOOZ was not inconvenienced and was able to maintain its position in the race as leader.
- [87] The Respondent submits that causing interference is a serious offence. The justification for the imposition of suspensions for the breach of the rule relate to prejudicing the other driver's position in the race. In this case, DIAMOND SHOOZ was able to maintain its position in the race. Despite this, the Respondent contends that it was unbalanced as a result of the interference.
- [88] The Respondent further notes that Stewards directed that the penalties associated with the breach of AHRR 149(2) and AHRR 165(1)(b) be served concurrently. Ordinarily, the penalties would be served cumulatively.²²

Nature of the offence

- [89] The Respondent submits that AHRR 165(1)(b) is an important rule of racing. The rule is primarily about safety, and safety must be paramount in racing. Horses are at top speed when establishing racing positions and safe clearance over other runners is of paramount importance, for the safety of drivers and their horses.

²² See AHRR 257. This rule records that unless the Controlling Body or the Stewards direct otherwise, a penalty by way of suspension or disqualification shall be served cumulatively to any other penalty of suspension or disqualification being served or ordered to be served.

[90] The Respondent has provided two schedules of offences for the two respective rules in consideration in this review. Those schedules confirm the penalties received for breaches of either AHRR 149(2) or AHRR 165(1)(b).

Comparative Schedules

[91] In respect of the charge pursuant to AHRR 165(1)(b) the Schedule provided by the Respondent, the Panel notes the following comparatives:

DATE	DRIVER	HORSE	PENALTY
16.06.23	Graeme Harris	Gleneagle Warrior	3 weeks
23.03.23	Brian Letton	Clares Fool	17 days
23.08.22	Rhett Markey	Sir Boston	19 days
24.01.22	Peter Greig	Aurora Rose	19 days
15.01.22	Lachie Manzelmann	Just Joshin	21 days
10.08.21	Justin Elkins	The Ideal Dancer	21 days
24.07.21	Anthony Butt	Copy That NZ	4 weeks

[92] The Applicant in oral submissions submitted that 23 out of 39 people charged under AHRR 165(1)(b) had received a 14-day suspension. The Panel accepts the accuracy of that submission.

[93] Whilst acknowledging the accuracy of that submission, the Panel notes that the Harness Racing Penalty Guidelines have only been in place since 31 March 2023.

[94] The other driver involved in the incident in this race, Layne Dwyer received the same suspension of four weeks for the breach of AHRR 149(2).

[95] The Panel notes the following comparatives in respect of AHRR 149(2) cited in the schedule:

DATE	DRIVER	HORSE	PENALTY
22.06.24	Layne Dwyer	Diamond Shooz	4 weeks
12.06.24	Ricky Gordon	Left to Rocknroll	3 weeks
24.05.24	John Stariha	Its Back Page News NZ	4 weeks
30.11.23	Dallas Wilkins	Frame Drive	4 weeks
04.10.23	Trent Hodges	Kiwi Royalty	3 weeks
31.05.23	Gary Litzow	Baby Ginnie	4 weeks

Discussion

[96] The Penalty Guidelines confirm that the purpose for the penalty is to;

- maintain standards of integrity and animal care in the thoroughbred code, which are maintained by enforcement of the rules of racing;
- provide general deterrence to the industry, by ensuring that the penalty imposed on an individual for a rule breach is sufficiently serious to discourage other participants from breaching the rule; and
- provide specific deterrence to the individual contravening the rule, that is, the penalty imposed on an individual for a rule breach must be sufficiently serious to discourage the particular individual from engaging in similar conduct.

[97] In considering the appropriate penalty to impose the Panel takes into account that:

- the Applicant entered a timely plea of guilty to the charge under AHRR 165(1)(b);
- the Applicant did not plead guilty to the charge under AHRR 149(2);
- The Applicant does not have any previous offences for breaches of either of the rules in consideration in this review, however, she does have a history of other breaches which have primarily resulted in either reprimands or fines.
- The Applicant has had seven previous charges for careless riding breaches in respect of which she has received four reprimands and three fines.

[98] As noted by the Penalty Guidelines in determining the appropriate penalty, the Panel is required to consider both general and specific deterrence.

[99] In this matter, the issue of specific deterrence has some relevance in light of the belief of the Applicant that there was nothing wrong in the manner that she drove the horse during the race which has led her to entering a plea of not guilty.

[100] In relation to the charge pursuant to AHRR 149(2), the Panel notes that the Applicant was charged in relation to more than one aspect of her driving during the course of the race, that is, the early over-exertion of SHEZ NOTORIOUS in an attempt to obtain and maintain an early lead, and then secondly, later in the race the rapid and abrupt reduction in pace of the horse which caused interference to other competitors.

[101] As noted above the Panel is satisfied to the *Briginshaw* standard that the Applicant's driving was below the required standard in both over-exerting her horse and in the interference caused to other drivers.

[102] The Panel takes into account the starting point of four weeks set out in the Penalty Guidelines. In light of some of the comparative decisions highlighted above in which a like suspension was imposed, the Applicant's plea of not guilty (which means that she is not entitled to any discount on the penalty) and the dual aspects of the Applicant's breach of the rule, the Panel is satisfied that a suspension of four weeks was appropriate in these circumstances.

[103] In relation to the charge pursuant to AHRR 165(1)(b), once again the suspension imposed by the Stewards of three weeks is consistent with what is indicated in the Penalty Guidelines as the starting point for a breach of this rule.

- [104] The Panel recognises that the Applicant entered a plea of guilty to this charge. The Panel also acknowledges the Applicant's submission that the comparatives in the Schedule provided by the Respondent in relation to breaches of AHRR 165(1) do indicate a shorter suspension of two weeks was regularly imposed by the Stewards.
- [105] The Panel notes that the large majority of those cases where a lighter penalty was imposed occurred prior to the Penalty Guidelines being adopted from 31 March 2023. Since the Penalty Guidelines have commenced operation the suspension periods have been longer.
- [106] The Panel considers that the great speed at which the first quarter of the race was conducted placed a greater onus on the Applicant to ensure that SHEZ NOTORIOUS did not shift in and interfere with the racing line of DIAMOND SHOOZ.
- [107] As noted by the Respondent in oral submissions, this was not a case of an abrupt shift in line by SHEZ NOTORIOUS but a continual tightening and shifting in of SHEZ NOTORIOUS which the Panel considers after viewing the race footage did inconvenience Mr Dwyer and DIAMOND SHOOZ.
- [108] The Panel accepts the Respondent's argument that in the circumstances the Applicant was obligated to cease driving SHEZ NOTORIOUS forward and to take action to prevent the horse from shifting in further.
- [109] The further matter that justifies a three-week suspension in this case is the fact that actual contact was made between SHEZ NOTORIOUS and DIAMOND SHOOZ which occurred at great speed. The Panel acknowledges the significant risk of injury to Mr Dwyer, DIAMOND SHOOZ and other horses competing in the race.
- [110] Given the above factors, the Panel is satisfied that a three-week suspension was appropriate for the breach of AHRR 165(1)(b) despite the Applicant's guilty plea.
- [111] As a consequence, pursuant to section 252AH(1)(a) of the *Racing Integrity Act* the decision of the Panel is to confirm the Stewards' racing decision to impose a suspension of four-weeks for the breach of AHRR 149(2) and a suspension of three-weeks for the breach of AHRR 165(1)(b). The Panel also confirms the decision of the Stewards that the two suspensions should be served concurrently.