

DECISION

Racing Integrity Act 2016, section 252AB

Review application number	RAP-48	
Name	Jason Grimson	
Panel	Mr Kerry O'Brien AM (Chairperson) Mr Ken Waller (Panel Member) Mr John McCoy OAM (Panel Member)	
Code	Harness	
Rule	Australian Harness Rules of Racing 231(1)(e) A person shall not assault anyone employed, engaged or participating in the harness racing industry or otherwise having a connection with it	
Penalty Notice number	PN-008707	
Appearances & Representation	Applicant	Mr J Murdoch KC
	Respondent	Mr M Copley KC instructed by QRIC
Hearing Date	1 September 2023	
Decision Date	19 September 2023	
Decision	Pursuant to Section 252AH(1)(c) of the <i>Racing Integrity Act 2016</i> the racing decision in so far as it relates to penalty is set aside and a fine of \$15,000 together with a penalty of six months suspension, such suspension to be suspended for a period of 12 months conditioned on the Applicant not further offending against the provision of AHRR231, is substituted for the penalty of 12 months disqualification	

Reasons for Decision

- [1] The Applicant in this matter, Mr Jason Grimson is a licenced Harness racing trainer. On the 22nd of August 2023, following an Inquiry conducted by Stewards into an incident that occurred after the conclusion of a harness racing meeting at Albion Park on Saturday the 22nd of July 2023, Mr Grimson was found guilty of an offence against Australian Harness Racing Rule (AHRR) 231(1)(e). The resultant penalty was a 12-month disqualification of licence imposed under AHRR 256(2)(c).
- [2] Pursuant to Section 252AB of the *Racing Integrity Act* 2016, Mr Grimson now seeks a review of that decision as it relates both to the determination of guilt and to the penalty imposed.
- [3] Rule 231(1)(e) of the Australian Harness Racing Rules (AHRR) provides as follows:
- “A person shall not assault anyone employed, engaged, or participating in the harness racing industry or otherwise having a connection with it.”*
- [4] The particulars of the charge against the Applicant allege that he had assaulted one Adam Russo in ‘The Creek’ bar, at the Albion Park Raceway on July 23, 2023, and the Applicant seeks this review on two bases. Firstly, that the Stewards lacked the power to punish since the incident fell outside the rule because Russo was not someone “employed, engaged or participating in the harness racing industry or otherwise connected with it”. Secondly, that the penalty imposed was in any event excessive having regard to the prevailing circumstances, particularly prolonged provocation preceding the incident and Russo's involvement as the instigator of the conflict.

Background

- [5] As indicated above, the Applicant is a licenced harness racing trainer. He is based at Menangle in Sydney and has a large stable of horses under his care. He is also the trainer and part owner of the horse Swayzee, which won the feature race, known as the ‘Blacks A Fake’, at Albion Park on the 22nd of July 2023. That race is described as a notable grand circuit race on the Australian Harness Racing calendar. The Applicant’s horse was an upset winner over the short priced Queensland based favourite Leap To Fame which finished second.
- [6] Entry to the Albion Park Raceway was free and several bars were opened around the course. A man by the name of Adam Russo was in attendance with a group of friends. He had enjoyed himself, it would seem, at the trotting meeting and had placed some bets and consumed a good deal of alcohol.
- [7] The Applicant’s horse, Swayzee, had been the winner of Race 8, which was run at 8:50pm. The final race on the programme was at 9:51pm, and the incident the subject of this Application occurred at approximately 12:30am on the morning of the 23rd of July 2023.
- [8] The Applicant and a group of his friends had remained in the bar area celebrating the win. Over this time, another group of persons in the bar had been directing what have been described as “scandalous comments” towards the Applicant, suggesting that he was, in fact, a drug cheat.
- [9] At around 12:30am, the man Russo approached one of the Applicant’s friends, Justin Downey, who had the dress rug of the winning horse from the feature race draped over his shoulder. A melee developed and several people, only some of whom were identified, became involved.
- [10] Towards the end of this incident, the Applicant struck Russo as he, Russo, was being restrained by security staff. It is this incident which forms the basis of the charge against the Applicant.

The Charge

- [11] To make out an offence against AHRR231(1)(e), it is necessary for the Respondent to establish not only that Mr Russo was assaulted, but also that he was a person “employed, engaged, or participating in the harness racing industry, or otherwise having a connection with it.”
- [12] It is clear that Russo was not employed in the harness racing industry. He was in fact employed as a groundsman/labourer by the Brisbane Racing Club in the Thoroughbred code. It is accepted that his duties, and his employer, have no connection with the harness racing code.
- [13] His evidence before the Stewards was that he had been at the paceway “for about three or four hours, if not more”¹ and had placed bets on a number of horses.² He had been in the Creek Bar “all night” with his group of friends.³ He said elsewhere,⁴ that he did not follow trotting racing but had attended because “all my friends were there and I went for a drink.”
- [14] The terms “participant” or “participating” are not defined in the Harness Racing Rules⁵. The *Racing Integrity Act* 2016 does provide a definition of “participant” for the purposes of that Act⁶. That definition would exclude as a participant a person who participates by attending a race meeting and/or placing a bet with a racing bookmaker at a race meeting. An identical definition applies where the term is used in the *Racing Act* 2002⁷
- [15] Section 113(3) of the *Racing Act* provides, inter alia, that if there is an inconsistency between that Act or the *Racing Integrity Act*, and the Rules of Racing then it is the former provision which prevails.
- [16] Subject to that provision, neither the *Racing Act* nor the *Racing Integrity Act* purport to define the terms used in the Rules. As indicated the Rules under consideration have provided no definition of “participant” and there can be no issues of any inconsistency arising.
- [17] Mr Murdoch KC, who appears for the Applicant, submits that the purpose of AHRR 231(1)(e) is to protect horse racing officials, employees and participants from being assaulted as they go about their work. The final words of the rule, “or otherwise having a connection with it,” invoke the use of the ejusdem generis rule of construction such that their scope is determined by the class of persons or things previously listed.
- [18] The rule, Mr Murdoch submits, has a restricted rather than an open scope, and therefore should not apply to a member of the public who happens to be drinking in the racecourse bar. Had such a wider scope of person being intended, then the term “members of the public” might have been used as it is elsewhere the rules, in the definition of, “Racecourse” or “Course”. In any event, submits Mr. Murdoch, the subject incident was so remote from harness racing as to remove it from the ambit of the Steward’s power.
- [19] Mr Copley KC, for the Respondent submits, however, that Russo’s attendance at the meeting, his actions in placing bets on horses and his continued presence at the paceway up until his ejection following the incident, when considered in accumulation, are sufficient to demonstrate that he was “participating in” the industry, or at very least “otherwise having a connection with it”.

¹ Transcript of Hearing, page 4, lines 104-108.

² Transcript, page 4, lines 109-110.

³ Transcript, page 4-5, lines, 112-114.

⁴ Transcript page 16, lines 465-466.

⁵ This might be contrasted with the Thoroughbred Racing Rules where the term “participant in racing” is defined

⁶ *Racing Integrity Act* 2016 Section 5 and Schedule 1 of the Act

⁷ *Racing Act* 2002 Section 5 and Schedule 1 of the Act

- [20] The word “it” in Rule 231(1)(e) is clearly a reference back to the harness racing industry and the word “otherwise” simply means ‘in a different way’- meaning a connection other than one employed in, engaged in, or participating in the industry. It expands the category of persons covered by the rule.
- [21] Counsel for the Respondent has made reference to the decision of the Western Australian Court of Appeal in Zucal, RWWA Charmain of Stewards and ORS -v- Harper⁸ as providing some support for his argument that the placing of bets on harness racing can constitute participation in the sport.
- [22] One of the issues considered by the court in that case was the operation of R.342 of the Rules of Harness Racing (W.A.) which provide that a person employed, engaged or participating in the harness racing industry shall not behave in a way which is detrimental to the industry.
- [23] Counsel had contended for a narrow interpretation of this Rule arguing that, for the Rule to have application, the person concerned must not only be employed, engaged or participating in the harness racing industry, but his behaviour which is detrimental to the industry must also be connected, in some way, with the harness racing industry.
- [24] The Court observed⁹ that “the words “detrimental to the industry” are wide and imprecise. However, they undoubtedly import a requirement of some injury to the industry itself, rather than merely to the reputation of the person engaging in the behaviour in question.”
- [25] At paragraph [50] of the judgement Steytler P (Wheeler and Pullen JJA agreeing) said:
- That said, in a sport such as harness racing, involving public participation through betting on races, there is plainly a need for those administering the sport to maintain public confidence in its integrity and standards. If a person who is prominent in the harness racing industry engages in conduct which has the potential for being made public and which, if made public, will cause people to lose confidence in his or her integrity or standards (even if the conduct is unconnected with the racing industry), then it may very well be the case that that conduct will, as a consequence, have a flow-on effect as regards the manner in which the harness racing industry itself is perceived. There is consequently no justification for giving Rule 243 a narrow construction of the kind contended for. If a participant in the harness racing industry has a high profile in that industry, as Harper seemingly does, then misconduct by that person which is public, or which has the potential to become so, may, depending upon its nature and seriousness, have a detrimental effect, if only by association, on the industry itself. The question whether it has that capacity is, in each case, one of fact and degree.*
- [26] Although that case is not entirely on point, the further comments of the court at paragraph [56] of the judgement suggest that there are a range of factors that might properly be considered in determining whether a person was, at the relevant time, participating in the harness racing industry or had otherwise “a connection with it”.
- [27] That determination must be made upon the circumstances of a particular case, but the Panel does not accept the contention that the Rule should be given the narrow interpretation contended for by Counsel for the Applicant, the effect of which would be to limit its application to the protection of harness racing official employees and participants from being assaulted as they go about their work.
- [28] The panel accepts the interpretation contended for by Mr Copley. The ordinary meaning of the word ‘participate’ is to share or take part in some activity or endeavour. Russo's conduct in attending the

⁸ Zucal, RWWA Charmain of Stewards and ORS -v- Harper [2005] WASCA 76

⁹ Zucal -v- Harper paragraph [49]

meeting, wagering on horses, and using the paceway's bar facilities, when considered together are sufficient to constitute him a participant for the purposes of the rule. If he was not so participating, then in the panel's view he was certainly by that activity "otherwise" demonstrating a connection with the harness racing industry on this evening. Moreover, in the Panel's view that connection was not so separate in time, place or circumstance as to remove it from the jurisdiction of the Stewards.

The Evidence

- [29] Although the specific conduct of the Applicant is not ultimately in dispute in these proceedings, it is necessary to make reference to some parts of the evidence as being relevant to issues of penalty.
- [30] The Stewards heard evidence from a number of witnesses, including Adam Russo. When asked for his version of events, Russo said¹⁰:

"OK. Look, I don't have that much to actually say, apart from obviously we've had a few beers and sort of getting to late hours of the night. I do remember saying to Jason's friend about the flag around his neck and he thought I was having a dig at him. Then from there, it pretty much just all erupted, so that's pretty much - yeah."

- [31] The account given by Justin Downey differs markedly from that given by Russo. Having heard Russo's version of events Downey was asked for his account of what had occurred, he said¹¹:

"For me, it started a bit earlier than that. I was approached by someone that I understood to be his partner and there was a couple of unsavoury comments made to me by her, which then I asked who she was and I found out and put two and two together. Then the flag comment was made and there was a few other comments made about Jason being a cheat and things like that. Then it was a bit of in-your-face, a bit of backwards and forwards arguing, making no excuses for myself, of course, I was exactly the same. Basically, I come to a point where I said, if you don't get out of my face, I'm going to slap you, and he didn't get out of my face, so I slapped him"

- [32] Mr. Jack Trainor was another member of the Applicant's group. He said¹²:

"Yeah, obviously it's pretty much exactly what Justin said is what I had remembered. It all happened quite fast as far as the actual fighting part, but the lead up to it I know that there were comments made about the flag being obviously the winning dress rug. I'm just not sure if – and I'm not sure if I can ask, but I believe that the person that Justin is talking about might not actually be Mr Russo's partner, it might be Kate Butt, unless he's going out with her."

I think he – the person that's not his partner because I think she was [unclear], I seen her there that night but it wasn't her, so he was talking about Kate Butt who obviously has a connection between Swazi being trained by her dad. I was standing back just watching a bit of the argument unfold and then I do recall Mr Russo getting up and walking towards, closer and within range of Mr Downey, pointing his finger and when Mr Downey then open-hand slapped Mr Russo in the face. Then from what I can recall, Mr Russo put his drink down and started swinging punches in the direction of Mr Downey and sort of us.

From there, I don't really remember what else happened, it just all happened so quickly, it was so many people that joined in from all different directions. I do remember getting pulled back from by maybe Mr

¹⁰ Transcript, page 4, lines 99-103

¹¹ Transcript, page 6, lines 157-166.

¹² Transcript, page 8, lines 199-277.

Whittaker or someone like that and then I looked to my right and the fight had made its way onto the dancefloor. Then the last I seen was Mr Downey going down the back entrance of the stairs and we then went to talk to Mr Turp, Tony Turpin and that and apologise for causing a scene or being involved in a scene on his night, which he said to us, don't worry about it. He seen what happened and we were never asked to leave the premises."

[33] The Applicant's account was as follows:¹³

"Yeah, well, obviously, as Mr Downey stated, all night I'd had comments made to me or behind my back or whatever, in the toilets, about me being a cheat. Obviously, Justin was with me on the night and he'd heard some of them. We'd gone to go to the bar to get drinks and I think Mr Michael Boots was with me, the other owner of Swayzee. I went up to order the drinks and I was in line and Justin was standing behind me and Mr Russo was sitting on the table with Miss Butt, Mitchell Speers, a couple of others.

Then, I don't know what the comments were made to start off with to Justin about it being a flag or whatever, but I'd turned around and went to order the drinks and then I turned around and then they were arguing. They were sort of in each other's faces. Mr Speers was standing sort of in the line-up right beside them. I walked over and just told them to stop and leave it and then I went back over to order drinks again and then I turned around and I heard them talking about cheating. Justin was pointing and he was saying, talking about Kate.

Then he said, I'll slap you, and then he ended up slapping him and then Mr Russo started striking Justin. That's when I ran in and pinned him on the table. I don't know what happened, but he ended up leaving there and I was talking to Karen Turpin. It had all settled down and then I just remember out of the corner of my eye, Jack Callaghan, he was over sort of pinned between the dancefloor and the bar, it was like he'd got hit and I just seen it out of the corner of my eye. I seen him charging towards the dancefloor and I thought he was in trouble.

I seen Mr Russo there. I can't quite recall because it was a big swarm of people that come in, but I remember – I felt like I got hit on the cheek at the same time I hit Mr Russo. Then we went to the floor and I was holding him down and all the security come. I remember looking up and seeing Mr Tony Turpin getting struck in the back of the head by security guards. Then I got up. Tony helped me up and I just went and stood outside. Then Mr Russo was taken out by three security guards and I forget who come out and told me, but they said if I changed my shirt, I can come straight back in, which I went around outside the veranda and walked back in and got Mr Boots' jacket and put it on."

[34] The Applicant was asked why he had introduced himself into the altercation at the point when Mr Callaghan was hit by Russo, he replied¹⁴:

"When your friend's in trouble, you've got to do something about it, aren't you? He's not someone that's big or I've never known him to get into a fight or be someone to be aggressive at all, so I just feared for my mate."

[35] Speaking of Mr Callaghan, the Applicant said a short while later¹⁵:

"Well, I can't remember. I just pictured in my head that he got hit and he was in trouble and I went straight over there. I was having just a normal conversation with Miss Turpin before I went over there --- It happened that quick and there was that many people there."

¹³ Transcript page 10-11 Lines 280-314

¹⁴ Transcript page 12 lines 325-328

¹⁵ Transcript page 12, line 339-341 and line 343

- [36] Although the Applicant accepted what is shown on the security footage, he maintained throughout the Stewards' hearing, as he has maintained before this panel that he, at the time, was not aware that Russo was being restrained.
- [37] This incident occurred over a relatively short period of time. As is not uncommonly the case with events such as these, there will inevitably be some differences in the accounts given by eyewitnesses. This does not necessarily mean that anyone or more of those witnesses is being deliberately untruthful. Even an honest witness can be a mistaken witness.
- [38] In this case the accounts given by Downey, Trainor and the Applicant are broadly consistent. Russo, on the other hand, seems to have a very poor memory of events. At one stage of the Steward's hearing, after the security videos had been played, the Applicant challenged Russo by suggesting that his memory had suddenly improved¹⁶. Russo responded by saying¹⁷:
- "Can I please say something? I'm just going by – I was quite – I was intoxicated. It was 12:30 at night, I'd been drinking after the races. I'm just going by what I can see."*
- [39] Aside from his initial statements set out above, it seems clear that much of the further evidence given by Russo before the Stewards was based upon reconstruction or his interpretation of what he had seen on the security footage.
- [40] In addition to the oral evidence, Stewards also had access to footage from two security cameras located in the bar. The second of these clearly shows the Applicant striking Russo approximately two seconds after Russo was being restrained by a security officer. Although there is no image of Russo striking the man Callaghan, the Applicant remained adamant throughout the Inquiry that had in fact occurred, though out of range of the camera¹⁸.
- [41] In these matters, the Respondent bears the responsibility of proof, and there is no evidence to cast doubt on the Applicant's claim in that regard.

Penalty

- [42] At the Steward's Inquiry, the specific allegation levelled against the Applicant¹⁹ was that he:
- "introduced (himself) an altercation where (he) assaulted Mr. Russo, a man who was being held by security at that point."*
- [43] The Applicant, who was unrepresented, pleaded guilty to that charge. The Stewards then invited him to address the Panel: *"in regard to your history, how many horses you have and (sic) work, is it your sole source of livelihood, that sort of thing."*²⁰
- [44] In response the Applicant made the following submissions:
- He trains some 20 elite level horses.
 - He is highly regarded in the harness racing industry, having won numerous big races throughout Australia.

¹⁶ Transcript, page 21, lines 608-615

¹⁷ Transcript, page 21, lines 616-618

¹⁸ Transcript, page 30-34, and page 41, lines 1288-1291

¹⁹ Transcript, page 44, line 1211

²⁰ Transcript, page 42, line 1220

- He employs staff and harness racing is his sole source of income.
- He was subject to a great deal of provocation, being falsely labelled a drug cheat, and only striking Russo after he had seen Russo assault his friend Callaghan.
- There were many others, including security staff, who were involved in throwing punches. Why, he argued with some vehemence, and perhaps some justification, had they not been called before the Inquiry?

[45] In imposing penalty, the Steward's described²¹ the Applicant's conduct as a serious assault on a man who was being held by a security officer. It was "a sickening cowardly blow" of the "most seriousness in this particular case". Taking into account all the evidence, and the Applicant's blameworthiness, a penalty of 12 months disqualification was imposed²².

[46] The Penalty Information Notice, in recording penalty details, records that the Stewards had regard to the "guilty plea, penalty guidelines, penalty precedent, good record, seriousness of the offence." The Stewards' Report simply states that the Stewards considered:

- The seriousness of their conduct which was deemed high range.
- The need for a penalty to serve as a deterrence both specific and general.
- The Applicant's record regarding behavioural matters, which included no previous offences.
- The Applicant's personal circumstances.
- Penalty precedents for similar offences.

[47] The Queensland Harness Racing Penalty Guidelines provides no starting penalty for an offence against AHRR231. However, AHRR256 makes it clear that a wide range of penalty outcomes can apply to offences against the rules.

[48] The rules are said to have been designed with ideals of both specific and general deterrence in mind²³. Among the circumstances relevant to penalty are the following²⁴:

- The circumstances of the offence, including any mitigating or contributing factors. Contributing factors are other matters relating to an incident which may have a bearing on penalty. Mitigating factors are factors or details about the offence intended to reduce the severity of penalty.
- The degree of culpability and the degree of personal or moral blameworthiness of the alleged offender.
- An early plea of guilty.

[49] The guidelines also make reference to human rights considerations, and the obligation imposed on public entities by the *Human Rights Act 2019* to ensure that decisions are compatible with human rights.

²¹ Transcript page 48, Line 1423

²² Transcript page 48, lines 1416-1430

²³ QRIC Harness Racing Guidelines 2003, paragraph 3

²⁴ Queensland Harness Racing Penalty Guidelines 2003, paragraph 5

- [50] A penalty of licence disqualification will affect the Applicant's human rights, in particular the right to property in the form of income earned pursuant to this licence, and the right to reputation.
- [51] Proceedings for breaches of these Rules are not penal in nature. Their purpose is essentially one of deterrence and not one of imposing punishment on the offender²⁵. Fundamental to the determination of penalty and proceedings such as these are considerations of specific and general deterrence, as well, of course, as the maintenance of standards of integrity and, where appropriate, animal care in the harness racing industry.
- [52] As Thomas J. (sitting as a QCAT member) observed in *QRIC -v- Gilroy*²⁶:
- "A key consideration in determining penalty is to maintain the integrity of the industry as a whole and to demonstrate to participants in the industry and the public, that behaviour which breaches the rules will not be tolerated. There is a need to deter participants in the industry from acting in a way that is in breach of the rules, which have been formulated to achieve the purposes which include: maintenance of public confidence, ensuring the integrity of all persons involved in the industry, and safeguarding the welfare of all animals involved in racing."*
- [53] The determination of penalty will necessarily involve a consideration of these several matters and a balancing of the severity of the offence, the need for deterrence, and any other mitigating factors, including the considerations of the Human Rights Act.
- [54] The Applicant does have a lengthy history of offending against the rules of Harness Racing. Having regard to the penalties imposed however, most of the offending seems to be of a relatively minor nature amounting in many cases to gear or whip infringements. He does have a prior entry in August 2020 for an offence against AHRR231(1) involving abuse. Importantly however, he has no history involving offence of assault or physical violence.
- [55] The Panel has been referred for comparison purposes to a number of other cases involving assaults. In *Harness Racing Victoria -v- Hryhorec*²⁷ the offender was a 20 year old licenced harness rider who pleaded guilty to an offence involving an altercation with a fellow driver following the winning of a race at a harness track meeting. There was personal history between two women involved which seems to have provided some background to the incident in which both threw punches. Hryhorec's assault caused some injury in the form of laceration to the facial area of the second woman.
- [56] On the assault charge she received a four month disqualification and, relevantly as far as totality is concerned, also received a \$1000 fine on the additional charge of misconduct.
- [57] In *Litzow -v- Harness Racing Queensland*²⁸ the offender received a suspended penalty of three months suspension for an offence which involved pushing and throwing a rug at another licensee.
- [58] Other cases to which the Panel was referred included *Schwidea KM v Queensland Racing*²⁹, and *Ryan SP -v- Queensland Racing*³⁰. In the first mentioned case, a fine of \$4000 was imposed for an offence of "improper conduct" or "unseemly behaviour" arising from a fight between a trainer and a jockey. In the second case a penalty of three month disqualification was imposed for an incident in which a trainer struck a stable hand in the race day stabling area of the Gold Coast Turf Club. That seems to have been

²⁵ Australian Building and Construction Commission -v- Pattinson [2022] 96ALJR 426 at [15]

²⁶ *QRIC -v- Gilroy* 2016 QCATA 146 at [24] and [25]

²⁷ Victorian Racing Tribunal 17 June 2020

²⁸ 2008 QRAT31

²⁹ 2004 QRAT 5, 22 January 2004

³⁰ 2007 QRAT11 22 May 2007

a consensual fight, and the stable hand who had traded blows with Ryan ultimately received a penalty of one month disqualification³¹

[59] These cases, although useful, involve circumstances which are considerably less serious in the Panel's view, than those involved in the present case.

[60] Involvement in a melee in a public place such as that involved here, is obviously a matter of considerable seriousness. It reflects upon the integrity of the harness racing industry and the maintenance of public confidence in the industry.

[61] This was a melee which, according to the report of the company responsible for security on that evening developed to the stage of involved as many as 20 or 30 people.

[62] The Applicant is someone with a significant involvement in the harness racing industry and is clearly someone with a high profile in that community. In the Panel's view the Steward was justified in seeing this incident as being particularly serious.

[63] In considering the Applicant's conduct it is to be said that his initial involvement was to try and prevent any fight from developing by restraining Russo.

[64] He was not charged with any offence relating to that incident or the commencement of the melee. Only later, did he strike Russo, and then in circumstances he describes of seeing his friend Callaghan struck by Russo³². Later³³ during his submissions on penalty, he repeated his evidence as follows,

"...I threw the punch because of what happened to Mr Callaghan. He's not someone that would be put in that situation and throw the punches or anything like that and he is my friend".

[65] Notwithstanding that explanation, there was however no need for the Applicant to have involved himself as he did. The security officers clearly had the situation in hand.

[66] The Applicant also gave evidence of his anger and frustration arising from unfounded allegations of cheating made throughout the evening. There is no reason to disbelieve the Applicant's account of events. The situation then is of Russo, being struck a single blow by the Applicant who had himself been subjected to the provocation of Russo.

[67] The Applicant did enter a plea of guilty and he has expressed remorse for his conduct. This Panel has been informed of his subsequent direct apology to Mr Russo. He has a long history in the industry and no history of similar offending.

[68] The consequences of a disqualification order³⁴, particularly for someone such as the Applicant, are onerous indeed. Given the factors of mitigation that exist in this case and giving weight to the provisions of the *Human Rights Act 2009*, the panel considers that there are less restrictive and reasonably available ways to achieve the purpose of penalty in this case. Although a severe penalty is merited by the circumstances the Panel considers that the penalty imposed upon the Applicant to have been excessive.

³¹ *Wearne -v- Queensland Racing 2007 QRAT 3 May 2007*

³² Transcript, page 11, lines 300-306, page 26, line 729- transcript page 35

³³ Transcript, page 44, line 1288

³⁴ Australian Harness Race AHRR rule 259

Decision

[69] The decision of the Panel is to set aside the racing order made by the Stewards and to substitute a fine of \$15,000 and a period of six months suspension, such suspension to be suspended for a period of 12 months conditioned on the Applicant not further offending against the provisions of AHRR231

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