

**NEW SOUTH WALES
HARNESS RACING
APPEAL PANEL**

APPEAL PANEL MEMBERS

B Skinner

C Edwards

P Fletcher

23 JANUARY 2024

APPELLANT LUCAS RANDO

RESPONDENT HRNSW

**AUSTRALIAN HARNESS RACING RULES
168(1)(a)**

DECISION

- 1. The appeal against conviction is dismissed**
- 2. The period of suspension is reduced to 14 days**
- 3. Appeal deposit is forfeited**

- 1 On 28 December 2023 at Penrith in Race 7, Ideal Copy was driven by Mr Lucas Rando, a licensed driver (“the appellant”).
- 2 An Inquiry was conducted by HRNSW Stewards following the race and after taking evidence, Stewards issued a charge against the appellant pursuant to Australian Harness Racing Rule 168(1)(a)(I) as follows:

AHRR 168 (1) A person shall not before, during or after a race drive in a manner which is in the opinion of the stewards: -

(a) careless

The particulars of the charge were:

“In race number 7, as the driver of Ideal Copy, Mr. Rando, at the Penrith Harness Racing Club meeting on Thursday, 28 December 2023, the Stewards would allege that approaching the first turn you have made insufficient effort to prevent Ideal Copy from shifting down and racing towards the line of the marker pegs and as a result you have contacted a marker peg and was checked and galloped. As a result of your runner galloping, it is noted that Bushy Beach NZ, Special Spin and also Frozen Jewel were also checked to varying degrees.”

- 3 The appellant received a 21-day suspension from driving in races to commence at midnight on Friday, 29 December 2023.
- 4 At the conclusion of the hearing, the appellant pleaded guilty to the charge. However, a Notice of Appeal was lodged on 29 December 2023 in which the appellant declined to elect whether the appeal was against conviction or penalty. In a later email, the appellant’s representative, Ms B. Scott on 4 January 2024 confirmed that the appeal was on all grounds.
- 5 A stay was granted to enable an appeal panel to be convened. The appeal was fixed for hearing by zoom on 16 January 2024. All parties were made aware of the fixture in advance, but the appellant did not appear and was content for his representative to appear alone. This was not a satisfactory arrangement which will be demonstrated by events further described below.
- 6 Written submissions were received from Mr C. Bentley, on behalf of HRNSW and from Ms B. Scott on behalf of the appellant. The appellant required Mr T. Sharwood, a steward to be available for cross-examination. Mr Sharwood could add little to his observations of the video of the race which in any event supported the findings of the stewards.

- 7 Ms B. Scott attempted to cross examine Mr Sharwood concerning other decisions in respect of careless driving. That course was terminated on the basis that appeal panels have regularly repeated the view expressed in the Guidelines that the suggested penalties and penalty ranges serve only as a guide and are not mandatory. Reliance upon other factual circumstances and decisions amounting to a precedent are to be avoided.
- 8 In essence, the defence to the charge comprised, inter alia, the following elements: -
 - (i) The horse was wearing for the first time, a choke plate. It was asserted that it is hard to steer a horse wearing such a device.
 - (ii) The appellant was instructed not to be rough with the horse and to be gentle with it.
 - (iii) It was further submitted that Ideal Copy shied and that this contributed to the driver connecting with a marker peg.
 - (iv). The appellant asserted that a horse to his outside, Bushy Beach driven by Mr Gallagher was hanging in and that this caused the appellant to collide with the marker peg.
- 9 For the respondent, the following submissions were made: -
 - (a) The appellant acknowledged throughout the course of the Inquiry that his runner Ideal Copy received ample room from Rogervalerio Lombo driven by Mr Portelli which crossed down the track forward of him.
 - (b) The appellant conceded on questioning by Mr Day that Mr. Gallagher's horse never gets close enough to Ideal Copy for his runner to shy.
 - (c) The video film did not support the statement that a steering problem arose because of the choke plate. Mr Bentley submitted that the film clearly showed that immediately after the start the appellant was able to turn the head of Ideal Copy to the inside (pointed to the inside of the track), a position of which it maintains for the entire length of the home straight. This would indicate that the appellant has more pressure on the inside rein rather than the outside.
 - (d) As to the trainer's instructions, Mr Bentley submitted that the appellant did very little to correct the line of Ideal Copy until it was too late. As a result, Ideal Copy contacted a marker peg and broke stride, which ultimately caused Mr. Gallagher to steer his runner up the track away from the galloping runner, contact the sulky wheel of Daggy Lamb NS and further check Special Spin and Frozen Jewel.

- 10 The Panel viewed the video and was satisfied that the matters relied upon by the appellant did not give rise to a conclusion that the charge was not made out. The panel agreed with the submissions and conclusions expressed by Mr Bentley. The panel was satisfied that the driving of the appellant was entirely responsible for Ideal Copy coming into contact with a marker peg. There were no extraneous circumstances giving rise to an explanation other than the appellant was careless in his manner of driving.
- 11 The stewards imposed a penalty of a three-week suspension having allowed a discount of one week for the entry of a plea of guilty. The appellant argued that the period of suspension was manifestly excessive. The appellant in submissions identified the circumstances of the incident and contributing factors of "Ideal Copy's racing manners and Bushy Beach racing intractably." For reasons expressed herein, the panel rejects that submission of a "manifestly excessive" penalty.
12. The panel in exercising its discretionary function reduced the period of suspension to 14 days on the basis that the events which followed the collision with the marker peg were not entirely the responsibility of the appellant. There is no doubt that Mr Gallagher had great difficulty on controlling Bushy Beach who was from the outset of the race hanging in. The events which followed the collision with the marker peg were due to a large degree to the racing manners of Bushy Beach.
- 13 It was accepted by the Panel that a fourteen-day penalty struck the right balance under the Guidelines. The appeal against conviction was dismissed and on the basis that the appeal lacked merit, the deposit fee was forfeited. Furthermore, the issue of an appropriate penalty was complicated by the withdrawal of a plea of guilty thereby cancelling any potential discount. The decision to withdraw the plea of guilty was also a factor considered by the panel in forfeiting the appeal deposit.
- 14 The commencement of the period of suspension gave rise to debate due to an announcement that the appellant was not present at the appeal because he was driving at Menagle on the afternoon of 16 January. Mr Bentley properly submitted that the period of suspension should take effect immediately. Whilst the panel had a great deal of sympathy with the submission, it was decided that immediate suspension would give rise to all manner of problems for trainers and the betting public. For these reasons, the suspension was announced to commence on 17 January 2024. Thus, the period of suspension will commence at midnight on 16 January 2024.

15 Given that the setting down of the appeal was arranged well in advance of the hearing date, the panel expresses dissatisfaction with the decision of the appellant to absent himself for the purpose of driving on the day of the appeal. Accordingly, it is recommended that NSWHR consider issuing a direction to the effect that appellants are expected to attend appeals and are not to accept driving appointments on the day on which appeals are scheduled to be heard.

Mr B. Skinner Convenor
Mr C. Edwards – Panel Member
Mr P. Fletcher– Panel Member

23 January 2024