

**NEW SOUTH WALES  
HARNESS RACING  
APPEAL PANEL**

**APPEAL PANEL MEMBERS  
B SKINNER  
P KITE SC  
D KANE**

**RESERVED DECISION  
22 OCTOBER 2024**

**APPELLANT AARON GOADSBY  
RESPONDENT HRNSW**

**AUSTRALIAN HARNESS RACING RULES  
187(3) & (7)**

**DECISION**

1. The Appeals Panel dismisses the Appellant's appeal, confirms the finding that Charge 1 is proven and substitutes a penalty of warning off for five years from 5 March 2024 in lieu of the penalty imposed by the Stewards.
2. Any appeal fee paid by the Appellant is to be forfeited by him.

# HARNESS RACING NEW SOUTH WALES APPEALS PANEL

Aaron Goadsby  
Appellant

Harness Racing New South Wales  
Respondent

## Determination

### Background and Notice of Appeal

1. Aaron Goadsby (Appellant) is a licensed harness racing trainer. He obtained a stablehand license in about 2012 and a trainer's licence in around 2015.

2. On 6 February 2024, Harness Racing NSW (HRNSW) Stewards commenced an Inquiry in relation to three directions issued by Stewards to Mr Goadsby on 17 January, 30 January and 1 February 2024. At the end of the Inquiry the Stewards issued three charges pursuant to Australian Harness Racing Rule (AHRR) 187(3) and (7) as follows:-

AHRR 187(3) A person shall comply with an order or direction given by the Stewards

...

(7) A person who fails to comply with any provision of this rule is guilty of an offence.

3. The particulars of Charge 1 were as follows:-

That you Mr Aaron Goadsby did fail to comply with a direction given by HRNSAW Stewards on the 17th of January 2024 to produce mobile phones used by you during the period of your disqualification.

4. Charges 2 and 3 were later withdrawn and played no part in the appeal proceedings.

5. The direction was issued under AHRR 15B(1)(a) which provided that the Stewards are empowered to require production of and take possession of any mobile phone for

the purpose of examining (by any mean) its data and/or contents. The form of direction was not challenged.

6. On 13 February 2014 Mr Goadsby pleaded not guilty to each of the three charges. Defences were provided on 14 February 2024. On 5 March 2024 Mr Goadsby was informed that Charge 1 had been proven against him and that it was not necessary to determine charges 2 and 3. By letter dated 19 April 2024 Charges 2 and 3 were formally withdrawn.

7. There was some argument concerning the ownership of mobile phones by a corporate entity, Pit Patrol Pty Limited of which the Appellant was sole director and shareholder, such phones which were in his possession and control. Reliance upon an argument that the Appellant was not required to produce mobile phones belonging to the company was abandoned in the proceedings before the Panel.

8. Submissions on the issue of penalty were provided by Mr Goadsby's legal representatives on 26 April 2024. In summary, Mr Goadsby's concerns surrounded legal professional privilege and privacy. If not for the concerns raised, Mr Goadsby submitted that he had no issue in producing mobile phones. The number of phones in issue is said to be between 10 and 12. The Panel does not accept that the Appellant has no issue in producing the mobile phones. To the contrary, the Panel is satisfied that the Appellant has no intention of producing the mobile phones.

9. On 26 June 2024 the Stewards convicted the Appellant of Charge 1 and announced the following penalties:

(1) Mr Aaron Goadsby is warned off until such time as he produces the Mobile Phones in compliance with a direction of HRNSW Stewards issued on 17 January 2024.

(2) Following production of the Mobile Phones in compliance with a direction of HRNSW Stewards issued on 17 January 2024, Mr Goadsby is disqualified for a period of 12 months.

10. On 26 June 2024 Mr Goadsby lodged with Harness Racing New South Wales (Respondent) a Notice of Appeal dated that same date.

11. Pursuant to section 34B(1)(a) of the *Harness Racing New South Wales Act 2009* (NSW) (HR Act) and rule 181B(a) of the Local Rules of Harness Racing New South Wales (effective 8 March 2023; Local Rules), a decision to disqualify or warn off a

person is appealable to the Harness Racing New South Wales Appeals Panel (Appeals Panel).

12. Rule 181C(2) required that the Notice of Appeal be lodged within two days of the Appellant being notified of the Stewards' Decision. Noting the date of the Stewards' Decision, the Notice of Appeal was lodged within time.

13. By reference to the Notice of Appeal:

- (a) The Appellant appeals against the Stewards' Decision, insofar as it relates to the question of the Appellant's guilt.
- (b) The Appellant sought a stay of the Stewards' Decision or its effect, and the application was refused prior to the date that the substantive appeal was heard before the Panel on 14 October 2024.
- (c) The Appellant's appeal also asserted in the alternative that the penalty was too severe.

### **Appeal Proceedings**

14. An appeal is conducted as a new hearing: 34C of HR Act.

15. The proceedings before the Appeals Panel proceeded by way of an oral hearing, conducted on 14 October 2024. In the proceedings before the Appeals Panel:

- a. With the leave of the Appeals Panel, each of the Appellant and Respondent was legally represented for the duration of the hearing.
- b. The evidence material put before the Appeals Panel comprised:
  - i. The Notice of Appeal and the appeal documents filed by the Appellant.
  - ii. A bundle of exhibits gathered as part of the Stewards' inquiry (Inquiry) that led, ultimately, to the Decision.
  - iii. The Appellant's written submissions dated 8 October 2024
  - iv. The Respondent's written submissions dated 10 October 2024.
  - v. Two additional bundles of material and a bundle of authorities handed up by the Respondent at the hearing.

16. The proceedings before the Appeals Panel proceeded by oral submissions made on the Appellant's behalf. Concisely summarised, the position taken on appeal by the Appellant was that the refusal to comply with the direction of the Stewards was justified because he had complied to the extent that he was lawfully able. The issue for the Panel as stated by Senior Counsel for the Respondent was to determine whether the Appellant had a lawful excuse for not complying with the direction by reason of the

Steward's treatment of his claims in relation to legal professional privilege and otherwise.

17. The penalty imposed by the Stewards was also rejected by counsel for the Appellant on the basis that it was ultra vires. Inter alia, it was submitted that it was theoretically open to the Stewards to warn off or disqualify the Appellant but not both. Further it was not permissible for a warning off to be conditional. The warning off must be pronounced as being permanent or for an ascertainable period. In short, the penalty ought to have resulted in a penalty which finalised the charge. Finally, it was submitted that the Stewards misdirected themselves as to the objective seriousness of the Appellants breach of AHRR 187(3).

18. In accordance with rule 181F of the Local Rules, the Appeals Panel may inter alia:

- a. Dismiss the Appellant's appeal.
- b. Confirm the Steward's Decision.
- c. Vary the Stewards' Decision.
- d. Make any other orders in relation to the disposal of this appeal, that the Appeals Panel thinks appropriate.

### **The Decision and the Disqualification**

19. The clear objective of the Stewards was to secure production of mobile phones in the possession of the Appellant. To that end there was voluminous correspondence between the legal representatives of the parties and at one point an attempt by Mr Haylen KC to broker a protocol agreeable to both parties to produce the phones and a process for determining legal professional privilege.

20. The correspondence was admitted into evidence together with a schedule prepared by the legal representatives for the Respondent. In all, there were 25 categories of correspondence passing between the parties concerned. Senior Counsel for the Respondent described with some accuracy the intention of the Appellant to raise all manner of 'roadblocks' to avoid production of the phones. The Panel agrees with this description.

21. Suffice to say that the Panel agreed with the characterisation of the conduct of the Appellant in his responses and through his legal representatives. The Panel was left in no doubt that the unstated intention of the Appellant was to continue indefinitely his continuing refusal to produce the mobile phones.

22. The legal arguments advanced by counsel for the Appellant misconceived the procedure for determining legal professional privilege. The gravamen of the argument concerned the process by which claims for privilege would be determined and a further issue of retention by the Respondent of the material downloaded from the mobile phones.

23. The Stewards, after the issue of legal professional privilege was raised, properly provided the Appellant with the opportunity of making privilege/confidentiality claims that would protect him when complying with the direction. Furthermore, the Stewards imposed a regime for the collection and imaging of data and the making of privilege claims by the Appellant that would protect him and related entities when complying with the direction. The protocol relied upon by the Stewards is set forth in the Penalty Decision of the Stewards delivered on 5 March 2024. The terms of the protocol were in the opinion of the Panel adequate to deal with the arguments advanced on behalf of the Appellant.

24. The Courts have consistently identified the fact that claims for legal professional privilege follow the production, seizure etc of documents and material. Invariably a protocol is determined as a means of facilitating precise identification of the material over which a claim is made. See *Fletcher v Racing NSW* [2019] NSWSC 358 ; *JMA Accounting Pty Limited v Michael Carmody, Commissioner of Taxation* [2004] FCAFC 274, *Okewood Pty Limited v Commissioner of Australian Federal Police (No.3)* [2021] FCA 2 and *Abbas v NSW Commissioner of Police* [2019] NSWSC 588. In short, the Appellant was obliged to produce the mobile phones and to thereafter make such claims as he wished upon legal professional privilege/confidentiality grounds.

25. The Panel rejects the submissions advanced on behalf of the Appellant and in accordance with the forgoing decisions finds that the Appellant was bound to produce the mobile phone and after the content was downloaded and provided to the Appellant, any claims for legal professional conduct could be articulated. A third party could then rule on the issue of whether legal professional privilege was made out. The Panel finds that there was no lawful excuse on the part of the Appellant not to comply with the direction.

26. The Panel notes that there was faint reference to issues of confidentiality and privacy. They were not advanced by the Appellant's legal representative in any meaningful way and effectively fell away.

27. In summary, the Panel was satisfied that the protocol enunciated by the Stewards for dealing with legal professional privilege issues was in accordance with existing principles of law.

28. Having rejected arguments that there was a defence available to the Appellant on the grounds advanced by his counsel, the Panel was satisfied that the Appellant was guilty of a failure to comply with a proper direction issued by the Stewards. The decision that Charge 1 is proven is confirmed under s.34D(1)(b) of the Harness Racing Act 2009 (NSW).

### **Penalty**

29. Counsel for the Appellant effectively repeated the "Submissions on Penalty" dated 26 April 2024 provided at Inquiry. The matters contained therein were set out in the decision of the Stewards. The Panel considered those matters in deciding the outcome of the appeal.

30. Whilst the Respondent argued for confirmation of the Steward's decision on penalty, she also made a submission in the alternative by way of response to the submissions of counsel for the Appellant that a lengthy, fixed period of warning off would overcome the technical arguments concerning the conditional basis of the penalty imposed by the Stewards. The submission was made on the Respondent's behalf, that the conduct of the Appellant in failing to produce the mobile phones, of which production was sought and ordered, amounted to a frustration of the investigative functions of the Stewards.

31. The Panel, rather than embarking on an exhaustive analysis as to the correctness of the contentions of counsel for the Appellant concerning the correctness of the Steward's formulation of the penalty imposed, chooses to accept the force of the Respondent's alternative submission. A more concise formulation identifies with greater clarity the seriousness of the conduct engaged in by the Appellant.

32. Contrary to the submission of counsel for the Appellant, the Stewards did not misdirect themselves and were correct in identifying the underlying seriousness of the offence committed by the Appellant. As Senior Counsel for the Respondent observed, the outcome of the Appellant's refusal to produce the mobile telephones would be nothing less than 'catastrophic' for the harness racing industry.

33. The Panel regards the obfuscation by the Appellant with the utmost disapproval. In order to meet arguments about the finality of the Inquiry and the conditions imposed by the Stewards, the Panel elects to substitute the penalty imposed by the Stewards with an order for the warning off of the Appellant for a period of five years commencing on 5 March 2024 (the date on which the charge was proven).

34. Accordingly, the Appeals Panel dismisses the Appellant's appeal, confirms the finding that Charge 1 is proven and substitutes a penalty of warning off for five years from 5 March 2024 in lieu of the penalty imposed by the Stewards.

35. Any appeal fee paid by the Appellant is to be forfeited by him.

22 October 2024

Brian Skinner (Convenor)

Peter Kite SC

Darren Kane