

## NEW SOUTH WALES HARNESS RACING APPEAL PANEL

### APPLICATION FOR A STAY BY MR AARON GOADSBY

1. Mr Goadsby has appealed against a decision of Stewards on 26 June 2024 that he be warned off and disqualified for a period of 12 months for a breach of AHRR 187(3). That rule provides that a person shall comply with an order or direction given by Stewards. Mr Goadsby also has sought a stay in accordance with the provisions of NSWLR181E(1).
2. The terms of NSWLR181E(1) are: On the lodging of an appeal and an application for a stay of proceedings, the Appeal Panel has the power to grant a stay of proceedings in circumstances where it considers that a substantial injustice may be caused to the appellant if the stay is not granted.
3. Recently, the Appeal Panel gave some consideration to the terms of the stay provision, noting that there had been few occasions that required a full examination of its scope. It was observed that the finding of 'a substantial injustice' may involve the presentation of evidence that calls into question decisions made by Stewards that, arguably, may not have been adequately proven or where relevant evidence was available but not taken into consideration. In short, there needs to be established an arguable case against the findings made by the Stewards that amounts to a substantial injustice. The wording of the provision suggests a possibly narrow application of the power to stay proceedings, however, the full scope of this new provision will have to await future decisions over a wide range of issues.
4. It is worthy of note that NSWLR181E (1) was introduced as a departure from a previous practice where a stay of penalty was regularly allowed without meeting strict requirements or supporting evidence. This approach led to the hearing of many cases being effectively logjammed in the Racing Appeals Tribunal. The 2022 amendments to the Harness Racing Act 2009 creating the Appeal Panel, was designed to provide a speedy hearing and determination of all appeals.
5. Against that background the present case is unfortunately an outlier from the system established by the 2022 amendments. Over a period of nearly 6 months the parties have been unable to agree on a series of steps that would allow mobile phones used by Mr Goadsby to be presented to the Stewards so that they may be scanned for a period when Mr Goadsby was disqualified as a trainer. The Stewards contend that they have 'intelligence' suggesting that during this period Mr Goadsby was in breach of the restrictions placed upon him as a disqualified person. Legal practitioners appearing for Mr Goadsby have claimed that the phone records contain matters covered by confidentiality and legal professional privilege. The exchanges between the parties over these months have exposed a degree of volatility with positions on each side changing without obtaining agreement.
6. In March 2024, Mr Goadsby commenced proceedings in the Supreme Court seeking urgent and interlocutory relief against Harness Racing NSW. An interlocutory injunction was sought to preserve the status quo pending a final hearing. At the initial listing the Court was informed that the parties could not agree on arrangements for the delivery to HRNSW of the mobile phones used by Mr Goadsby during his disqualification or arrangements for the scanning of the contents of the mobile phones and how the

parties could address the claims for legal professional privilege and confidentiality. The Court urged the parties to engage in face to face discussions about what might occur pending a proper hearing before the Court. After further discussion the Court observed that the parties ought to be able to come to an agreement on a protocol with respect to the mobile phones to be produced for inspection.

7. The case came before the Court again on 27 March 2024 for the hearing of an amended notice of motion filed by Mr Goadsby that sought a number of orders, including orders restraining HRNSW from taking any further steps in respect of the directions and the decision made by the stewards. It was noted that Mr Goadsby had not complied with three directions issued by HRNSW between 17 January 2024 and 1 February 2024 for the production of phones used by him during a period of disqualification. It was also noted that Stewards had the power under AHRR 15B to require and take possession of any mobile phone for the purpose of examining its data and content. Mr Goadsby had not complied with those directions, claiming that they were privileged communications. At this stage of the case the Court was prepared to find that there was a serious case to be tried although that was not of itself sufficient. There were other factors to consider in deciding whether to exercise the discretion to grant the injunction. The Court accepted the defendant's submission that the proper approach to this matter did not merely involve the application of what was described as a balance of convenience test as there was a public interest in the protection of the integrity of the sport of harness racing.
8. In dealing with the arguments why the Court should act, a number of issues were considered. For present purposes it is sufficient to note that the Court stated that the simple fact was that Mr Goadsby had a right of appeal to the Appeal Panel and then to the Racing Appeals Tribunal. He could also apply for a stay. The Court then stated: 'It may be difficult to anticipate why a stay would not be granted, although that is of course a matter for the Appeal Panel'. Ultimately the Court was not persuaded that the interim restraining orders sought by Mr Goadsby should be made, also noting that HRNSW should be permitted to complete its process. Mr Goadsby would then have the right of appeal and could apply for a stay.
9. Mr Goadsby has now filed an application to the Appeal Panel for a stay of the proceedings brought against him. It has been submitted that without a stay Mr Goadsby 'will experience reputational harm, ongoing pressure and stress of having to reside out of his home and unable to visit his son's memorial site, loss of friends and connections within the industry and mental distress.' While these matters have been expanded in the submission it is appropriate to point out that Mr Goadsby was disqualified for three months and during that period it is alleged that he breached conditions that were binding on him. Since then he has been warned off until he produces the mobile phones in compliance with a 17 January direction of the Stewards and when he produces the mobile phones he will be disqualified for twelve months. Obviously, persons disqualified under HRNSW rules suffer various forms of reputational harm and lose their connection with industry participants. Their actions have the capacity to harm the reputation of the harness racing industry. Those consequences are simply the result of breaching the binding rules of Harness Racing. As to the 'pressure and stress of having to reside out of his home and unable to visit his son's memorial site', it is Mr Goadsby's choice to allow registered horses to remain at the property that was his home. That is prohibited under HRNSW rules when a person is disqualified, and as a prominent and apparently successful business man, he has the capacity to send the horses elsewhere, allowing him to return to the home, but

he has chosen to move away. In relation to Mr Goadsby's inability to attend the property to visit his son's memorial, it is not the case that he has been prevented from doing so. The Stewards have permitted him to visit the memorial on condition that he advises Stewards of his attendance by sending a text message at the time he arrives and leaves the property. To date for the month of July Mr Goadsby has not attended the memorial on 8 occasions.

10. In addition to the matters dealt with above, it has been argued that the warning off of Mr Goadsby will result in the following disabilities and difficulties: inability to operate business from home; loss of friendships, family and industry connections; financial strain as a result of residing out of his home address; mental distress; inability to attend at any racecourse, premise or place under the control of HRNSW; inability to be a member or employee of HRNSW or a club; inability to race, lease, train, drive or nominate horses; inability to breed any horses; and, an inability to place or have placed a bet. Some of these alleged difficulties simply arise from being warned off and then being disqualified for twelve months. Further, most of these matters are simple allegations without evidence. Mr Goadsby is known for his various businesses but there is no evidence of the level of his alleged financial strain and mental distress. Also provided was a list of subjective factors, noting that he had participated in the harness racing industry as a hobby for many years, the number of starters he had in racing partnerships he had with other trainers, the 50 standard breed horses he owned and 50 trained for other trainers, the size of his \$2.5m property for training, an unspecified considerable investment he had made in harness racing, and the businesses he is involved in and the staff employed. These are often matters that are considered after a finding of a breach of Harness Racing Rules and are taken into account in arriving at an appropriate penalty.
11. The matters dealt with in the last two paragraphs do not warrant the granting of a stay. It appears to be accepted by the parties that Mr Goadsby currently holds no HRNSW licences, although he has applied for a stablehands licence and a Grade A Trainers licence. Those applications have been with HRNSW for approximately three months without a decision being made. It seems likely that while he is warned off his application for a licence will not be considered.
12. In the Supreme Court proceedings the focus of Mr Goadsby's case appears to have been aimed at protecting him from being required to surrender his mobile phones to the Stewards without the protection of an agreed protocol that would set aside confidential matters and protect legal professional privileged discussions. At the time of the hearing the parties had not reached such an agreement despite the urgings of the Court at the first hearing. It is significant that in the submissions for a stay before this Panel, it was stated that the balance of convenience was in favour of retaining the status quo, '...at least until such time that an agreed protocol may be reached...'. Over nearly six months the parties have failed to agree on such a protocol. The matter is now before the Appeal Panel. There appears to be no purpose in simply granting a stay and leaving the parties to continue their inability to agree to an appropriate protocol for dealing with the mobile phones. The present and likely future delay in this case is unacceptable. The framing of a workable protocol for considering the contents of the mobile phones is clearly the most effective way of progressing this appeal – a stay alone will not achieve that purpose. In these circumstances the Appeal Panel will provide a protocol designed to address the concerns of both parties and allow the Stewards investigation to proceed.

13. The protocol is as follows:

- (a) Assuming that the parties have agreed to an independent qualified person receiving the mobile phones used by Mr Goadsby for imaging and securing the contents, the phones shall be presented two at a time. If there is no such agreement, the parties are to nominate their preferred independent qualified person and Appeal Panel member Mr Brian Skinner shall select one of the persons put forward to undertake this task.
- (b) Once the task of securing the contents of the mobile phones is concluded by the chosen qualified person, the legal representatives of Mr Goadsby and Harness Racing NSW shall be given copies of the phone calls captured, for the sole purpose of identifying matters considered to be confidential calls or calls for which legal professional privilege is claimed. If the parties are unable to agree on calls that are claimed to fall within the class of confidential exchanges or legal professional privilege, Mr Skinner will determine whether or not the disputed calls fall within either of these categories.
- (c) When this process is concluded, the documents considered to be available to the parties shall be released to Mr Goadsby and his legal representatives and to Harness Racing NSW and its legal representatives.
- (d) Should the parties agree to other steps in this process or an amendment to the matters set out in paragraphs (a), (b) and (c) above, they should be notified to Mr Skinner for consideration.
- (e) Should there be further disagreement between the parties concerning the operation of the protocol, those matters shall be referred to Mr Skinner for consideration and resolution.

Hon Wayne Haylen KC – Principal Member  
29 July 2024