

**NEW SOUTH WALES
HARNESS RACING
APPEAL PANEL**

APPEAL PANEL MEMBERS

**Hon W Haylen KC
P Kite SC
J Moore**

RESERVED DECISION

17 March 2025

APPELLANT BEN SARINA

RESPONDENT HRNSW

AUSTRALIAN HARNESS RACING RULES

231(1)(e) & 267

DECISION

The Appeal Panel makes the following orders:

- 1. The Appeal by Mr Sarina against conviction on both charges is dismissed;**
- 2. On each charge the penalty of 7 years disqualification is set aside and a penalty of permanent warning off is imposed in each case, to be served concurrently; and,**
- 3. The Appeal fee is forfeited.**

1. In this Appeal, Mr Sarina seeks to overturn findings made by the Stewards, that he assaulted a person who was known to him as a Harness Racing Steward some years ago, when he was a licensed driver. Although this assault took place some years after they both had left harness racing, the Stewards rely upon the provisions of AHRR 231(1)(e). That rule states that "...a person shall not, (e) assault'...anyone employed, engaged or participating in the harness racing industry or otherwise having a connection with it." It is argued for Mr Sarina that the section stating, "...otherwise having a connection" with the industry is not available in his case as the assault had nothing to do with harness racing, and in any event applied only to people presently engaged in the industry. In order to deal with these propositions, it is necessary to consider a wide range of matters including Mr Sarina's history in Harness Racing.
2. In mid-December 2011, Harness Racing NSW charged licensed harness driver, Ben Sarina, with a breach of AHRR 187(2). The charge alleged that Mr Sarina had given false evidence to investigating Stewards who were enquiring into alleged corruption and improper practices in harness racing in that State. It was alleged that Mr Sarina gave false evidence in relation to telephone communications between himself and the former harness racing Steward, Paul O'Toole. A Special Stewards Panel was established to conduct the inquiry into these matters.
3. In its December 2012 decision, the Special Panel found that the investigating Stewards had established the charge against Mr Sarina and that he had given false evidence in relation to telephone communications between himself and the former Steward, O'Toole. In February 2013 the Special Stewards Panel concluded that Mr Sarina be warned off permanently, pursuant to the provisions of AHRR 256(2)(d). The Panel found that his evidence was unsatisfactory and also untruthful. It noted that the flimsy and unbelievable excuses proffered by Mr Sarina to the Stewards and to the Inquiry, aggravated the breach. Mr Sarina, to the present day, remains a permanently warned off person.
4. Mr Sarina then Appealed to the Racing Appeal Tribunal against the decision of the Special Panel. In its decision the Tribunal concluded that Mr Sarina had lied to the investigators and that what he did related to inquiries dealing with corruption and therefore his conduct had the capacity to thwart the investigation. He treated the Inquiry officers and the Special Stewards Panel with contempt. There had been no contrition or remorse. Therefore, he remained a person categorised as a liar to the industry regulator and to a Special Panel of Stewards and had done nothing by his acts or his evidence to address those matters.
5. On 27 February 2020, Mr Michael Hurley, a person who had retired from being a Steward for Harness Racing NSW, some 14 years earlier, was carrying out letter drops into post boxes along Keelendi Road, Bellbird Heights, Cessnock. At this time Mr Hurley was working as a real estate agent. Whilst sitting astride his bike in carrying out this task he recalls that Ben Sarina approached him, although at the time he did not recognise Mr Sarina. He recalled that Mr Sarina approached him and asked Mr Hurley if he remembered him. Mr Hurley responded by saying, yes and asking how he was going, although he had no idea of who he was talking to. He said that he was punched by Mr Sarina and suffered severe injuries that

required hospitalisation. His jaw was broken in two places and required fixation. He said that Mr Sarina then said, "that's for being a cunt for all the times when you were a harness racing steward". Mr Hurley called the police and was taken to hospital. Mr Sarina was charged by police with reckless grievous bodily harm and assault occasioning actual bodily harm. At the hearing in the Local Court in Cessnock, the circumstances around this attack were hotly contested by Mr Sarina.

6. In his statement to the police, Mr Hurley spoke of the trauma he endured as a result of this assault. After x-ray at hospital he was informed that there were two clinical fractures to his jaw, that his teeth were knocked around and would need surgery. After treatment and surgery he remained in immense pain. Also his jaw moved and clicked and two of his lower teeth continued to move and click. Those teeth continually moved apart and back together causing extreme pain. The area below and around his chin was extremely swollen as was under his tongue. His operation was delayed because of his pain. Later he had braces fitted and a permanent metal plate screwed into his chin. He continued to feel extreme pain and struggled to sleep. He also suffered nightmares about the assault and for a long period experienced constant headaches that greatly impeded his daily life.
7. During the Local Court hearing, it was conceded that Mr Sarina and Mr Hurley knew each other in the harness racing industry. Mr Hurley gave evidence that after he had been punched Mr Sarina walked back towards the house, hopped up on the ladder and appeared to go back to work. Mr Hurley used his phone to call tripleO and reported the assault to the police. He observed Mr Sarina looking up and seeing that Mr Hurley was using his phone. He assumed that Mr Sarina hopped down off the ladder but he started to walk back to Mr Hurley. While still on the phone Mr Hurley told the police that Mr Sarina was walking towards him. He was concerned that he would be assaulted again by Mr Sarina. Mr Sarina came within 2 or 3 metres of him and then turned and walked towards his car that was parked 10 or 12 metres away on the other side of the road. Mr Sarina drove away from the site.
8. In cross examination Mr Hurley said that he did not see or notice Mr Sarina standing at or near a box trailer in the yard. It was put to him that Mr Sarina was obtaining some tools from the box trailer, but Mr Hurley said he did not notice the box trailer. It was then put to him that Mr Sarina was at the trailer and Mr Hurley had called his name, "Ben". Mr Hurley disagreed, and had not called out Ben and that Ben had responded with, "yes". He agreed that Mr Sarina said, "Do you remember me", but disagreed that he then said to Mr Sarina, "Oh yeah, you and your father deserved what you got." It was then put to Mr Hurley that Mr Sarina then said, "Fuck you, you paedophile dog", but Mr Hurley rejected that had been said. It was then put to him that after being called a paedophile dog he went to strike Mr Sarina with his right hand, but he rejected that had occurred. He also rejected the proposition that it was after trying to hit Mr Sarina, that he was hit by Mr Sarina. He also rejected the proposition that Mr Sarina had not punched him but had slapped him with an open hand. Mr Hurley also observed that you do not get a fracture in two parts of the jaw, from an openhanded slap. Mr Hurley also

disagreed that he had called Mr Sarina a fucking dog, as he was walking out to his vehicle.

9. Mr Sarina gave evidence at the Local Court and stated that on the day of this confrontation he was near a box trailer on the ground. This was in the morning and he heard his name called and looked across his shoulder, and there was a male standing at the mailbox. He did not recognise the man but approached him and was face to face with him being about half a metre apart. At this stage Mr Sarina recognised Mr Hurley and asked him "you remembered me". Mr Hurley said yes and then said, "You and your father deserved what you got". Mr Sarina replied, "Fuck you, you paedophile dog". When he said that, Mr Hurley's arm left the handlebar in an abrupt, aggressive manner and came towards him. Mr Sarina took a step back, raised his right hand and slapped him on the side of the face. He did this action with his right hand palm open. He thought Mr Hurley was going to attack him. After he was struck, Mr Hurley looked Mr Sarina in the eyes and said, "fucking dog." Mr Hurley did not move and Mr Sarina "retracted and walked straight away back up to the ladder". He climbed the ladder and said to the other workers, "I've got to go, I'm going." He went down the ladder, walked across the driveway, across the road and drove away. Heading towards the car, Mr Hurley again called him a fucking dog. He left the work site because he just wanted to get out of there, he "didn't want to be around". When he returned to the site he told Mr Adams words to the effect, "I know when I did it Geoff that I'd done the wrong thing." Mr Sarina said that he just wished he hadn't said anything at all, acknowledging that calling him a paedophile was "pretty nasty". He said that Mr Hurley's evidence was that Mr Sarina approached him and out of the blue punched him in the face, but that was false.
10. In cross examination by the Prosecutor, Mr Sarina was asked why he had asked Mr Hurley if he remembered him. Mr Sarina said that when he got to Mr Hurley he was surprised he had called out his name. When he approached Mr Hurley he immediately knew who he was. He knew Mr Hurley had previously been a harness racing steward but he had no problem with him, recognising that he had a job to do and Mr Sarina also had a job to do. When it was put to him that at the time of the assault, he didn't like Mr Hurley, Mr Sarina replied: "Of course I did, he's done nothing wrong to me". He said he had no reason on the day to dislike Mr Hurley and repeated that he had done nothing wrong to Mr Sarina. It was then put to Mr Sarina, if that was the case, why did he call Mr Hurley a paedophile? Mr Sarina replied: "Just the first thing, it was a terrible thing to say and it was just the first thing that came to me head, I don't know why I said it, I regret saying it but it just come up and I don't know why it come up. I would never normally use a word like that." It was then put to Mr Sarina, that his version was when Mr Hurley said that you and your father deserve what you got, that angered him. Mr Sarina replied that he was "upset about it". It was then asked of him what in the statement upset him, and he replied that his father had passed away at a very young age. He did not take that statement as being a reference to what happened with his father and himself as part of the racing industry as Mr Hurley had left harness racing as a steward in 2006 and anything that happened with the stewards was in 2011.

11. In further cross examination, attention was focused on Mr Sarina's allegation that Mr Hurley moved his arm from the handlebar and moved abruptly and aggressively. He said that he reacted by stepping back and slapped Mr Hurley and that was done in the same motion. Mr Sarina thought that he was in danger and was still in motion going backwards as he slightly slapped Mr Hurley. It was put to Mr Sarina that although he faced Mr Hurley's aggressive motion, he had only moved back slightly. He was then asked why he reacted with a slap as opposed to just stepping back and away. Mr Sarina replied, that was a good question but it just happened quickly, he just moved back and threw his palm out. He then said: "There was a lot of other ways that it could have been dealt with."
12. Mr Sarina was then asked, that being a distance of 70 or 50 centimetre from Mr Hurley, moving backwards, and unbalanced, how had he managed to still catch and slap Mr Hurley very hard on the right side of the face? His answer was, "yes". He was later questioned about the slap being able to break Mr Hurley's jaw. Mr Sarina replied that he had used his palm and it fractured the jaw. Mr Sarina was then questioned about his allegation that Mr Hurley twice called him a "fucking dog". It was put to him that at the time these words were said, Mr Hurley was on the phone speaking to triple-O. That call was recorded and the transcript did not contain those words said to be made by Mr Hurley. Mr Sarina replied that Mr Hurley could have put his phone down beside him, made the statement alleged, and then returned to the phone. He did not see that happening but it could have happened.
13. In the decision of the Court it was stated that there was no dispute that Mr Hurley, as a result of the altercation, sustained a broken jaw and that it required surgical intervention, and it was not disputed that the injury in itself ought at least reach the threshold of grievous bodily harm. What was in dispute was whether the defendant acted in self defence. In dealing with Mr Sarina's evidence, it was observed that his evidence was "somewhat strange", further, his answers were quite evasive on what one would expect was a fairly simple answer. Other shortcomings in Mr Sarina's evidence were identified and the Court stated that it had difficulties, and significant difficulties with Mr Sarina's version of events and these matters were dealt with in a close examination of his evidence. Ultimately, the Court made the following ruling: "Looking at all those matters and watching the defendant in the witness box, he was not an impressive witness when pressed on issues, and I do not accept his version of events. They simply do not fit with the other evidence for the reasons that I have set out. Having made those findings, in my view there is no issue of self-defence on the complainant's version which I accept beyond reasonable doubt; the defendant was the aggressor from the start and there was no act of violence by the complainant. In those circumstances, I find the offence proved."
14. HRNSW Stewards, in the course of dealing with the assault on Mr Hurley, obtained records of the Local Court in sentencing Mr Sarina. The records included a copy of the Intensive Corrective Order issued by the Court, pursuant to Section 7 of the Crime (Sentencing Procedure) Act 1999. The Intensive Correction Order ordered a term of Sentence of 12 months. The Particulars of Imprisonment were: "It is hereby ordered that the above term(s) of imprisonment is to be served by way of intensive correction in the community in accordance with Section 7 Crime

(Sentencing Procedure) Act 1999". Section 7(1) of this Act provided: "A court that has sentenced an offender to imprisonment in respect of 1 or more offences may make an intensive correction order directing that the sentence or sentences be served by way of intensive correction in the community." It appears that if an Intensive Correction Order is breached, that person is likely to be imprisoned. Mr Sarina did not appeal the decision of the Local Court.

15. In June 2021 Stewards advised Mr Sarina that they were considering whether he should be disqualified pursuant to AHRR 267, that is: (1) Subject to sub-rule (2) the Stewards may for such a period and on such conditions as they think fit, disqualify a person who is found guilty of a crime or an offence in any State or Territory of Australia or in any country. (2) Where a person is convicted of a crime or offence in any State or Territory of Australia or in any country and sentenced to a period of imprisonment, the Stewards shall disqualify that person for a period that is at least equivalent to the actual sentence imposed. (3) Sub-rule (2) shall apply where either part or whole of the period of imprisonment is suspended.

16. After considering the Court documents in Mr Sarina's case, the Stewards determined that a charge should be issued against him, pursuant to the provisions of AHRR 231(1)(e), that is: (1) A person shall not (e) assault, anyone employed engaged or participating in the harness racing industry or otherwise having a connection with it. The particulars of that charge were: "That you, Mr Ben Sarina, on Thursday 27 February 2020 did assault Mr Michael Hurley, a person having a connection with the harness racing industry as a former Harness Racing Steward." In March 2024 Mr Sarina pleaded not guilty to that charge. At the time of the assault, Mr Sarina was a warned off person.

17. The case presented for Mr Sarina did not attempt to challenge the Local Court decision and the penalties imposed upon him. Instead, the case presented involved issues of construction of a number of rules of Harness Racing to establish that Mr Sarina could not be penalised again because of his status as a warned off person.

18. AHRR 299 was said not to apply to Mr Sarina because he was warned off and not licensed. Persons were bound by the AHRR due to their contractual agreement of a licence. AHRR231 did not apply to Mr Hurley as he had not been a Harness Racing Steward since 2006 and was not engaged or participating in the harness racing industry. AHRR 267 did not apply to a warned off person because they are already under prohibitions under Part 16 of the rules. The provisions of AHRR were also mentioned. In addition Mr Sarina was not subjected to a term of imprisonment.

19. In considering the submissions for Mr Sarina, especially AHRRs 231(1) and 267, Stewards noted that AHRR 309 provided the following: "In the interpretation of a rule a construction that would promote the purpose or object underlying it, whether expressly stated or not or which would facilitate or extend its application, is to be preferred to a construction that would not promote that purpose or object or which would impede or restrict its application. They also considered the decision of the NSW Racing Appeals Tribunal in the cases of Achurch and Clement.

20. The Stewards also considered the evidence given by Mr Hurley and Mr Sarina in the Local Court and the comments of the presiding Magistrate. They were satisfied that if it had not been for Mr Hurley's connection with the harness racing industry, the incident involving the assault would likely have never occurred. The Stewards then announced that they found the charge issued pursuant to AHRR231(1)(e), proven against Mr Sarina. The Stewards also determined that the provisions of AHRR267 should be invoked, namely, that the Stewards may for such period and on such condition as they think fit, disqualify a person who is found guilty of a crime or offence in any State or Territory of Australia.

21. On 9 January 2025 Stewards determined the penalty to be applied to Mr Sarina. Submissions on behalf of Mr Sarina sought to compare his case with the case of Darren Elder who had assaulted a licensed driver following an exchange of disparaging remarks on the track that continued in the raceday stalls. Mr Elder forcefully pushed the driver in the back causing him to be propelled from the sulky seat towards the rear of the horse. Mr Elder was found guilty under AHRR 231(1)(e) and was suspended for a period of 4 months with three months of the penalty suspended for a period of 2 years. It was argued that Mr Sarina's conduct was no more serious than that of Mr Elder, because; Mr Sarina's actions were not premeditated but were a spur-of-the-moment decision; Mr Sarina was the only person involved in the assault of Mr Hurley; and, the assault occurred on private property and did not have a direct impact on the public image of harness racing. Also Mr Sarina had expressed genuine remorse for his actions. Further, the Stewards should consider the 9 months Intensive Correction Order imposed by the Court. It was also submitted that Mr Sarina was not in a financial position to pay a fine, and that any penalty imposed should be applied from the date that Mr Sarina was found guilty of assault, i.e, 20 January 2021.

22. The Stewards did not accept the submission that Mr Sarina's conduct was no more serious than Mr Elder's. It was also noted that Mr Sarina was the person who approached Mr Hurley in a public place from a distance and in an unprovoked assault, punched him resulting in a broken jaw, a very serious injury. Prior to approaching Mr Hurley, Mr Sarina had identified him as having a connection with the harness racing industry, otherwise there would be no other reason for him to approach and this incident/assault would not have occurred. The evidence of Mr Sarina had not been accepted by the Local Court. Indeed, Mr Sarina had shown no remorse and had distanced himself from any blame relating to the incident and the assault and claiming that Mr Hurley was the instigator of the assault. During the Stewards inquiry, Mr Sarina was questioned regarding the statement of the Magistrate regarding his evidence. Mr Sarina responded: "I believe on the day the Judge got it wrong."

23. In reaching a penalty, the Stewards considered that general deterrence and messaging to the industry were relevant. Mr Sarina's lack of remorse and attempt to distance himself from any blame in respect of the incident and the assault upon Mr Hurley, were aggravating factors. The Stewards acknowledged that HRNSW Penalty Guidelines did not provide any guidance as to appropriate penalties for AHRR231 offences. However, the Stewards considered that the appropriate penalty for an AHRR231 charge must include a substantial period of disqualification due to the following matters: Mr Sarina was the instigator of the incident, having identified Mr

Hurley as having a connection to the harness racing industry; in an unprovoked attack, Mr Sarina approached Mr Hurley from a distance and punched him resulting in a very serious injury; and, that Mr Sarina had not shown any remorse and attempted to blame Mr Hurley for the incident.

24. Having regard to those matters, the Stewards believed that the appropriate starting point for a disqualification in these circumstances, was 8 years. Mr Sarina had no previous assault offences recorded, resulting in a reduction of 12 months. As Mr Sarina entered a plea of not guilty to the charge issued pursuant to AHRR 231, the Stewards did not provide any further mitigation of the penalty. Having been convicted of the charge pursuant to the provisions of AHRR 213, the Stewards announced a disqualification period of 7 year, to commence from the date of this decision, being 9 January 2025.

25. Mr Sarina has appealed to this Panel and raises a number of issues that were dealt with by the Stewards. Although he maintained the view that he had been wrongly convicted of assault, he did not canvass that matter in the Appeal. Strangely, in providing a brief background to this case it was asserted, amongst other matters, that there was new evidence that the material before the Special Stewards Panel was factually incorrect. It was asserted that had he not been warned off he would not have been at the work site where Mr Hurley was assaulted. Mr Sarina did not give evidence in the Appeal and ultimately did not seek to cross examine Mr Hurley.

26. In the conduct of the Appeal numerous issues were canvassed by the parties, however, the Panel is of the view that there are particular provisions that assist in determining this Appeal. Under the heading of Assault and Interference, AHRR 231(1)(e), states that a person shall not assault anyone employed, engaged or participating in the harness racing industry or otherwise having a connection with it. In the Dictionary of the Rules of Harness Racing, "person" includes an individual. During submissions it was argued that such a person had to be engaged with the harness racing industry or having current connections with it and Mr Hurley was not such a person. In the case of Mr Achurch (NSW Racing Appeal Tribunal, 17 Feb 2011), the following statement was made: "The Tribunal is in no doubt that the statutory scheme governing Harness Racing enables rules to be made that impose requirements on persons who are not registered or licenced but who are broadly connected with harness racing." It is significant that during the Local Court proceedings, Mr Sarina's legal representative, at the outset of the case, conceded that the defendant and the complainant knew each other in the harness racing industry, with Mr Hurley engaged as a Steward and Mr Sarina being "involved" in that industry.

27. In the Local Court proceedings, Mr Sarina's evidence as to how the assault came about was totally rejected. The entire assault was focussed on matters that occurred while the two of them were engaged in Harness Racing and that was their only connection. Absent that connection, the matter would have ended at the Local Court. Further, the Panel cannot accept the submission that AHRR231(1)(e) does not apply to Mr Hurley because he had not been a Harness Racing Steward since 2006 and at the time of the assault was not engaged or participating in the harness racing industry. The terms of AHRR 231(1)(e) carefully distinguish the

persons employed, engaged or participating in the harness racing industry, from a wider group who otherwise have a connection with the harness racing industry. It would be an odd result if that connection had to be employment, engagement or participation. Clearly the rule expands those who are to come within its provisions. It is also unlikely that such a rule was drafted to protect only those who are currently employed, engaged or participating in the harness racing industry and excluded those who had the requisite connection with the industry. In this case the entire confrontation revolved around their past history in Harness Racing.

28. It was then argued that as a warned off person, Mr Sarina suffers the disabilities imposed under AHRR 259, namely, that a disqualified person or a person warned off cannot be involved or do a large range of specified matters. Being warned off, Mr Sarina was excluded from any participation in the harness racing industry and so he could not later be required to return to the industry to attend an inquiry and answer a charge to be found guilty of breaching harness racing rules. That submission ignores the operation of sub rules (6) and (7), whereby the Controlling Body may make determinations waiving, varying or qualifying the prohibitions set out in the rule, and that a disqualified person who fails to comply with the rule is guilty of an offence and is liable to a penalty. Under the provisions of AHRR 256 (1) one or more of the penalties set out in sub rule (2) may be imposed on a person...guilty of an offence under these rules; (2) (d) warning off, either for a period or permanently. Mr Sabina has been warned off permanently. It is clear that as a permanently warned off person he remains scrutinised to ensure that he complies with the terms of his warning off. There is no provision which prevents the Stewards from dealing with a further breach of Harness Racing Rules. In addition, requiring Mr Sarina to appear before the Stewards in relation to a further breach does not constitute "returning to the industry" as a participant.

29. As Mr Sarina's case relied upon various versions of the AHRR's, it is appropriate at this stage to clarify some of those matters. The Rules Dictionary includes the following matters: a "person" includes an individual; "Warned Off" or "Warning Off" means a decision or penalty prohibiting a person from entering any racecourse or place under the control of a club or the Controlling Body and a person "warned off" shall be subject to the same prohibitions as a disqualified person mentioned in rule 259 sub-rule (1); "Disqualification" means a penalty that imposes the restrictions contained in Part 16. Part 16 of AHRR deals with "Disqualified Persons". AHRR 259 (1), under the sub heading "Restrictions", provides that a disqualified person...or a person warned off, cannot do any of the following. There follows a number of restrictions. Sub rule 7, states, "A disqualified person who fails to comply with this rule is guilty of an offence and is liable to a penalty". The submissions for Mr Sarina ignore the fact that the rules treat disqualified persons and warned off persons in the same way for the matters covered by AHRR259 (1). The submissions regarding these matters put forward for Mr Sarina cannot be accepted by the Appeal Panel.

30. The Stewards conclusions were also attacked for relying on the alleged remark from Mr Sarina following the assault, "that was for all the times you were a cunt when you were a harness racing steward." That conclusion was said to be founded on the false and unreliable evidence provided by Mr Hurley. Further, it was stated: "Given Mr Hurley's tendency to be dishonest in order to conceal his own actions,

particularly his failure to state there was an argument and his failure to agree that he called Mr Sarina 'a dog', means his entire testimony should now be disregarded and given no weight." That assertion was not put to Mr Hurley in the hearing before this Appeal Panel but formed part of the written submissions for Mr Sarina. It does not stand scrutiny, especially having regard to the decision of the local Court.

31. In a separate decision, delivered on 9 January 2025, the Stewards considered the nature and scope of the penalty to be imposed on Mr Sarina. It was noted that the charges were: a breach of AHRR231 (1)(e), that a person shall not assault anyone... having a connection with the harness racing industry; and, a breach of AHRR 267, and subject to sub rule (2), the Stewards may for such period and on such conditions as they think fit, disqualify a person who is found guilty of a crime or an offence in any State or Territory of Australia or in any country, and (2) where a person is convicted of a crime or offence in any State or Territory of Australia or in any country and sentenced to a period of imprisonment the Stewards shall disqualify that person for a period that is at least equivalent to the actual sentence imposed. The Stewards were satisfied that Mr Sarina had not shown any remorse for the assault of Mr Hurley and had attempted to distance himself from any blame for the assault and its nature. These matters were considered to be aggravating factors. Having regard to those matters, Mr Sarina was convicted of the charge made under AHRR 231 and imposed a disqualification of 7 years, commencing from the date of the decision. In relation to the AHRRR 267 charge, Mr Sarina was disqualified for a period of 7 years. The penalties were to be served concurrently.

32. At the conclusion of the hearing of the Appeal, after four hours of deliberation, both parties sought leave to provide further submissions, especially to respond to issues raised by the Panel during the hearing. The Panel agreed to that course.

33. The submissions for the Stewards focused on the seriousness of this assault and the need for severe penalties to protect those covered by the rules. The submission did not address how the penalty imposed by the Stewards was calculated, having regard to the fact that the Penalty Guidelines did not address assaults of the nature being dealt with in this case.

34. Submission for Mr Sarina ran to 17 pages, said to address the issue of penalty. Unfortunately, these submissions canvassed matters already addressed during the hearing before the Panel. There was new evidence regarding Mr Sarina's close connection with his father but without evidence from Mr Sarina. Indeed Mr Sarina was present during the hearing of the Appeal but did not give evidence. Another new issue was the alleged delay of the Stewards in acting on the assault. This was not a ground of Appeal and was not raised during the hearing before the Panel. Indeed, that complaint does not sit well with correspondence between Harness Racing NSW and Ms Scott in March 2024, where Ms Scott offered full co-operation with the Stewards to expedite the case and did not raise any issue of delay. The submission also ignores how the case was delayed because of the pandemic and that Harness Racing had sought to have the case heard from November 2021 due to the inability of the solicitors then acting for Mr Sarina to provide an update on Mr Sarina's position. Further, there was a complaint that Stewards had "extended and deliberate delay" in finalising the Hurley matter, another new issue without evidence. It was also asserted that Mr Sarina's "progress with rehabilitation during

his term of his ICO and sentencing” should be given weight”, but no evidence of that assertion was submitted to the Panel. There was another assertion that the assault was “provoked”, apparently by Mr Hurley, and that Mr Sarina was unlikely to re-offend, but no evidence was provided to support those matters.

35. In the course of the Appeal, the Stewards accepted that the nature and rarity of the matters arising in this case may well warrant a variety of approaches to an appropriate penalty. In this case, the severity of the assault on a person who was a Harness Racing Steward, and an assault arising from the harness racing relationship between them, warrants a strong penalty. The Appeal Panel has concluded that an appropriate penalty in this case is a further permanent warning off. To make it clear this warning off relates solely to the assault of Mr Hurley. A breach of this seriousness warrants a significant penalty that should cause would-be offenders to think again before they commit a serious breach of the rules of Harness Racing.

36. For the reasons set out above, the Panel makes the following orders: 1. The Appeal by Mr Sarina against conviction on both charges is dismissed ; 2. On each charge the penalty of 7 years disqualification is set aside and a penalty of permanent warning off is imposed in each case, to be served concurrently; and, 3. The Appeal fee is forfeited.

Hon Wayne Haylen KC – Principal Member
Mr Peter Kite SC – Panel Member
Ms Jo Moore – Panel Member

17 March 2025