

**NEW SOUTH WALES
HARNESS RACING
APPEAL PANEL**

**APPEAL PANEL MEMBERS
Hon W Haylen KC
B Skinner
J Murphy**

**RESERVED DECISION
15 JULY 2024**

**APPELLANT BRENT BERRY
RESPONDENT HRNSW**

**AUSTRALIAN HARNESS RACING RULES
259(1)**

DECISION

1. The decision of the Appeal Panel in this case is that the appeal is dismissed and the appeal deposit is forfeited.

1. In May 2021, Mr Berry was disqualified for a period of 2 years and 9 months following an inquiry into his conduct before Stewards at Wagga in March 2021. Mr Berry faced 4 charges under various rules of Harness Racing that resulted in his disqualification for a period of 2 years and 9 months, commencing on 31 March 2021. An appeal to the Racing Appeals Tribunal was dismissed in 2024.
2. In February 2022, Mr Berry was informed that HRNSW Stewards had conducted an investigation into his betting activities that had identified 393 pari-mutuel Australian harness racing bets placed in his TAB account between 29 May 2021 and 5 February 2022, whilst he was a disqualified person. Stewards also identified 66 fixed odds Australian harness racing bets placed in his TAB account between 2 June 2021 and 28 December 2021, whilst he was a disqualified person. In addition, Stewards identified a further 72 Australian harness racing bets placed in his BET 365 account between 2 June 2021 and 17 August 2021, whilst he was a disqualified person.
3. Arising from this investigation Mr Berry was charged on 3 counts under AHRR259 (1) , namely, that a disqualified person or a person whose name appears in the current list of disqualifications published or adopted by a recognised harness racing authority...cannot do any of the following-(j) place or have placed on their behalf, or have any other interest in, a bet on any Australian harness racing race. Sub section (7) provided that a disqualified person who fails to comply with this rule is guilty of an offence. Although Mr Berry responded to these charges, he did not enter a plea to them.
4. In considering these charges Stewards gave consideration to the provisions of AHRR259A: In addition to any penalty imposed pursuant to Rule 259(7) the original period of disqualification shall, unless otherwise ordered by the Stewards, automatically recommence in full. Having regard to these provisions, Stewards ordered that the original period of 2 years and 9 months disqualification recommence in full from 5 February 2022, the date of the last bet identified as having been placed by Mr Berry prior to him being informed of the Stewards investigation. Thus the current period of 2 years and 9 months disqualification would recommence from 5 February 2022 and conclude in November 2024. In addition to that disqualification the Stewards imposed a further 6 months disqualification to commence from 5 November 2024 and to expire on 5 May 2025.
5. Mr Berry has Appealed to the HRNSW Appeal Panel against these extended periods of disqualification, challenging both the conviction and the penalty. At the hearing of his Appeal Mr Berry confined the grounds to: (a) he had not been informed of betting being prohibited due his disqualification, and (b) at the time his mental health was not good. Mr Berry also provided 2 character references.
6. This Appeal, being a rehearing, commenced with HRNSW analysing the matters that led to Mr Berry being initially disqualified for 2 years and 9 months, matters with which the Panel was well acquainted. The Racing Appeals Tribunal noted that Mr Berry, who again appeared for himself, had entered pleas of guilty to the charges before the Tribunal. The Tribunal further noted that in the light of the factual circumstances underpinning his offending, this was a case in which the circumstances of that offending needed to be canvassed in full. It was also noted that Mr Berry had spoken of the fact that he had some form of mental illness for which he was now medicated, however, there was no other information about that issue. That lack of further evidence meant that little weight could be given to it.

7. In relation to the case before this Panel, HRNSW drew attention to the seriousness of this offending by Mr Berry. In this matter no further discounts should be applied by the Panel, having regard to his total lack of insight and remorse. A number of references were made to the decision of the Racing Appeals Tribunal in the case of Mr Danny Gallagher, a case involving the operation of AHRR 259 (1)(j).
8. Mr Berry's submissions were relatively brief and concentrated on his history of betting in all three of the racing sports. He was unaware of the prohibition on betting on harness racing while disqualified although he had been in the industry for over 40 years. At the time of his disqualification he was told of some things he could not do but nothing was mentioned about betting on harness racing. He spoke of having mental health problems and had been on medication since 2022-23 and was being treated by a doctor but could not obtain access to a psychiatrist.
9. In both Appeals brought by Mr Berry, his case required the assistance of a professional advocate. His lack of supporting evidence about his mental health leaves the Appeal Panel in the position, also found in the Tribunal case, where there is no relevant material to be considered.
10. Mr Berry's insistence that he was not aware of the ban of betting in harness racing while disqualified, suggests that he was unaware of undertakings he had given each year in the renewal of his licence. The Appeal Panel had before it 3 renewals of licence documents signed by Mr Berry for 2018, 2019 and 2020, provided by HRNSW, that contained the following undertaking: 'I declare that, as a condition of granting of my application to be licenced by HRNSW, I will comply at all times with the Rules of Harness Racing and all applicable laws and policies in force from time to time.'
11. At least one of the Rules of Harness Racing, of relevance to this case, is AHRR299. That rule states: All persons (a) licensed under these rules; (b) carrying on or purporting to carry on activities related to the harness racing industry; or (c) who is in some other way are affected by the rules, are deemed to have knowledge of and be bound by them and of all things done under them.
12. Mr Berry was under an obligation to be aware of the rules of Harness Racing. He should have been aware of AHRR 259 (1)(j), and that as a disqualified person he could not place bets on any Australian harness racing race. He should also have been aware of AHRR259(7): a disqualified person who fails to comply with this rule is guilty of an offence and is liable to a penalty.
13. Mr Berry also relied upon two character references that spoke well of him generally. In his career in Harness Racing over more than 40 years his penalty record is sparse. He seems to have lost his way in 2021 where his offences are numerous and serious. The lack of evidence about his possible mental state during this period leaves the Appeal Panel with no basis to consider other courses than to simply record that his Appeal in this case is dismissed. The Appeal deposit is forfeited.

Hon Wayne Haylen KC – Principal Member
Mr B Skinner – Panel Member
Mr J Murphy – Panel Member
15 July 2024