TASMANIAN RACING APPEAL BOARD

Appeal No 3 of 2018/19

Panel:	**Kate Brown (Chair)** **Suzanne Martin (Member)** **Wendy Kennedy (Member)**	**Appellant:**	**Zeke Slater**
Appearances:	**Anthony O'Connell (on behalf of the Appellant)** **Adrian Crowther (on behalf of the Stewards)**	**Rules:**	**AHRR 259A**
Heard at:	**Office of Racing Integrity** **Level 2, Henty House** **1 Civic Square** **LAUNCESTON, TAS**	**Penalty:**	**Recommencement of disqualification, backdated to commence 4 August 2018 and expiring 4 February 2019**
Date:	**3 October 2018**	**Result:**	**Dismissed**

REASONS FOR DECISION

1. On the 3rd of October 2018 the Tasmanian Racing Appeals Board heard an appeal lodged on the 29th of August 2018 against a decision of Stewards to find the appellant guilty of a breach of Australian Harness Racing Rule (AHRR) 259(j) in that he had bet on harness races whilst a disqualified person and as a result their recommencement of his period of disqualification pursuant to AHRR 259A.

2. In support of the appeal, the appellant referred particularly to the transcript of the inquiry and to the documents noted as exhibits (j), (l), (n), and (o) of the Stewards Exhibit list in paragraph 3 below. He also relied on and tendered the following documents:

    a. Report dated 1 March 2017 from harness Racing SA with respect to a Donald Moore;
    b. Media Release from Harness Racing Victoria's Racing Appeals & Disciplinary Board (HRV RAD Board) dated 28 February with respect to David Battye and Boris Devcic;
    c. Decision of the NSW Racing Appeals tribunal of 23 July 2018 with respect to Shannon Wonson;
    d. Report dated 20 September 2016 from Harness Racing Victoria with respect to Daniel Neagoe;
    e. Media Release from the HRV RAD Board dated 9 January 2017.

3. Stewards relied on:
    a. Transcript of Inquiry 9 August 2018
    b. TRAB Appeal No. 09 of 2015/16 – Zeke Slater
    c. Letter to Mr. Slater from Racing Victoria dated 7 April 2016
    d. Racing Victoria Register of Penalties as of June 2018
    e. Bet details spreadsheet – CrownBet
    f. Bet details spreadsheet – Bet 365
    g. Media release – Racing Appeals & Disciplinary Board hearing 9 January 2017
    h. William Hill spreadsheet tendered by appellant
    i. CrownBet spreadsheet tendered by appellant
    j. Letter to Mr. Slater from Chairman of Stewards dated 9 August 2018
    k. Email to Mr. Slater from Chairman of Stewards dated 10 August 2018
    l. Penalty submission from Mr. Slater
    m. National offences for AHRR 259A
    n. Penalty decision letter
    o. Media release dated 28 August 2018
    p. Appellant's Offence Report (printed on 10 September 2018)

4. Stewards also tendered documents from HRA notifying adoption of amendments approved by HRA on the 11th of December 2015, and advertised by Tasracing as coming into effect 1 January 2016. Relevantly this tranche of the amendments included the addition of AHRR 259(i)(j) prohibiting a disqualified person from placing, or having placed on their behalf, or having any other interested in, a bet on an Australian harness race.

5. The following matters were undisputed:

    a. Stewards disqualified Mr Slater on the 15th of December 2015. He appealed and the disqualification was stayed until the appeal was delivered on the 15th of February 2016. The appeal resulted in an eighteen-month period of disqualification being imposed.
    b. That period of disqualification meant that the appellant was a disqualified person for the period 15th February 2016 -14th August 2016.
    c. On the 7th of April 2016 Racing Victoria advised the appellant that his application there for a stable employee licence was denied and that they would be adopting the Tasmanian disqualification pursuant to AR 7A.
    d. Importantly that letter attached a copy of AR 182 which prohibits a disqualified person from betting on any thoroughbred race in Australia.
    e. In May 2016, the appellant was disqualified for 3 months under AHRR 259 (7), for breaching the restriction imposed by AHRR 259 (1)(d) by being present at the stables of a licensed trainer. As a result of that breach Stewards determined to rely on AHRR 259A to recommence the period of disqualification therefore moving its end date to 14 February 2018.
    f. On the 9th of January 2017 the appellant pleaded guilty to breaching AHRR 259 (1)(a) and (g) by associating with a trainer for purposes associated with the harness racing industry and entering training premises on the 19th October 2016. It was noted in that decision that the appellant was disqualified until the 14th February 2018. HRV RAD Board did not (although they properly could have) determine to recommence the appellant

period of disqualification, but ordered that he serve a further 6 months disqualification cumulatively. That took the appellant's period of disqualification to the 14th August 2018.

g. The appellant continued to wager extensively on harness racing in Australia between 15th February 2016 and 4th August 2018.
h. On the 4th of August 2018 the appellant was advised by ORI that his wagering placed him in breach of AHRR 259(1)(j).

The Inquiry

6. On the 9th August 2018 an inquiry was held into breaches of AHRR 259 by the appellant. He was charged with breaching that section in that between 12th March 2016 and 20th August 2017 he placed bets on harness racing via a Bet365 account and between 15th December 2016 and 20th November 2017 he placed bets on harness racing via a CrownBet account. The printouts of transactions on those accounts were provided to the appellant and there was no dispute that he placed the bets. It is worth noting that he could have been charged separately with respect to each of those accounts and therefore face two convictions.

7. The appellant did not dispute that he was at all relevant times a disqualified person for the purposes of AHRR 259 or that he placed the bets.

8. Stewards found the appellant had breached the AHRR 259(j) and adjourned the appeal to allow the appellant to provide submissions on penalty pursuant to AHRR 259(7) and the recommencement of the original period of disqualification pursuant to AHRR 259A.

9. The appellant's written submissions to stewards with regard to penalty relied on the fact the he was not aware that betting whilst disqualified was prohibited. Essentially he argued that he had asked advice of stewards as to the implications of disqualification when disqualified in December 2015. At that time the prohibition on betting while disqualified was not included in the rules. That prohibition was approved by HRA on 11 December 2015, adopted by Tasracing sometime in January 2016 and then advertised in the racing calendar. He continued to bet throughout his various periods of disqualification and asserted he did not know that in doing so he was in breach of the rules; and did not become aware of that until the 21st November 2017 when he received a letter from the Chairman of Stewards. He relied to a lesser extent on whether the amendment to the rule had been properly adopted by Tasracing; an assertion that ORI had an obligation to notify betting organisations that he was disqualified; that ORI had an obligation to advise him of the restrictions placed on disqualified persons; that Stewards had a discretion not to recommend the period of disqualification and ought not have done so. He also relied on the fact that he was addicted to gambling.

10. Stewards advised the appellant by letter dated the 24th of August 2018 that in determining penalty they intended to rely on AHRR 259A and recommence the eighteen-month period of disqualification, commencing on the 4th of August 2017 (being the date of the appellant's last recorded harness wager) and expiring on the

4th of February 2019. That letter set out the matters that Stewards had taken into account in reaching that decision.

The Appeal

11. The appellant lodged an appeal against both conviction and penalty noting the penalty imposed was the recommencement of the disqualification. The grounds of appeal were that the decision of Stewards to invoke the provisions of AHRR 259A were:
    a. *"Manifestly excessive given the circumstances that related to the offending under AHRR 259(j)"*;
    b. *"The mischief described by the stewards in their correspondence that related to the breach of AHRR 259(j) was not of sufficient level to attract a penalty under the provisions of AHRR 259(7)"*; and
    c. *"That when invoking the provision of AHRR 259A the stewards failed to properly take into account all the circumstances submitted by Mr Slater during the inquiry and subsequent written submission on penalty. The failure of the stewards has resulted in an unjust result given that the circumstances supported that Mr Slater's actions was an inadvertent breach."*

12. The appeal was heard on the 3rd of October 2018. The appellant sought to add an additional ground of appeal that stewards had no jurisdiction to invoke rule 259A as it is a precondition of that rule that a penalty be imposed for the primary offence. Stewards did not oppose the adding of the additional ground. It is noted that none of these grounds go to conviction and the appeal proceeded as an appeal against penalty only. It is also noted that the ground added, asserting that the further disqualification was not permissible as no specific penalty was imposed for the breach conflicts with the grounds of the initial application which are premised on the further disqualification itself being the penalty.

13. With respect to the ground of appeal added at the hearing the appellant's representative relied on a number of cases to submit that a penalty for the primary breach must be imposed before stewards can invoke AHRR 259A. It is appropriate to set out AHRR 259A here. It falls within Part 16 of the AHRR which is headed "Disqualified Persons". It provides that *"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"*. While those were examples of cases where a penalty had been imposed and consideration then given as to AHRR 259A they were of limited assistance beyond that.

14. In *Wonson* (23 July 2018 Racing Appeal Tribunal NSW) the Tribunal stated that once a conviction was recorded under Rule 259 that automatically brings into play Rule 259A. They found that the words *"shall unless otherwise ordered"* give the Stewards discretion whether or not to recommence the period of disqualification. That is quite clear from the rule itself and needs no authority to clarify it. The Tribunal also noted Rule 256(6) (in Part 15 headed "Penalties") where it provides

"Although an offence is found proven a conviction need not necessarily be entered or a penalty imposed".

15. The matter of *Donald Moore* (1 March 2017) was also referred to. That served only as an example of a penalty being imposed prior to AHRR 259A being invoked, as did *Battye & Devcic* (28 February 2018) and *Neagoe* (20 September 2016). This argument relies on a characterisation of the Steward's decision at the Inquiry as simply convicting the appellant of the breach of AHRR 259(j), determining not to impose a penalty for that breach and simply proceeding to exercise their discretion to invoke Rule 259A. This Board considers that argument to be a disingenuous one, and one which relies on an overly technical interpretation of the Rules. In the letter of the 24th of August 2018 Stewards use the phrase "in determining penalty" before referring to all the factors taken into account in so determining and then noting the decision to recommence the period of disqualification pursuant to Rule 259A. In the media release issued on the 28th of August 2018 pertaining to that decision it was stated – "Under the provisions of AHRR 259A Mr Slaters disqualification of eighteen months was recommenced from 4 August 2017 and will expire at midnight on 3 February 2019". The Fine and Notification of Penalty form number 6323 referred simply to Details of Action being "recommencement of disqualification pursuant to AHRR 259A backdated to commence 4.8.2017 and expiring 4.2.2019". The appellant's own ground of appeal refers to "Penalty imposed - Recommencement of DQ 4/8/17-4/2/19".

16. It is quite clear from reading all the material that Stewards intended the recommencement of the disqualification to be the penalty. As noted in *Wonson* referred to above, Rule 256 sets out the penalties that may be imposed on a person guilty of an offence under the Rules. Rule 256 includes disqualification. It states that although an offence is found proven, a conviction need not be necessarily be entered or a penalty imposed.

17. It is perhaps unfortunate that the Stewards did not have specific reference to the wording of AHRR 259 and 259A when setting out the course of action they took. Their intention was clear however, and in not imposing a separate penalty for the breach, and simply recommencing the period of disqualification they clearly had regard to the difficulties the appellant was having with his gambling addiction, and that he had been convicted of breaching AHRR 259 previously as well as the other factors set out in the letter of 24th August 2018. Indeed it might be considered that in not imposing a penalty but simply recommencing the disqualification on the third occasion he had breached his obligations, stewards were demonstrating considerable leniency to the appellant.

18. The Board does not accept that it is a necessary precondition of the operation of AHRR 259A that a separate penalty have been imposed for the breach. AHRR 259 operates to extend the power of Stewards and set up an expectation that the disqualification period will recommence unless Stewards determine otherwise. The ground of appeal is rejected.

19. With respect to the other grounds of appeal raised by the Appellant, they can be characterised as the appellant arguing that he didn't know he couldn't gamble as disqualified person, seeking to blame the Office of Racing Integrity (ORI) for not advising him on an ongoing basis what his obligations as a Disqualified person were, and attempting to impose an obligation on ORI to advising betting agencies that he was a disqualified person.

20. It is accepted by this Board that on the date the appellant was initially disqualified, now some three years ago, the prohibition on betting was not part of AHRR 259. However, while there may have been some confusion as to exactly when that amendment came into force, it was at the very latest in force in late February 2016 and available on the various websites used by harness industry participants by then. It was part of a raft of amendments approved by the HRA on the 11th of December 2015. Evidence on this appeal indicated the amendments for approved by Tasracing out of sessions on the 22nd of December 2015 as taking effect on the 1st of January 2016 and the out of sessions approval was formally approved at the Tasracing meeting on the 23rd of February. This Board accepts that evidence.

21. The appellant's appeal of the initial disqualification imposed by Stewards in December 2015 was dismissed on the 15th of February 2016 (No 9 of 2015/16). He clearly was aware that he was a disqualified person at that time and that the stay he had sought from the stewards' decision had lapsed. His obligations as a disqualified person have been continuing and have been set out in the Part 16 of AHRR as it has provided from time to time.

22. Less than two months after his disqualification took effect he was advised by Racing Victoria Limited by letter dated 7th April 2016 that they were refusing to grant him a Stable Employee licence on the basis of the Tasmanian disqualification, and that they were adopting that disqualification in Victoria as they were entitled to do. Importantly that letter stated "The restrictions which apply to a disqualified person are as set out in AR 182 of the Racing Victoria Rules of Racing". A copy of that section was provided to him with the letter. Amongst other prohibitions AR182 prohibits betting on thoroughbred racing in Australia AR182(1)(k) and did at the time the provision was provided to him. At this appeal the appellant's evidence was that he had not read that letter.

23. On the 9th of January 2017 the appellant appeared before the HRV RAD Board. He was found guilty of breaching AHRR 259(1)(a) and (g) by associating with a trainer and entering her registered training premises in October 2016. In imposing penalty the HRV RAD Board noted Rule 259 as having come into effect in December 2015, that the rule was in place "to ensure the integrity of any disqualification is maintained" but determined that they would not recommence the disqualification in full on that occasion. Noting the guilty pleas, and having accepted that the appellant's breach was "inadvertent", the HRV RAD Board ordered a further 6 month period of disqualification to be served cumulatively to the "21 months currently imposed and commencing on the 14th of February 2016", noting that the disqualification would therefore end on the 14th of August 2018. It is noted that the original disqualification was for 18 months from the 14th of

February 2016. His offence record which formed part of the papers at the hearing noted that on the 14th May 2016 he was convicted of a breach of AHRR 259, was disqualified and the period disqualification recommenced which is likely to account for the additional three months of disqualification. In any event no issue was taken by either party with the timeframes of the various periods of disqualification referred to at the appeal hearing.

24. It appears therefore that between December 2015 and when the appellant admits ORI advised him they were aware of his betting activity in November 2017 he was reminded of his status as a disqualified person in April 2016, May 2016, October 2016, and January 2017 by reason of his activity in breach of the ongoing period of disqualification. His own evidence was that he knew in December 2015 that there were prohibitions which applied to disqualified persons. His offence report indicates that he had been active within the racing industry since early 2008.

25. This Board does not accept that the appellant did not know of the restrictions on the activity of disqualified person or that the rules of racing were subject to frequent change and that those restrictions might well change from time to time. Of course, his lack of that knowledge would not provide him with a defence – ignorance of the law is no excuse - but it might have been mitigating. However it is quite clear to this Board that this appellant ought to have known that as a disqualified person his status was very different to an unregistered person for the purposes of any activity associated with racing. It is also quite clear to this Board that registered and disqualified persons bear the onus for ensuring their own compliance with the rules of racing in force from time to time. There is no onus on the regulatory body to inform individual participants of their obligations. As stewards submitted the rules are available on the Harness Racing Australia, ORI and Tasracing websites. Compliance with the obligations that come with the privilege of a licence is an ongoing obligation, and while it is appropriate that Tasracing and ORI take the step of alerting participants when changes are made to the rules, that does not absolve participants of the duty to ensure their own compliance.

26. The final argument raised by the appellant that needs to be addressed is the suggestion that Stewards have an obligation to keep betting agencies informed of the list of disqualified persons from time to time. The appellant relied on the power granted to the Director of Racing in s.7(2) of the Racing Regulation Act 2007 to support this argument. The Board does not accept this submission. The effect of s.7 is permissive not mandatory. The fact that the Director may do something does not mean he or she must.

27. The Board is not persuaded that the Appellant has made out his grounds of appeal, however the Board is not a purely appellate body and has the powers set out in s.34(1)(a) to affirm, vary or quash the decision the subject of the appeal. Appellants in this jurisdiction should be aware that as well as reducing penalty it is open to this Board to increase penalties, even where the industry participant has asserted the original penalty imposed by Stewards was excessive.

28. While the appellant did not plead guilty at the inquiry, he was convicted and the evidence against him was incontrovertible. He had clearly breached the conditions of his disqualifications and not for the first time. At both the Inquiry and the Appeal he sought to claim lack of understanding or knowledge of his obligations, not for the first time. He placed responsibility on others for his breach, not for the first time.

29. The manner in which the appellant has comported himself since the first period of disqualification was imposed has demonstrated no insight into his own responsibility for the situation he finds himself in and no improved ability to comply with the rules pertaining to participants. There were a number of points in time throughout his disqualification at which the appellant ought to have sought out the rules setting out what he may and may not do. His evidence was that as long ago as April 2016 when Racing Victoria provided him with a copy of the rules applicable to a disqualified person, he chose not to read that.

30. It ought go without saying that a licence to participate in the racing industry is a privilege accorded those who are able to comply with its rules. Clearly this appellant needs reminding of that.

31. This Board considered exercising its power to impose a specific penalty for the breach of AHRR 259, in addition to the recommencement of the initial period of disqualification. It did so on the basis that it considered that Stewards had been lenient in not doing so in the context of the appellant's repeated breaches of the conditions of his disqualification and ongoing excuse of ignorance of his obligations. Ultimately the Board determined not to increase penalty, not because a further penalty would not have been warranted, but because that possibility had not been raised at the hearing of the appeal and to do so without allowing the appellant the opportunity to be heard as to that may have been a denial of natural justice.

32. The appeal is dismissed and the decision of Stewards affirmed. The appellant will forfeit his deposit and pay the costs of the transcript.