RACING APPEALS AND DISCIPLINARY BOARD

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DECISION

RACING VICTORIA STEWARDS

and

DARREN WEIR

Date of Hearing	6 February 2019
Panel	Judge John Bowman (Chair) Brian Forrest (Deputy Chair) Josh Bornstein (Deputy Chair)
Appearances	Jeffery Gleeson QC, instructed by Simonette Foletti, appeared on behalf of the Stewards. Patrick Wheelahan, instructed by Tony Hannebery, appeared on behalf of Darren Weir.
Charges 1 to 3	AR 175(hh)(ii) *The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise:* *(hh) Any person who:* *(ii) has in his possession, any electric or electronic apparatus or any improper contrivance capable of affecting the performance of a horse in a race, official trial, jump-out or training gallop.* *For the purposes of this provision where an electric or electronic apparatus or any improper contrivance capable of affecting the performance of a horse in a race, official trial, jump-out or training gallop.*
Summary	The summary of the particulars of each of the three charges being that, on or about 30 January 2019, Mr Weir was in the possession, at a Miners Rest premises used in relation to the training or racing of horses, of an electric or electronic apparatus designed to deliver an electric shock.
Charge 4	AR 175(f) Failure to give evidence at an inquiry **Withdrawn**
Charge 5	AR175(p) Failure to comply with a direction of the stewards [Alternative to Charge 4] **Withdrawn**

Charge 6	AR 175A *Any person bound by these Rules who either within a racecourse of elsewhere in the opinion of the Principal Racing Authority (or the Stewards exercising powers delegated to them) has been guilty of conduct prejudicial to the image, or interests, or welfare of racing may be penalised.*
Summary	The summary of the particulars being that Mr Weir's conduct, in possessing three electric or electronic apparatus, which has been widely reported in the media, and his failure to proffer an explanation to the stewards, was prejudicial to the image, interests or welfare of racing.
Plea	Charges 1 to 3 – no contest (treated as plea of 'not guilty) Charges 4 and 5 – withdrawn Charge 6 – no contest (treated as plea of 'not guilty)
Penalty	In relation to charges 1 to 3 (inclusive) and charge 6, the Board finds the charges proved. Mr Weir is disqualified for a period of four years. The period of disqualification is to commence immediately, Wednesday 6 February 2019.

Grace Gugliandolo
Registrar
Racing Appeals and Disciplinary Board

TRANSCRIPT OF

PROCEEDINGS

RACING APPEALS AND DISCIPLINARY BOARD

HIS HONOUR JUDGE J. BOWMAN, Chairman
MR B. FORREST, Deputy Chairman
MR J. BORNSTEIN, Deputy Chairman

EXTRACT OF PROCEEDINGS

PENALTY DECISION

RACING VICTORIA STEWARDS

- and -

DARREN WEIR

RACING VICTORIA CENTRE, FLEMINGTON

WEDNESDAY, 6 FEBRUARY 2019

MR J.J. GLEESON QC (instructed by Ms S. Foletti) appeared on behalf of the RVL Stewards

MR P.J. WHEELAHAN (instructed by Tony Hannebery Lawyers) appeared on behalf of Mr D. Weir

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CHAIRMAN: The following is the ruling of Mr Forrest and myself. Mr Bornstein will give a separate ruling.

Mr Darren Weir, you are not contesting three breaches of AR 175(hh)(ii) of the Rules of Racing and one of AR 175A. In essence, in relation to the breach of AR 175(hh)(ii), you are not contesting that you had in your possession electric or electronic apparati capable of affecting the performance of a horse in a race, jump-outs or the like.

In relation to the breach of AR 175A, you are not contesting a charge of conduct prejudicial to the image, interests or welfare of racing. The charges involve some overlap and concern the one course of conduct.

There are three things that Mr Forrest and I would emphasise at the outset:
(1) this is a case of possession and not use of jiggers, the electronic apparati;
(2) we are not bound by what has effectively been agreed between yourself and the Stewards as to a penalty of four years' disqualification. We can go higher or lower. We take into account what the Stewards say about penalty.
(3) This is not necessarily the end of the matter. If further information comes to hand which leads to the laying of further charges, they can be heard.

The electric or electronic apparatus involved is a double-pronged handheld device known as a "jigger" which effectively conveys a nasty electric shock type of sensation when pushed against a horse, usually in the neck region. This is often done in conjunction with some other event or means of handling, so

that the horse comes to associate such event and/or handling with the nasty electric shock. The end result is that it is anticipated that the horse will put on a burst of increased speed. Such devices have long since been banned and have been the subject of rulings by this Board and its predecessors. Apart from the dishonesty and cheating that can be involved, the very important aspect of animal welfare is at the forefront of modern thinking.

In the present instance, these jiggers were seized at your residence at Forest Lodge, Miners Rest, near Ballarat, where what could be described as your principal stables are located, and they were seized in a raid on 30 January 2019. We emphasise again the charges laid against you are charges of possession of the jiggers, not using them, but that still leaves you facing very serious charges. However, it is a distinction to be borne in mind.

In short, we find the charges pursuant to AR 175(hh)(ii) proven.

When dealing with Mr Paul Preusker, licensed trainer, on a charge of both possessing and using a jigger back in early 2007, the Board referred to the practice, possession and use of jiggers as being abhorrent, and a practice that tarnishes the image of the racing industry. It is still abhorrent. What may have changed is that the emphasis on animal welfare is now even greater than it may have been 12 years ago. Surely those in the industry are aware of that. I say yet again we appreciate that you are not charged with the use of the jiggers, but even possessing devices capable of inflicting such cruelty is a very serious offence indeed and it warrants stern punishment.

For many people, it is sad that it has come to this. You are a 48-year-old man who has completed a famous rags-to-riches fairytale rise in the racing world. You come from Berriwillock, a very small Mallee town. You left school at the age of 15. You worked as a horse breaker, farrier, trackrider and strapper. You started training in 1995 at the age of 25 years. Within a decade, you were the leading country trainer, and whilst long based in Ballarat and to a lesser extent Warrnambool, you rapidly rose to become premier metropolitan trainer and went on to become the Commonwealth training record holder. Subsequently, your rate of winners went on to improve that even further.

Until a week ago, you were what could be described as a leviathan trainer - hundreds of horses, chasing winners from the big city carnivals to the once-a-year country meetings, owners numbering in the thousands, a staff of 150 and a number of training establishments. To cap all of this, you always appeared on television coverage as a down-to-earth, affable, approachable, no airs or graces, country trainer. You rose from the depths of the Mallee to be Australia's leading trainer. All of this makes your fall all the sadder and more tragic. Your knowledge of your horses and your amazing recall astonished people. Now you will be remembered for possessing instruments of cruelty, instruments associated with high-level cheating, although as stated many times, you are not charged with use.

Your record is a comparatively good one. There are numerous race-day offences of no great magnitude - failing to bring colours, failing to scratch a

horse on time, late rider notifications and numerous others of that nature. There has been no charge of any substance that the Stewards wish to bring to our attention for 15 years.

In relation to penalty for the possession charge, we bear in mind the desirability of parity of sentencing. Cases such as this are those of Paul Preusker, Holly McKechnie and that of Nicole Boyd. Each faced multiple charges, including use of jiggers. In the case of Preusker and McKechnie, the charges involved the use of jiggers on the racetrack during training. Further, Preusker pleaded not guilty and fought the charges unsuccessfully before this Board and on appeal. On appeal, the penalties imposed by this Board were repeated and stood. The penalties imposed for possession were as follows: Preusker, disqualified for two and a half years; McKechnie, disqualified for two years; Boyd, disqualified for 18 months.

We also accept that what you have done has focused the spotlight of public and media attention on the industry and focused it in a most unfavourable way. Great damage is done to its reputation when its most prominent trainer is found in possession of prohibited implements associated with animal cruelty and cheating. We certainly bear that in mind.

This is clearly a substantial breach of AR 175A. To adopt the wording used by the Supreme Court of New South Wales in *Waterhouse v Racing Appeals Tribunal*, there is public knowledge of your conduct; the tendency is to prejudice racing generally, as distinct from your own reputation; and your

conduct is capable of being labelled as blameworthy. In short, as stated, we find the charge under AR 175A also made out, as we do with the possession charges.

The Stewards seek what could be described as a global penalty of four years' disqualification on the remaining charges - Charges 1, 2, 3 and 6, being the possession of three jiggers and the conduct prejudicial to the image, interests and welfare of racing. No material submission or opposition to this penalty was advanced on your behalf and it is to be remembered that the laying of criminal charges by the police is still a possibility.

We are cognisant of the impact that a lengthy period of disqualification will have upon you.

Weighing all of this up, Mr Forrest and I are of the view that a global period of four years' disqualification is an appropriate penalty, and that is the penalty that we impose. Mr Bornstein has a different opinion which he will now outline.

MR BORNSTEIN: Thank you. I accept and adopt the facts as recounted by Judge Bowman on behalf of my colleagues and the decision to uphold the charges. But with respect to my colleagues, I differ in respect of the appropriate penalty in this matter.

Although the Stewards and Mr Weir have reached a common position as to

penalty, as observed by Judge Bowman, the Board is not bound to adopt that common position. Previous analogous cases are a guide but do not also bind the Board in the disposition of a particular case, as each case must be determined on the facts and on the merits, and this case has features which distinguish itself from previous cases.

In this case, I have determined that I would impose a penalty of two and a half years' disqualification in respect of Charges 1 to 3, which I will call the possession charges, and in addition, a penalty of two and a half years for Charge 6, a charge of engaging in conduct prejudicial to the interests of racing, the penalties to be served cumulatively, that is, a total of five years.

I have taken into account the submissions of Mr Gleeson for the Stewards and Mr Weir's cooperation with an expeditious hearing of this matter. In some senses, as Mr Gleeson has noted, the circumstances of this case are unprecedented. Mr Weir is arguably the most successful trainer in Australia, operates the largest training establishment in this country and has achieved enormous prominence.

In these circumstances and in the context of very serious charges that have been upheld, the damage to the reputation of the horseracing industry is enormous and of great concern. I take into account that Mr Weir has pleaded no contest to the charges and not offered any explanation for his conduct. Such circumstances also in my opinion harm the reputation of the industry and are relevant in particular to Charge 6.

The charges as observed by Judge Bowman are of a most serious nature and must be punished accordingly. The punishment must be just and provide a deterrent to Mr Weir personally not to repeat such conduct again. Even more importantly, the punishment must provide an appropriate general deterrent that is heeded loudly and clearly throughout the industry by all licensed persons. A penalty of five years' disqualification would also reflect this Board's strong denunciation of Mr Weir's conduct in this case.

In reaching this conclusion, I have also taken into account Mr Weir's record. There are no previous analogous matters which bear on this matter. I have also taken into account the significant effect on Mr Weir of such a penalty and those around him, including his staff.

CHAIRMAN: The end result of course, to make it quite clear, is that the penalty imposed is four years' disqualification.
