

STEWARDS DECISION

OFFICE OF RACING INTEGRITY

and

MR BEN YOLE

Date of Decision: 30 January 2025

Stewards Panel: Larry Wilson; Barry Delaney

Respondent: Mr Ben Yole

Rule(s): Australian Harness Racing Rule 218A

(1) A person shall not mistreat a horse.

(2) For the purposes of this rule “mistreat” means to abuse or treat a horse badly, cruelly or unfairly.

Australian Harness Racing Rule 196D(1)

A person shall not within eight (8) clear days of the commencement of a race administer, attempt to administer or cause to be administered an intra-articular injection to a horse nominated for that race.

Charge 1: The Independent Stewards Panel charge you with breaching AHRR 218A(1) of the Rules (in conjunction with AHRR 218A(2)). The Particulars of the Charge are:

1. You are, and were at all relevant times, including between 1 April 2020 and 1 April 2023, a trainer licensed by Office of Racing Integrity Tasmania and a person bound by the Rules.
2. Between approximately 1 April 2020 and 1 April 2023, at your licensed stables in Sidmouth, Tasmania, you systematically

abused and / or treated horses badly, cruelly and / or unfairly, thereby mistreating them, by participating in the carrying out a prerace regime on horses on race day whereby, on your instructions:

- a. The horse was fitted with head gear, blinds and earplugs, and tied to a pole in the vicinity of the rear wall of the wash bay;
- b. The horse's blinds and earplugs were pulled, thereby allowing them to see and hear;
- c. Mr Tim Yole would then wave a driving whip with a plastic bag attached to it to exacerbate the noise of the whip, striking the wall of the wash bay and waving the whip in the vicinity of the horse's rear legs while yelling loudly and making excessive noise;
- d. The horses became frightened, and at times responded by shifting erratically causing them to make contact with the rear wall and the tie up pole.

Plea: Guilty

Decision: Guilty

Penalty: 3 year Disqualification

Charge 2: The Independent Stewards Panel charge you with breaching AHRR 196D(1) of the Rules. The Particulars of the Charge are:

1. You are, and were at all relevant times, including between 1 April 2020 and 1 April 2023, a trainer licensed by Office Racing Integrity Tasmania and a person bound by the Rules.
2. As at 26 November 2022, you were the registered trainer of Jawbreaker.
3. On 26 November 2022, at your licensed stables in Sidmouth, you administered an intra-articular injection to the horse Jawbreaker into the hocks or stifles.
4. The horse Jawbreaker was nominated in and raced on:
 - a. 27 November 2022 in race number 4 at Launceston; and
 - b. 3 December 2022 in race number 7 at Launceston.
5. The administration of the intra-articular injection to Jawbreaker in particular 3 above occurred within 8 clear days of a race at the Tasmanian Harness Racing Meeting at Launceston on 27 November 2022, further and alternatively, a race at the Tasmanian Harness Racing Meeting on 3 December 2022, in breach of AHRR 196D(1).

Plea: Not Guilty

Decision: Not Guilty

Penalty: N/A

Charge 3: The Independent Stewards Panel charge you with breaching AHRR 196D(1) of the Rules. The Particulars of the Charge are:

1. You are, and were at all relevant times, including between 1 April 2020 and 1 April 2023, a trainer licensed by Office Racing Integrity Tasmania and a person bound by the Rules.
2. As at 2 December 2022, you were the registered trainer of Jawbreaker.
3. On 2 December 2022, at your licensed stables in Sidmouth, you administered an intra-articular injection to the horse Jawbreaker into the hocks or stifles.
4. The horse Jawbreaker was nominated in and raced on 3 December 2022 in race number 7 at Launceston.
5. The administration of the intra-articular injection to Jawbreaker in particular 3 above occurred within 8 clear days of a race at the Tasmanian Harness Racing Meeting at Launceston on 3 December 2022, in breach of AHRR 196D(1).

Plea: Not Guilty

Decision: Guilty

Penalty: \$5,000.00 Fine

Background

1. Following release of the final report of Mr Ray Murrphy dated 28 November 2023 (the Final Report), the Independent Stewards Panel (**ISP**) was appointed on 22 February 2024, and the Director of Racing, Mr Robin Thompson, issued a direction to the ISP to conduct an investigation pursuant to Rule 181 of the Australian Harness Racing Rules (**AHRR**).
2. Part B of the direction was to investigate specific findings outlined in Mr Ray Murrphy's Final Report, including '*Finding 7*' and '*Finding 10*' which are outlined below:
 - Finding 7 - Mistreatment of horses in the wash bay on race days at Yole Sidmouth property: The investigation determined that there has been non-compliance with AHRR 218A(1) by trainer Ben Yole and the stable foreman Tim Yole in that the evidence supports that they mistreated horses in the wash bay at the Sidmouth property on race mornings regardless of whether the horses were actually contacted with the whip.
 - Finding 10 - Administration of intra-articular injections to horses within eight clear days of the race: The investigation determined that there has been non-compliance with AHRR 196D(1) by trainer Ben Yole in that the evidence supports that he did administer intra-articular injections to horses nominated to race within eight clear days of the commencement of their races.

3. As part of their investigation the ISP conducted interviews with industry participants relevant to the matters outlined in Part B of the direction. Once this process was concluded, the ISP conducted formal inquiries on the following dates: 14 & 15 August, 21 & 22 August and 9 & 10 September 2024.
4. In conducting its investigation in respect of '*Finding 7*' and '*Finding 10*' the ISP carefully considered and analysed evidence from:
 - a. Ms Lily Blundstone;
 - b. Mr Sam Clothworthy;
 - c. Mr Malcolm Jones;
 - d. Ms Jenna Griffiths;
 - e. Ms Isabelle Wynwood;
 - f. Ms Tayla Szczypka;
 - g. Mr Corey Bell;
 - h. Mr Cody Crossland;
 - i. Mr Ben Yole; and
 - j. Mr Tim Yole.
5. On 23 September 2024, Mr Ben Yole jointly filed written submissions with Mr Tim Yole to the ISP addressing the allegations against them. In respect of Mr Ben Yole, these submissions:
 - a. addressed the evidence given to the ISP by the witnesses that came before it;
 - b. submitted there was no case to answer in respect of allegations relating to:
 - the care and welfare of the horse "Blings on Fire";
 - the systematic race day administration of oral pastes to racehorses between 1 April 2020 and 1 April 2023;
 - the systematic administration of intravenous injections to racehorses between 1 April 2020 and 1 April 2023; or
 - direction of illegal race tactics to drivers of racehorses trained by Mr Ben Yole;
 - c. accepted there was a case to answer in respect of the treatment of horses in wash bays at Mr Ben Yole's Sidmouth property between 1 April 2020 and 1 April 2023; and
 - d. accepted there was a case to answer in respect of intra-articular injections to racehorses between 4 November 2020 and 1 April 2023, and specifically prior to the Golden Apple race on 3 December 2022.
6. On 30 September 2024, the ISP charged Messrs Ben Yole and Tim Yole with a breach of AHRR 218A(1) for the systematic mistreatment of horses between 1 April 2020 and 1 April 2023.
7. On 7 October 2024, in light of the charges against Messrs Ben Yole and Tim Yole, the Director of Racing stood down both Messrs Ben Yole and Tim Yole under AHRR 90(7).

8. On 18 October 2024, the ISP issued Mr Ben Yole with two charges for breaches of AHRR 196D(1) for the administration, on 26 November 2022 and 2 December 2022, of an intra-articular injection to Jawbreaker within 8 clear days of race which the Jawbreaker was nominated in.
9. On 12 November 2024, the legal representative for Mr Ben Yole informed the ISP that, amongst other things, he would plead guilty to the charge alleging a breach of AHRR 218A(1) and not guilty to the charge alleging a breach of AHRR 196D(1).
10. On 21 November 2024, the ISP wrote to Mr Ben Yole's legal representative acknowledging his intention to plead guilty to the charge alleging a breach of AHRR 218A(1) and requested written submissions as to penalty on or before 29 November 2024.
11. Following a number of extensions of time, on 13 December 2024, the legal representative for Messrs Ben Yole and Tim Yole filed joint written submissions to the ISP in relation to the appropriate penalty in respect of the pleas of guilty to the Charges under AHRR 218A(1) of the Rules (in conjunction with AHRR 218A(2)).
12. On the same date, being 13 December 2024, the legal representative for Mr Ben Yole filed written submissions to the ISP pleading not guilty to the two charges under AHRR 196D(1) and providing reasons and further evidence to support his plea.
13. On 13 January 2025, the ISP:
 - a. accepted Mr Ben Yole's plea of guilty in respect of the alleged breach of AHRR 218A(1) (Charge 1);
 - b. determined that Mr Ben Yole was not guilty in respect the alleged breach of AHRR 196D(1) on 26 November 2022 (Charge 2); and
 - c. determined that Mr Ben Yole was guilty in respect the alleged breach of AHRR 196D(1) on 2 December 2022 (Charge 3).

a copy of this decision is **Attachment A** to this decision.

14. On 17 January 2025, the legal representative for Mr Ben Yole filed written submissions to the ISP in relation to the appropriate penalty in respect of the breaches which have been found proven.

Penalty Approach

15. The ISP is cognisant of the following Sentencing Principles:
 - a. that penalties are designed to punish the offender for his/her wrongdoing. They are not meant to be retributive in the sense that the punishment is disproportionate to the offence, but the offender must be met with a punishment;
 - b. in the harness racing context, a primary focus is to ensure that any penalty imposed has the effect of deterring the charged individual, as well as others

- from committing similar offences through the consideration of both general and specific deterrence; and
- c. in determining what, if any, penalty is to be imposed, the ISP endeavours to reach a proportionate balance between: the public interest; the interests of the offender; the interests of the industry as a whole including the integrity and perception of integrity; the seriousness of the offending; and any aggravating/mitigating factors.

Respondents Penalty Submissions

Charge 1

16. In his submissions to the ISP of 13 December 2024, Mr Ben Yole indicated that the following factual matters should form the basis upon which the ISP ought to impose a penalty on him for the breach of AHRR 218A(1):
 - a. the 'razzing' occurred approximately once a week;
 - b. it occurred for somewhere between a year and a year and a half;
 - c. the 'razzing' was voluntarily desisted by Ben and Tim Yole of their own volition, not because of detection by authorities;
 - d. no horse was harmed;
 - e. the 'razzing' of each horse was of seconds duration on each occasion;
 - f. no horse was struck because of the 'razzing'; and
 - g. the level of mistreatment is properly to be characterised as very low.

17. He further directed the ISP to the NSW Harness Penalty Guidelines, noting that:

"The NSW Harness Penalty Guidelines inform that where a breach AHRR 218(A) is proven and "there is no injury to the horse" a fine of not less than \$2,000 ought to be imposed"

18. As for similar cases, Mr Ben Yole cited the following cases and presented them to the ISP as matters which provide precedential value to the ISP's determination of penalty for his offending:

- a. Sarah & Mel Cotton: A trainer and stablehand found guilty of AR228 (b) - conduct detrimental to the interests of racing - improper conduct.

The circumstances of the conduct was that Mel Cotton had made contact to the rump of a horse with a piece of poly pipe on a number of occasions trying to entice the horse to enter a pool. The contact made was considered of low impact.

They were fined \$400 and \$200 respectively, with the penalty suspended subject to both not re-offending against the same or similar rules in that period.

- b. Alex & Jarrod Alchin: Trainers found guilty of breaching AHRR 213 – a person shall not by use of harness, gear, equipment, device, substance or other thing inflict suffering on a horse.

The circumstances of the conduct was that Jarrod Alchin activated deafeners and applied a driving whip to a horse whilst the horse was wearing a heavy rug and tethered in a washbay. There was no evidence that the horse had been injured.

Jarrold Alchin was fined \$5,000 and his trainers licence suspended for 6 months, that suspension being fully suspended for 12 months. Alex Alchin was fined \$3,500 and his trainers licence suspended for 6 months, that suspension being fully suspended for 12 months.

- c. Wade Rattray: A barrier attendant found guilty of AR 175A – conduct prejudicial to the image of racing.

The circumstances of the conduct was that whilst handling a horse behind the barriers prior to the start of a race, Mr Rattray struck the horse with a clenched fist in the vicinity of the head.

Mr Rattray was fined \$1,500.

19. Mr Ben Yole's submissions also highlighted his personal background, noting that at 40 years of age, he has been actively engaged in the harness racing industry since he was 10 and has maintained a licence in the harness racing industry since turning 16. Additionally, he has achieved considerable success, securing 7 Tasmanian Trainers' Premierships and 2 Australian Trainers' Premierships.
20. Additionally, it was noted that Mr Ben Yole has previously been found guilty on four occasions of presenting a horse for a race with arsenic levels in excess of the allowable threshold; twice in Victoria and twice in Tasmania.
21. The submissions were also accompanied by a character reference from Mr Ben Yole's father, Mr Wayne Yole. This reference attests to Mr Ben Yole's professional achievements, his compassionate nature, and his generous spirit. Mr Wayne Yole describes his son's dedication not only to advancing his own career but also to contributing positively to the wider harness racing community. He highlights Mr Ben Yole's commitment to providing employment opportunities for those facing hardships and his role in guiding emerging young drivers. Moreover, it is noted that the adverse publicity arising from the Murrinh report and subsequent independent inquiry has had a negative effect on Mr. Ben Yole's mental well-being, financial situation, and family life.
22. In the context of the ISP's assessment of the appropriate penalty for his offending, Mr Ben Yole submitted that:
- a. the concept of specific deterrence should carry little, if any, weight, as the practice that led to the relevant charge was ceased a considerable time ago;
 - b. his prompt disclosure of the practices that resulted in the charge, along with his admission of guilt following the charge, should be duly considered;
 - c. the delay in the laying of the relevant charge, owing to the time taken to investigate other allegations, should be taken into account;
 - d. the repetition of the practice which led to the charge gives rise to the consideration of a suspension of licence. However, the facts do not

warrant a punitive approach that would result in either a disqualification or a warning off; and

- e. the 'enormous price' he has already paid up to this point is a significant factor that must be taken into consideration. He notes, in this regard, that he has expended over \$160,000 due to the two warning off notices issued in relation to this matter.

23. Mr Ben Yole contended that the appropriate penalty for his breach of AHRR 218A(1) is a 24-month suspension, with 20 of those months suspended.

Charge 3

24. In his submissions to the ISP of 17 January 2025, Mr Ben Yole indicated that there is limited precedential guidance as to penalty in respect of the charge under AHRR 196D(1), and further submitted that in respect of this charge the ISP must guard against erroneously taking into account matters that are beyond the breadth of AHRR 196D(1) in accordance with the principle of *R v De Simoni*.¹

25. In relation to cases that provide precedential value, Mr Ben Yole cited the following

- a. Phillip Henwood: A trainer found guilty of a breach of AHRR 196D(1).

The circumstances of the conduct was that as Mr Henwood presented a horse to the swab station for a trial blood prior to the trial, he disclosed that the horse had received injections of kenacort into his joints approximately 5 days prior to the trials.

Mr Henwood was fined \$1,000.

- b. Emma Stewart: A trainer found guilty of two breaches of AHRR 196B(1) – administering an injection to a horse within one day clear of a race that the horse is nominated for.

The circumstances of the conduct was that Ms Stewart was found administering and attempting to administer an intravenous drip to horses within one day clear of the relevant race meeting.

Ms Stewart was fined \$5,000 for each charge.

26. Further, Mr Ben Yole directs the ISP to interstate penalty guidelines, submitting that because breaches of AHRR 196A and 196B are classified as serious offences under the Harness Racing Victoria's Serious Offence Penalty Guidelines, and a breach of AHRR 196D is not listed as a serious offence, it follows that a breach of AHRR 196D(1) should be regarded as less severe than breaches of AHRR 196A and 196B. In this vein, he contends that this perspective is consistent with the NSW Penalty Guidelines, which provide penalty guides for AHRRs 196A, 196B, and 196C but notably exclude AHRR 196D, reinforcing the argument for its comparatively lesser seriousness.

¹ (1981) 147 CLR 383.

27. As for the *De Simoni principle*, Mr Ben Yole refers to various cases which support its application and accordingly contends that in coming to a decision in respect of penalty for the breach of AHRR 196(D)1, the ISP cannot consider the nature of the substance injected, and must penalise on the basis that the substance was in fact not a prohibited substance.

Penalty Discussion

28. The ISP has carefully considered the relevant evidence in this matter and each of the matters and factors raised on behalf of Mr Ben Yole in his submissions of 13 December 2024 and 17 January 2025 as to penalty.

Charge 1

29. The ISP first wishes to underscore the gravity of a breach of AHRR 218A(1). The mistreatment of horses within the Tasmanian harness racing industry is of the utmost concern. The industry's foundation is built upon integrity and public confidence, and any behaviour that involves the mistreatment of horses for perceived performance gains is entirely at odds with the standards expected within the industry and the general public and should be met with appropriate consequences.
30. In setting an appropriate penalty, the ISP is satisfied that systematic "razzing" occurred in the stables' wash bay for a period of at least 12-18 months. The razing involved a process instructed by Mr Ben Yole, whereby Mr Tim Yole would:
- a. tether horses to a pole facing the rear wall;
 - b. equip the horses with gear, such as blinds and/or earplugs, and abruptly remove them, to suddenly expose the horses to sight and sound;
 - c. escalate the unsettling environment for the horses by:
 - loudly yelling;
 - forcefully striking a metal wall with his hand; and
 - waving a whip with a plastic bag attached to create a crackling sound.

(the Regime)

31. The Regime prompted the horses to become fractious and move, but the confined space and the obstructions that surrounded the horses posed a substantial risk of harm in attempting to evoke the horses natural fear response. The ISP heard evidence that at times the horses would make contact with the rear wall and the tie up pole due to the erratic movements created by the Regime.
32. Mr Tim Yole and Mr Ben Yole ceased the Regime after approximately 12-18 months once they formed the opinion that it did not have the desired effect on the horses. While they do not admit that the Regime was cruel, they admit that it was a bad look and that they would not have performed the Regime in the presence of Stewards.
33. Mr Ben Yole's directions to mistreat horses in the present case is significant. Although he asserts that no horse sustained injuries, the ISP is of the view that

the seriousness of the conduct is more appropriately assessed by identifying the departure from the accepted standards of the Harness Racing industry in respect of a licensed trainer's paramount duty to protect animal welfare, and the potential for harm to a significant number of horses created by the Regime that Mr Ben Yole was party to.

34. It is accepted by Mr Ben Yole that the mistreatment involved a systematic weekly regime over 12-18 months, where a significant number of horses were confined to a restricted area and agitated for the purposes of 'switching them on' before a race. The ISP notes that he has shown insight into his conduct in the submissions provided on his behalf on 13 December 2024.
35. The ISP does not accept the submission that the mistreatment should be properly characterised as low, and finds that the regime constituted horse mistreatment of a serious nature, particularly given the systematic approach to the practice, the duration of the Regime and the significant number of horses which endured it.
36. The ISP recognises the importance of maintaining sentencing uniformity regarding this case and those involving similar facts and circumstances. The ISP has carefully considered the cases which Mr Ben Yole has submitted as being of precedential significance in respect of the charge under AHRR 218A(1). However, upon review, the ISP has determined that the circumstances of those cases bear minimal resemblance to the present matter. The referenced cases are distinguished either by a lesser degree of mistreatment and/or pertain to a solitary incident of mistreatment to a single horse.
37. In contrast, the ISP considers that, while different in some key aspects, the penalty decision of the Victorian Racing Tribunal in the case of Darren Weir is of more relevance and assistance in this matter. Similar to the admitted conduct before the ISP, that matter involved:
 - a. mistreatment of horses in a confined area;
 - b. the mistreatment of multiple horses; and
 - c. a systemic approach to conduct that was in the breach of the Rules of Racing.
38. The ISP does recognise that the matter of Weir involved the use of an electronic apparatus, known as a 'jigger', by a trainer on three separate horses while they were tied to a treadmill, which was significant and did not form part of the conduct found proven by the ISP in this matter. On the other hand, however, there are aspects of the conduct found proven in the present case which are more significant and severe than the conduct in question in the matter of *Weir*, in particular, the repetitiveness of the mistreatment, which occurred over a systematic and sustained period. The ISP recognises that Weir was found guilty of three charges of using a jigger (AR 231(2)(a)), three charges of animal cruelty (AR 231(1)(a)), and one charge of improper or dishonourable conduct in connection with racing (AR 229(1)(a)). Weir received a disqualification of 2 years for each charge, and each penalty was to be served concurrently. The length of that penalty was determined having regard to the fact that Mr Weir had already received and served a four year disqualification for the possession of a jigger.

39. As mentioned above, Mr Ben Yole submitted that the NSW Harness Penalty Guidelines in respect of AHRR 218A(1) are relevant to this matter. The relevant guidelines state that an offence in which there is:
- a. no injury to a horse – a starting point of no less than a \$2,000 fine;
 - b. injury or suffering to a horse – a starting point of no less than a \$4,000 fine and/or a suspension of licence for not less than 6 months; and
 - c. death of a horse – a starting point of no less than 2 years disqualification of licence.
40. The ISP has considered the guidelines in the assessment of penalty in this matter, however note that the guidelines, which are not binding, are premised on the act of a single event of mistreatment to a solitary horse.

Charge 3

41. The factual matrix relevant to the finding against Mr Ben Yole for his breach of AHRR 196D(1) on 2 December 2022 is detailed in the ISP's determination of 13 January 2025.
42. In respect of determining the appropriate penalty for Mr Ben Yole's breach of AHRR 196D(1) the ISP has carefully considered the cases to which Mr Ben Yole referred in his submissions of 17 January 2025.
43. The ISP acknowledges that there are few, if any cases that offer precedential value relevant to the facts of this case. Regarding the case of Mr Phillip Henwood's breach of AHRR 196D(1), the ISP observes that the circumstances differ significantly from the current matter. Specifically, Mr Henwood voluntarily disclosed his breach, and as a result of such disclosure, the horse in question did not partake in the nominated trial.
44. Likewise, the case of Ms Emma Stewart's contraventions of AHRR 196B(1) is also distinguished in that they involved a breach which was promptly admitted to, albeit Ms Stewart was caught in the act of administering and attempting to administer injections to horses one day clear of a nominated race. Further, the horses in question did not compete in the relevant races following the breaches.
45. In saying that, the ISP has recognised the serious nature of Ms Stewart's breaches, in that they occurred prior to sanctioned races as opposed to trials, as was the case in the Henwood matter. Such circumstances are somewhat analogous to the facts under consideration in the current matter, as Mr Ben Yole's conduct constituting the breach occurred in circumstances where the relevant horse, Jawbreaker, was nominated, and did, race in the renowned Golden Apple final.
46. The ISP does not accept Mr Ben Yole's assertion that simply because the NSW Penalty Guidelines do not provide penalty guidance for breaches of AHRR 196D(1) it should be considered less seriously than a breach of AHRRs 196A, 196B and 196C. Moreover, while the ISP does accept that AHRR 196D(1) is

not expressly listed in the Harness Racing Victoria Serious Offence Penalty Guidelines, the ISP doubts the utility of such guidelines given they exclude certain provisions, including AHRR 214, 221 and 222, each of which are uncontroversially serious.

47. In any event, the ISP has given consideration to the abovementioned national guidelines in determining the relevant penalty for Mr Ben Yole's breach of AHRR196D(1), however the ISP seeks to ensure that the seriousness of a breach of AHRR 196D(1) is not downplayed, particularly given the risks that such breaches pose to equine health.
48. In respect of Mr Ben Yole's submission as to the application of the *De Simoni principle*, the ISP notes that principles derived from the criminal law are not strictly binding in the context of civil disciplinary matters, but nonetheless confirms that in reaching a decision as to an appropriate penalty, the ISP has not proceeded on the basis or assumption that the substance the subject of the intra-articular injection was a prohibited substance. Rather, this is a case of a prohibited method of administration, having particular regard to its timing relative to race day.

Mitigating factors

49. In weighing up all of the circumstances of Mr Ben Yole's offending, the ISP has taken into consideration all relevant mitigating factors, including Mr Ben Yole's:
 - a. commitment and contributions to the Tasmanian harness racing industry;
 - b. previous record with respect to this type, or similar offending (although, noting that he has in fact been found guilty for three counts of breaching AHRR 190(1) in Victoria, as opposed to two counts as submitted);
 - c. character reference from Mr Wayne Yole;
 - d. co-operation with the ISP's investigation;
 - e. the admission of guilt to the charge under AHRR 218A(1); and
 - f. loss of licence for a period approaching 5 months by way of periods of warning off, and suspension pending determination of the allegations and investigations related to this matter.

Penalty

50. Having taken into account all of the aforementioned circumstances relevant to this matter, the ISP has determined to:
 - a. disqualify Mr Ben Yole for a period of 3 years for his breach of AHRR 218A(1); and
 - b. fine Mr Ben Yole a sum of \$5,000 for his breach of AHRR 196D(1).
51. The effective date of the commencement of the disqualification is backdated to 29 July 2024. This date has been calculated by giving recognition to Mr Ben Yole of the period over which he has been stood down pending determination of the charges, as well as the period in which Mr Ben Yole was warned off by Tasracing, being a period of 70 days in total.

Decision Date: 30 January 2025

STEWARDS DECISION

OFFICE OF RACING INTEGRITY

and

MR BEN YOLE

Date of Decision: 13 January 2025

Stewards Panel: Larry Wilson; Barry Delaney

Respondent: Mr Ben Yole

Rule(s): Australian Harness Racing Rule 218A

(1) A person shall not mistreat a horse.

(2) For the purposes of this rule “mistreat” means to abuse or treat a horse badly, cruelly or unfairly.

Australian Harness Racing Rule 196D(1)

A person shall not within eight (8) clear days of the commencement of a race administer, attempt to administer or cause to be administered an intra-articular injection to a horse nominated for that race.

Charge 1: The Independent Stewards Panel charge you with breaching AHRR 218A(1) of the Rules (in conjunction with AHRR 218A(2)). The Particulars of the Charge are:

1. You are, and were at all relevant times, including between 1 April 2020 and 1 April 2023, a trainer licensed by Office of Racing Integrity Tasmania and a person bound by the Rules.
2. Between approximately 1 April 2020 and 1 April 2023, at your licensed stables in Sidmouth, Tasmania, you systematically

abused and / or treated horses badly, cruelly and / or unfairly, thereby mistreating them, by participating in the carrying out of a prerace regime on horses on race day whereby, on your instructions:

- a. The horse was fitted with head gear, blinds and earplugs, and tied to a pole in the vicinity of the rear wall of the wash bay;
- b. The horse's blinds and earplugs were pulled, thereby allowing them to see and hear;
- c. Mr Tim Yole would then wave a driving whip with a plastic bag attached to it to exacerbate the noise of the whip, striking the wall of the wash bay and waving the whip in the vicinity of the horse's rear legs while yelling loudly and making excessive noise;
- d. The horses became frightened, and at times responded by shifting erratically causing them to make contact with the rear wall and the tie up pole.

Plea: Guilty

Decision: Guilty

Charge 2: The Independent Stewards Panel charge you with breaching AHRR 196D(1) of the Rules. The Particulars of the Charge are:

1. You are, and were at all relevant times, including between 1 April 2020 and 1 April 2023, a trainer licensed by Office of Racing Integrity Tasmania and a person bound by the Rules.
2. As at 26 November 2022, you were the registered trainer of Jawbreaker.
3. On 26 November 2022, at your licensed stables in Sidmouth, you administered an intra-articular injection to the horse Jawbreaker into the hocks or stifles.
4. The horse Jawbreaker was nominated in and raced on:
 - a. 27 November 2022 in race number 4 at Launceston; and
 - b. 3 December 2022 in race number 7 at Launceston.
5. The administration of the intra-articular injection to Jawbreaker in particular 3 above occurred within 8 clear days of a race at the Tasmanian Harness Racing Meeting at Launceston on 27 November 2022, further and alternatively, a race at the Tasmanian Harness Racing Meeting on 3 December 2022, in breach of AHRR 196D(1).

Plea: Not Guilty

Decision: Not Guilty

Charge 3: The Independent Stewards Panel charge you with breaching AHRR 196D(1) of the Rules. The Particulars of the Charge are:

1. You are, and were at all relevant times, including between 1 April 2020 and 1 April 2023, a trainer licensed by Office of Racing Integrity Tasmania and a person bound by the Rules.
2. As at 2 December 2022, you were the registered trainer of Jawbreaker.
3. On 2 December 2022, at your licensed stables in Sidmouth, you administered an intra-articular injection to the horse Jawbreaker into the hocks or stifles.
4. The horse Jawbreaker was nominated in and raced on 3 December 2022 in race number 7 at Launceston.
5. The administration of the intra-articular injection to Jawbreaker in particular 3 above occurred within 8 clear days of a race at the Tasmanian Harness Racing Meeting at Launceston on 3 December 2022, in breach of AHRR 196D(1).

Plea: Not Guilty

Decision: Guilty

Background

1. The Independent Stewards Panel (**ISP**) was appointed on 22 February 2024, and the Director of Racing, Mr Robin Thompson, issued a direction to the ISP to conduct an investigation pursuant to Rule 181 of the Australian Harness Racing Rules (**AHRR**).
2. Part B of the direction was to investigate specific findings outlined in Mr Ray Murrehy's Final Report, including '*Finding 7*' and '*Finding 10*', which are outlined below:
 - Finding 7 - Mistreatment of horses in the wash bay on race days at Yole Sidmouth property: The investigation determined that there has been non-compliance with AHRR 218A(1) by trainer Ben Yole and the stable foreman Tim Yole in that the evidence supports that they mistreated horses in the wash bay at the Sidmouth property on race mornings regardless of whether the horses were actually contacted with the whip.
 - Finding 10 - Administration of intra-articular injections to horses within eight clear days of the race: The investigation determined that there has been non-compliance with AHRR 196D(1) by trainer Ben Yole in that the evidence supports that he did administer intra-articular injections to horses nominated to race within eight clear days of the commencement of their races.
3. As part of their investigation the ISP conducted interviews with industry participants relevant to the matters outlined in Part B of the direction. Once this process was concluded, the ISP conducted formal inquiries on the following dates: 13, 14 & 15 August, 21 & 22 August and 9 & 10 September 2024.

4. In conducting its investigation in respect of 'Finding 7' and 'Finding 10', the ISP carefully considered and analysed evidence from:
 - a. Ms Lily Blundstone;
 - b. Mr Sam Clothworthy;
 - c. Mr Malcolm Jones;
 - d. Ms Jenna Griffiths;
 - e. Ms Isabelle Wynwood;
 - f. Ms Tayla Szczypka;
 - g. Mr Corey Bell;
 - h. Mr Cody Crossland;
 - i. Mr Ben Yole; and
 - j. Mr Tim Yole.

5. On 23 September 2024, Mr Ben Yole filed written submissions to the ISP addressing the allegations against him. Relevantly, these submissions:
 - a. addressed the evidence given to the ISP by the witnesses in paragraph 4;
 - b. submitted there was no case to answer in respect of allegations relating to:
 - i. the care and welfare of the horse "Blings on Fire";
 - ii. the systematic race day administration of oral pastes to racehorses between 1 April 2020 and 1 April 2023;
 - iii. the systematic administration of intravenous injections to racehorses between 1 April 2020 and 1 April 2023; or
 - iv. direction of illegal race tactics to drivers of racehorses trained by Mr Ben Yole,
 - c. accepted there was a case to answer in respect of the treatment of horses in wash bays at Mr Ben Yole's Sidmouth property between 1 April 2020 and 1 April 2023; and
 - d. accepted there was a case to answer in respect of intra-articular injections to racehorses between 4 November 2020 and 1 April 2023, and specifically prior to the Golden Apple race on 3 December 2022.

6. On 30 September 2024, the ISP charged Mr Yole with a breach of AHRR 218A(1) for the systematic mistreatment of horses between 1 April 2020 and 1 April 2021.

7. On the same date, being 30 September 2024, the ISP published a report in respect of its inquiry which noted that it was continuing to consider the written submissions provided by Mr Yole in respect of the allegations that he had breached AHRR 196D(1).

8. On 2 October 2024, Mr Yole's legal representation wrote to the ISP and noted, amongst other things, that Mr Yole could not consider his plea to the alleged breach of AHRR 218A(1) until the ISP determined whether any other charges were to be laid against Mr Yole.

9. On 7 October 2024, the ISP wrote to Mr Yole's legal representation noting that they were continuing to consider three outstanding matters and agreed to allow Mr Yole to wait until the ISP had determined the outstanding matters before providing his response to the charge for breach of AHRR 218A(1).
10. On 18 October 2024, the ISP issued Mr Yole with two charges for breaches of AHRR 196D(1) for the administration, on 26 November 2022 and 2 December 2022, of an intra-articular injection to Jawbreaker within 8 clear days of race which the Jawbreaker was nominated in.
11. On the same date, being 18 October 2024, the ISP published a supplementary report which noted that it had formed the view that there was sufficient evidence to issue charges for a breach of AHRR 196D(1) against Mr Yole for administering an intra-articular injection to a horse nominated to race within eight clear days of the commencement of the race.
12. On 12 November 2024, Mr Yole's legal representation informed the ISP that:
 - a. Mr Yole would plead guilty to the charge alleging a breach of AHRR 218A(1);
 - b. not guilty to the charges alleging a breach of AHRR 196D(1); and
 - c. indicated that he intended to call a number of witnesses, whose names had been mentioned within the ISP inquiry process in relation to matters regarding the contested charges, which would be communicated to the ISP by 13 November 2024
13. On 21 November 2024, the ISP wrote to Mr Yole's legal representation noting that significant opportunity had already been afforded to test the evidence of all witnesses, and invited Mr Yole to provide written submissions setting out his position in relation to the evidence already obtained during the inquiry and any specific matters that he sought to expand upon through the reconvening of the panel to hear additional oral evidence. The ISP requested such written submissions by 29 November 2024.
14. On 2 December 2024, Mr Yole's legal representation sought a 7-day extension from the ISP to file the further written submissions on behalf of Mr Yole.
15. On 3 December 2024, the ISP granted Mr Yole an extension to 6 December 2024 to file written submissions.
16. On 11 December 2024, the ISP wrote to Mr Yole's legal representative indicating that no further submissions had been received, and the ISP intended to consider the Charges on 16 December 2024.
17. On 13 December 2024, Mr Yole filed submissions to the ISP in respect of the penalty for breach of AHRR 218A(1), accepting that.
 - a. the "razzing" occurred approximately once a week;
 - b. it occurred for a duration of between 12 and 18 months;
 - c. the "razzing" was voluntarily desisted of Mr Yole's own volition and not as a consequence of detection;
 - d. the "razzing" of each horse was of short duration on each occasion.

18. On the same date, being 13 December 2024, Mr Yole filed written submissions to the ISP pleading not guilty to the two charges under AHRR 196D(1) and providing reasons and further evidence to support his plea. The additional evidence was comprised of:
 - a. witness statements from Messrs Blair Fidler and Harrison Worker. Both Messrs Fidler and Worker worked at the Yole's Sidmouth property as stable-hands. Mr Fidler worked at the property between 2021 and 2024, and Mr Worker worked at the property between 2019 and 2023.
19. On 18 December 2024, the ISP wrote to Mr Yole's legal representation requesting the details of Mr Fidler and Mr Worker so that they could be interviewed by the ISP, noting that a link to the interview would be provided to Mr Yole's legal representation. No response was provided to the ISP.
20. On 31 December 2024, the ISP interviewed Mr Fidler and Mr Worker in respect of their statements filed by Mr Yole on 13 December 2024.

Relevant Evidence

21. In reaching its decisions, the ISP has carefully considered all relevant evidence before it.

Murrihy Report

22. While not itself evidence which informed the ISP's decision, the ISP's inquiries took place against the background and context of Mr Ray Murrihy's Report of 28 November 2023 into the alleged team driving, race fixing and animal welfare concerns relating to the harness racing industry. This served as the basis for the direction to the ISP to investigate the finding that Mr Yole had breached AHRR 196D(1), and was referred to in Mr Yole's submissions to the ISP.
23. Relevantly, the Murrihy Report relied on but was not limited to the evidence given by three former stable employees whom allegedly witnessed Mr Yole administer intra-articular injections to horses nominated to race within eight clear days of the commencement of their race.
24. Murrihy's investigation considered Mr Yole's submissions of 4 October 2023 in which he stated that, "I do intra-articular injections regularly, but never within eight clear days of a race." When questioned as to how often intra-articular injections took place, Mr Yole stated that he "Probably picked out one or two (horses) a week that were sore that it, that showed me signs of, after I flexed them up, trotted them up." When further questioned regarding how far out from a race the intra-articular injections were given, Mr Yole replied, "Ten days, 11 days, 12 days".
25. Mr Yole also raised the difficulty in advancing evidence that stands apart from his own testimony, in the absence of particularisation of dates and horses. The evidence of one of the stable employees identified two horses which were said to have been given intra-articular injections. Their stable names were "Aha" and "Kiwi". In denying these allegations, Mr Yole was able to identify these horses and stated that "Aha" was a sound horse, never needing an intra-

articular injection and that “Kiwi” had a particular knee injury for which intra-articular therapy was not an appropriate treatment.

26. On 5 October 2023, the Murrhiy investigation examined the stable treatment log book of Mr Yole. Contrary to his evidence that he gives intra-articular injections to horses on a weekly basis, the log failed to detail any entries of intra-articular injections being given to horses at the property in the current calendar year. Little or no weight was placed on the log information as the investigation found the treatment entries not to be a credible or accurate record of all Mr Yole horse treatments.
27. Whilst the Murrhiy investigation was not able to find that intra-articular injections were given to specific horses on specific dates, it found credible the first-hand corroborative witness accounts of the three employees that were present at the Yole Sidmouth property within the period 4 November 2020 and 1 April 2023, that intra-articular injections were given by Mr Yole to horses nominated to race and that such injections were given within eight clear days of such horses racing.

Crossland Evidence

28. The ISP obtained and considered for itself the available evidence in relation to allegations that intra-articular injections were given by Mr Yole to horses nominated to race within eight clear days of a race.
29. The ISP interviewed Mr Crossland on 9 May 2024 and 14 August 2024. Mr Crossland worked as a stablehand at Mr Yole's stables between November 2022 and January 2023 and drove Mr Yole's horses in races on a weekly basis during that period.
30. During the 9 May 2024 interview, Mr Crossland explained the process that occurred when injections were administered to horses at the Yole's Sidmouth stables. His explanation included, amongst other things, the following relevant evidence:

MR CROSSLAND: ... But he, all the horses that are racing go on the jogger a day or two, I think it's a day before, then Ben, Ben is always like in the corner, in a shed, he never comes out, and he does the needles...

...

MR CROSSLAND: So they jog, get a needle, next day is race day.

31. Mr Crossland confirmed this process in the subsequent interview on 14 August 2024.

CHAIRMAN: Take us through the process.

MR CROSSLAND: So they go on the jogger and once they've finished jogging they come up to the wash bay, get the needle.

CHAIRMAN: Yep

MR CROSSLAND: Get up out in the paddock, then race the next day.

32. Mr Crossland also provided his recollection in respect of the specific matters the subject of the current charges, being the administering of intra-articular injection to Jawbreaker within eight days clear of a race:

MR CROSSLAND: There was, when I first came over, I drove in the Golden Apple, I drove JAWBREAKER, I think I drove JAWBREAKER and there was a few in it. I think CULLENBURN, CHECK IN, JAWBREAKER and a few others and they go to the beach the day before which is good for them and that, but he actually, before he took them to the beach he injected their hocks and stuff or their knees, himself, which is a bit strange.

33. In the subsequent interview on 14 August 2024, Mr Crossland confirmed his recollection in respect of injecting Jawbreaker, and specified that it was indeed an intra-articular injection that was administered.

MR CROSSLAND: Not one, before, it wasn't long when I first started there. I think it was the Golden Apple, I drove JAWBREAKER I think. I think I drove JAWBREAKER and they got it, yeah they all got, every horse that was in the Apple got that done.

CHAIRMAN: So that was an injection into the joints?

MR CROSSLAND: Yep.

CHAIRMAN: Do you recall the timing of that injection relevant to race day?

MR CROSSLAND: No I don't, no, I think it was the day before.

CHAIRMAN: Well no, if you don't know say you don't know. Don't guess.

MR CROSSLAND: Yep.

CHAIRMAN: Alright. But just, if you don't know, say you don't know.

MR CROSSLAND: I'm pretty sure it was the day before when they went to the beach, then they raced the next day.

CHAIRMAN: Okay. So, so when, let me (inaudible). So when they got the intra-articular injection, are you saying they got it the day before the race?

MR CROSSLAND: Yep.

Blundstone Evidence

34. The ISP interviewed Ms Blundstone on 9 July 2024. Ms Blundstone worked as a stablehand at Mr Yole's stables between 2019 and September 2021, and during a period from July 2022 to January 2023 on race days.
35. During her 9 July and 14 August 2024 interviews, Ms Blundstone gave relevant evidence where she explained the process that occurred when injections were

administered to horses at the Yole's Sidmouth stables. Her explanation included, amongst other things, the following relevant evidence:

9 July 2024

Ms BLUNDSTONE: Every horse basically. Any horse that would race in big races would get that three or four days before it raced

...

14 August 2024

Ms BLUNDSTONE: Usually on the Wednesday or the Thursday during the week, which was our longer days for work..... someone would twitch the horse, someone would hold the needles and the syringes of whatever liquid was used, and Ben would come and inject their joints, so usually knees, hocks. They would then, like depending on the horse, get all their joints done and then the twitch would come off, we'd have to clean the legs back up and then they'd just go back into the paddock

Yole Evidence

Oral Evidence

36. During the ISP inquiry on 9 September 2024, Mr Yole denied the allegations that he had administered intra-articular injections to horses within eight days of a race.

MR SHEALES: What do you say to the allegations you injected horses within eight days, in the joints, of racing?

MR BEN YOLE: Incorrect.

37. Mr Yole confirmed his denial when further questioned by the ISP on 10 September 2024.

CHAIRMAN: From your recollection, was any horse ever administered an intra-articular injection into the joints inside eight days before racing?

MR BEN YOLE: No, it wasn't, no.

Written Submissions – 23 September 2024

38. On 23 September 2024, Mr Yole submitted joint submissions with Mr Tim Yole to the ISP which suggested that the allegations against Mr Yole may have been fabricated. They pointed to the existence of a long campaign against the Yoles by members of the harness racing industry and animal rights activists, drawing specific attention to the Facebook group "Save Harness Racing in Tasmania", whose membership notably includes many of the witnesses before the ISP, including Mr Crossland, suggesting the affiliation may have influenced the credibility of such testimonies.
39. The submissions further suggested that Mr Crossland's evidence in respect of intra-articular injections given to horses the day before the Golden Apple race on 3 December 2022 is weak, tenuous and unreliable. However, Mr Yole

recognised that such evidence is capable of being accepted by the ISP and conceded that there was a case to answer as to the allegations.

Written Submissions – 13 December 2024

40. Following the issuing of charges against Mr Yole by the ISP in respect of the alleged breaches of AHRR 196D(1), Mr Yole filed submissions addressing the charges.
41. Amongst other things, the submissions assert that the only two witnesses called before the ISP were working at Mr Yole's stable during the relevant period of the charges, being Ms Wynwood and Mr Crossland. The submissions further identifies the evidence to which Mr Yole believes is relevant to the charges, requesting that the ISP inform the legal representative of Mr Yole should an alternative factual matrix be relied on.
42. The submissions critique the truthfulness and reliability of Mr Crossland's evidence, highlighting the absence of corroborative evidence. It is consequently argued that the ISP ought to dismiss the charge on the basis that Mr Crossland's claims failed to meet the requisite standard of reliability. Moreover, the submissions emphasise that the uncertain nature of the language used by Mr Crossland advances the revelation that his evidence is unreliable.
43. Mr Yole contends that given the considerable passage of time since the alleged events took place, Mr Crossland's recollections could be compromised and therefore less accurate. Additionally, the submissions identify instances where Mr Crossland has acknowledged factual inaccuracies in his previous statements regarding Mr Yole's alleged breaches of the AHRR's by which is proposed to cast further doubt on the reliability and truthfulness of Mr Crossland's evidence. The submissions also present the possibility that Mr Crossland may have been influenced by Ms Brooke Hammond's presence when he gave evidence.
44. Mr Yole relied upon the statements of Blair Fidler of 13 December 2024 and Harrison Worker of 13 December 2024, both of whom Mr Crossland stated in his evidence were present at the Yole stables on 2 December 2022.
45. The submissions expressly provided no objection to the ISP conducting further questioning of Messrs Fidler and/or Worker with all parties being joined by audio-visual link. Accordingly, on 18 December 2024 the ISP requested the details of Messrs Fidler and Worker from Mr Yole's legal representatives for the purposes of interviewing them and suggested dates of 20 December 2024 and 23 December 2024 to ensure all parties had the opportunity to join.

Worker Evidence

46. Mr Worker's statement asserts that he has a clear memory of 2 December 2022 and that no horses that went to the beach, being the 'Golden Apple horses' were injected in their joints that day.
47. Further, Mr Worker asserts 'categorically' that no horse was injected in any way after their return to the stables from the beach. He notes that if injections had taken place he would have seen them occur.

48. On 31 December 2024, Mr Worker was interviewed by the ISP. During that interview, Mr Worker:
 - a. confirmed the matters attested to in the statement provided to the ISP; and
 - b. further advised that during his period of employment, never saw Mr Yole complete an intra-articular injection on any racehorse.

Fidler Evidence

49. Mr Fidler's statement asserts that he too clearly remembers 2 December 2022 and recalls the 'Golden Apple horses', including Jawbreaker, being taken to the beach via a truck.
50. Mr Fidler asserts 'categorically' that no horse was injected at all before being put onto the truck. He also 'categorically' asserts that no horse was injected at all in any way after the return of the truck to the stables from the beach. He notes that if injections had taken place he would have seen them occur.
51. On 31 December 2024, Mr Fidler was interviewed by the ISP. During that interview, Mr Fidler:
 - a. confirmed the matters attested to in the statement provided to the ISP; and
 - b. further advised that during his period of employment, never saw Mr Yole complete an intra-articular injection on any racehorse.

Findings

52. For the reasons set out below, and having regard to the matters set out above the ISP has found the following:
 - a. **In respect of Charge 1 the ISP has determined that Mr Yole is guilty.**
 - b. **In respect of Charge 2 the ISP has determined that Mr Yole is not guilty.**
 - c. **In respect of Charge 3 the ISP has determined that Mr Yole is guilty.**

Standard of Proof

53. The standard of proof is referred to in the well-known High Court case of *Briginshaw v Briginshaw* (1938) CLR 336. The ISP must have a reasonable degree of satisfaction, or to put it another way, the ISP must be comfortably satisfied on the balance of probabilities that the charge has been proven.
54. The ISP notes the gravity of the allegations and the seriousness of the potential consequences for Mr Yole that may flow from any findings. The ISP recognises that the Charges reflect conduct that should not be found without sufficiently cogent evidence to support a finding of fact that supports any charge. As such,

findings are made only where the ISP has achieved the requisite degree of satisfaction appropriate to the charges laid and has approached the determinations in accordance with those principles.

Charge 1

55. On 12 November 2024, Mr Yole's legal representation indicated a plea of guilty to the charge alleging a breach of 218A(1).
56. The ISP accepts Mr Yole's plea of guilty.

Charge 2

57. Although of no material significance, the ISP note that Mr Yole's submissions of 13 December 2024, in respect of Charge 2, make two erroneous factual assertions:
 - a. the submissions misidentify the date of the alleged administration of an intra-articular injection to Jawbreaker as 27 November 2022 instead of 26 November 2022; and
 - b. second, they incorrectly state that Ms Wynwood was working at the Yole stables between November and December 2022. Ms Wynwood worked at the Yole stables between mid 2019 to 2021. Accordingly, given the dates of the alleged conduct, the ISP do not consider Ms Wynwood's evidence relevant to the AHHR 196(D)1 charges against Mr Yole.
58. Charge 2 is based upon the premise that Mr Yole administered an intra-articular injection to Jawbreaker the day before a race as part of the Golden Apple.
59. The reference to "the Golden Apple" is a reference to the harness racing event comprising of two heats and a final at Launceston. The ISP has reviewed the race history that reveals:
 - a. in 2022, the heats for the Golden Apple were held on 13 and 27 November 2022;
 - b. Jawbreaker raced in heat 2 on 27 November 2022 and in the final held on 3 December 2022;
 - c. Jawbreaker finished fifth on 27 November 2022 and was driven by Mr Nathan Ford; and
 - d. Jawbreaker finished 11th on 3 December 2022 when driven by Mr Crossland.
60. Upon consideration of the key evidence in respect of the charges, particularly the evidence of Mr Crossland, and the relevant racing records, the ISP recognise that Mr Crossland's recollection of seeing Mr Yole administer an intra-articular injection to Jawbreaker is wholly referrable to when he drove Jawbreaker in the Golden Apple.

61. While Ms Blundstone gave evidence to the ISP about the administration of intra-articular injections prior to big races, at the relevant time (being November 2022), Ms Blundstone was only employed to work for Mr Yole on racedays.
62. The racing records indicate that Mr Crossland drove Jawbreaker in the Golden Apple final on 3 December 2022 and Mr Nathan Ford who drove Jawbreaker in the Golden Apple heat on 27 November 2022.
63. The ISP has formed the view that there is insufficient evidence before it to find that Mr Yole administered an intra-articular injection to Jawbreaker on 26 November 2022 in breach of AHHR 196D(1).

Charge 3

64. The ISP has carefully considered and taken into consideration all of the relevant evidence and submissions in respect of the charge that Mr Yole breached AHRR 196D(1) by administering an intra-articular injection to Jawbreaker on 2 December 2022 within 8 clear days of Jawbreaker racing, being on 3 December 2022 in the Golden Apple final.
65. Contrary to the submissions of Mr Yole, the ISP have found Mr Crossland's evidence in relation to the charged breach of AHRR 196D(1) to be sufficiently reliable and credible to support a finding that the charge has been proven to the requisite standard. Mr Crossland's recollection of driving Jawbreaker in the Golden Apple final and of the beach preparation of the horses on 2 December 2022 is able to be corroborated by other evidence before the ISP.
66. While Mr Yole correctly submits that at times Mr Crossland's evidence was marked by a degree of uncertainty in that his language lacked conviction and he admitted to prior factual inaccuracies in his evidence, those frank concessions by Mr Crossland as to certain parts of his recollections and evidence support the ISP's view that Mr Crossland's evidence was in fact reliable when given with confidence as to the relevant specifics and details. The acknowledgement of uncertainty by Mr Crossland in respect of parts of his evidence contributed to the ISP's comfortable satisfaction that he was not overstating or misstating his recollections to the Stewards, and that he was careful to only confirm certain matters when he was confident in his recollections of those matters.
67. Together with the details of the incidents in question that Mr Crossland was able to recall, and the fact that making this admission is contrary to Mr Crossland's own interests in that it amounts to an admission that he had been the driver of a horse that was treated in a manner contrary to the rules of racing, the ISP have found that Mr Crossland's evidence was sufficiently certain and reliable in relation to his recollection that Mr Yole had administered an intra-articular injection to Jawbreaker on 2 December 2022.
68. In reaching this decision, the ISP carefully considered and weighed the submissions and evidence tendered before the ISP and relied upon by Mr Yole, including the evidence of Messrs Fidler and Worker. The evidence of Fidler and Worker was:

- a. consistent with the evidence of Mr Crossland, Jawbreaker did go to the beach on 2 December 2022;
 - b. if Mr Yole administered the alleged injection they would have seen it;
 - c. they did not see any intra-articular injection so it is their genuine belief that an intra-articular injection did not occur.
69. In preferring Mr Crossland's account to that of Messrs Fidler and Worker, the ISP finds Messrs Fidler and Worker both gave evidence to the ISP:
- a. that they had "never" seen Mr Yole administer any intra-articular injection; and
 - b. this recollection reflects their memory for their entire period of employment for Mr Yole,

in accepting the evidence of Messrs Fidler and Worker, the ISP is satisfied the evidence of Fidler and Worker has little probative value in reaching a determination of the Charge.

70. Mr Yole's evidence is that he does administer intra-articular injections to horses, just not within 8 days of a race. Accordingly, to reconcile the views of Messrs Fidler and Worker and Mr Yole it would seem that Messrs Fidler and Worker simply have never had any visibility of Mr Yole's administration of intra-articular injections. Their evidence regarding the absence of such an event on 2 December 2022 does not support a finding that the event did not occur, but rather reflect the precedented workings of the stable that when Mr Yole administered such injections, such practices were not observed by Messrs Fidler and Worker.
71. It follows that the insistence of Messrs Fidler and Worker that they did not see Mr Yole administer an intra-articular injection to Jawbreaker on 2 December 2022 does not meaningfully inform the question of whether such an injection did in fact occur.
72. In taking into account and assessing all of the relevant evidence, the ISP is comfortably satisfied that Mr Yole breached AHRR 196D(1) by administering an intra-articular injection to Jawbreaker on 2 December 2022.

Penalty

73. The ISP received written submissions from Mr Yole on 13 December 2024 in respect of the penalty for his breach of AHRR 218A(1).
74. The ISP will invite further submissions on the question of the appropriate penalty in light of the ISP's findings in respect of the Charges by 20 January 2025

Decision Date: 13 January 2025