

**STEWARDS DECISION**

**OFFICE OF RACING INTEGRITY**

and

**MR TIM YOLE**

- Date of Decision:** 30 January 2025
- Stewards Panel:** Larry Wilson; Barry Delaney
- Respondent:** Mr Tim 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.*
- 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 driver licensed by the Office of Racing Integrity Tasmania and a person bound by the Rules.
  2. Between approximately 1 April 2020 and 1 April 2023, at Mr Ben Yole’s licensed stables in Sidmouth, Tasmania, you systematically abused and / or treated horse badly, cruelly and / or unfairly, thereby mistreating them, by carrying out a pre-race regime on horses on race day whereby:
    - 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. You would then pull the horse's blinds and earplugs thereby allowing them to see and hear;
- c. You 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 responded by shifting erratically, at times causing them to make contact with the rear wall and the tie up pole.

**Plea:** Guilty

**Decision:** Guilty

**Penalty:** 3 year Disqualification

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## 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*' which is 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.
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*' 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 Tim Yole jointly filed written submissions with Mr Ben Yole to the ISP addressing the allegations against them. In respect of Mr Tim 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;
  - 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.
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)(b).
8. On 12 November 2024, the legal representative for Mr Tim Yole informed the ISP that, amongst other things, he would plead guilty to the charge alleging a breach of AHRR 218A(1).
9. On 21 November 2024, the ISP wrote to Mr Tim 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.
10. 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)).

## Findings

### *Standard of Proof*

11. 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 a charge before it has been proven.
12. The ISP notes the gravity of the allegations and the seriousness of the potential consequences for Mr Tim Yole that may flow from any findings and penalties it imposes. The ISP recognises that the charge relates to conduct that should not be found proven without sufficiently cogent evidence to support the findings of fact that supports each element of the 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*

13. On 12 November 2024, Mr Tim Yole's legal representative indicated a plea of guilty to the charge alleging a breach of AHRR 218A(1).
14. The ISP accepts Mr Tim Yole's plea, is satisfied that the evidence, including his admissions, are sufficient to establish each element of the charge, and finds him guilty of breaching AHRR 218A(1).

## Penalty Approach

15. Turning to the matter of penalty the ISP are 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

16. In his submissions to the ISP of 13 December 2024, Mr Tim Yole indicated that the following factual matters should form the basis to 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 from 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 Tim 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 Tim Yole's submissions also highlighted his personal background, noting that at 36 years of age, he has been actively engaged in the harness racing industry since he was 10 and has maintained a driver's licence since turning 23.
20. Additionally, it was noted that Mr Tim Yole has a clean record with the AHRRs, with the exception of a four-month disqualification in or about 2015. He submitted that this disqualification was entirely unrelated to his involvement in the harness racing industry.
21. In the context of the ISP's assessment of the appropriate penalty for his offending, Mr Tim 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.
22. Mr Tim Yole contended that the appropriate penalty for his breach of AHRR 218A(1) is a 24-month suspension, with 20 of those months suspended.

### **Penalty Discussion**

23. The ISP has carefully considered the relevant evidence in this matter and each of the matters and factors raised on behalf of Mr Tim Yole in his submissions as to penalty.
24. The ISP 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.

25. 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 whereby Mr Tim Yole would:

- a. tether horses to a pole facing the rear wall;
- b. upon instructions from Mr Ben Yole, he would then 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)**

26. 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.

27. 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.

28. Mr Tim Yole's mistreatment of 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 better assessed by identifying the departure from the accepted standards of the Harness Racing industry in respect of animal welfare, and the potential for harm to a significant number of horses created by the Regime that Mr Tim Yole was party to.

29. It is accepted by Mr Tim 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.

30. 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.

31. The ISP recognises the importance of maintaining uniformity regarding the appropriate penalty for breaches of the AHRRs, especially in circumstances where available decisions involving similar facts and circumstances identifies a consistent range in the determination of the approach to penalty. The ISP has

carefully considered the cases which Mr Tim Yole has submitted as being of precedential significance. 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.

32. In contrast, the ISP considers that, while different in some key respects, 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
33. 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.
34. As mentioned above, Mr Tim 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.
35. 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.



36. In weighing up all of the circumstances of Mr Tim Yole's offending, the ISP has also accounted for a number of mitigating factors, including Mr Yole's:
- a. position as the stable foreman;
  - b. previous clear record with respect to this type, or similar offending;
  - c. co-operation with the ISP's investigation;
  - d. guilty plea; and
  - e. 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**

37. Having taken into account all of the aforementioned circumstances relevant to this matter, for his breach of AHRR 218A(1) the ISP has determined to disqualify Mr Tim Yole for a period of 3 years.
38. 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 Tim Yole of the period over which he has been stood down pending determination of this charge, as well as the accumulation of 70 days for the period in which Mr Tim Yole was warned off by Tasracing.

**Decision Date:** 30 January 2025