24 April 2024

**RACING VICTORIA**

**and**

**DARREN WEIR**

**and**

**JARROD McLEAN**

**and**

**TYSON KERMOND**

**Dates of hearing:** 18 March 2024, 19 March 2024 and 20 March 2024.

**Date of decision:** 24 April 2024

**Venue:** VRT Hearing Room,Level 16, 121 Exhibition Street, Melbourne

**Panel:** His Honour John Bowman (Chairperson), Her Honour Kathryn Kings (Deputy Chairperson) and Mr Des Gleeson.

**Appearances:** Mr Albert Dinelli KC with Mr Angus Willoughby of Counsel appeared on behalf of the Stewards.

Mr Ian Hill KC with Mr Matthew Stirling of Counsel and Ms Anna Dixon of Counsel appeared on behalf of Mr Weir.

Mr Damian Sheales of Counsel with Mr Tony Hannebery appeared on behalf of Mr McLean and Mr Kermond.

Mr Robert Cram appeared as a witness.

Mr Rob Montgomery appeared as a witness.

Dr Andrew McLean appeared as a witness.

**Charge and particulars:**

**DARREN WEIR**

**Charge (1): AR 229(1)(b) – *Red Cardinal***

AR 229(1)(b) reads as follows:

***AR 229***

*(1) A person must not:*

*…*

*(b) engage in conduct that corrupts the outcome of a race or is intended to corrupt the outcome of a race, where;*

*(i) conduct “corrupts the outcome of a race” if it:*

*(A) affects or, if engaged in, would be likely to affect the outcome of any race; and*

*(B) is contrary to the standards of integrity that a reasonable person would expect of persons in a position to affect the outcome of a race;*

*(ii) “conduct” means an act or an omission to perform an act;*

*(iii) “engage in conduct” means:*

1. *do an act; or*
2. *omit to perform an act, and*

*(iv) “outcome” includes any result within the race and is not limited to winning or placing in the race;*

**Particulars of Charge**

You were at all relevant times, including on or about 30 October 2018, a trainer licensed by Racing Victoria and a person bound by the Rules.

As at 30 October 2018, it was an offence under AR 175(aa) of the Rules (as then in force) to engage in the conduct the subject of AR 229(1)(b).

By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.

As at 30 October 2018, you were the registered trainer of *Red Cardinal*.

As at 30 October 2018, *Red Cardinal* had been accepted to race in the 2018 Melbourne Cup on 6 November 2018.

On or about 30 October 2018, in breach of AR 231(2)(a) or AR 175(hh)(i) (as then in force), at your licensed stables at Warrnambool in the State of Victoria, you used an electric or electronic apparatus capable of affecting the performance of a horse in a race (the **Apparatus**), in that you applied the Apparatus to *Red Cardinal* on approximately seven occasions*.*

You applied the Apparatus to *Red Cardinal* with the intention of affecting *Red Cardinal*’s performance in, and thereby affecting the result of, future races in which *Red Cardinal* would race, including the Melbourne Cup on 6 November 2018.

**Charge (2): AR 229(1)(b) – *Tosen Basil***

AR 229(1)(b) reads as follows:

***AR 229***

*(1) A person must not:*

*…*

*(b) engage in conduct that corrupts the outcome of a race or is intended to corrupt the outcome of a race, where;*

*(i) conduct “corrupts the outcome of a race” if it:*

*(A) affects or, if engaged in, would be likely to affect the outcome of any race; and*

*(B) is contrary to the standards of integrity that a reasonable person would expect of persons in a position to affect the outcome of a race;*

*(ii) “conduct” means an act or an omission to perform an act;*

*(iii) “engage in conduct” means:*

*(A) do an act; or*

*(B) omit to perform an act, and*

*(iv) “outcome” includes any result within the race and is not limited to winning or placing in the race;*

**Particulars of Charge**

1. You were at all relevant times, including on or about 30 October 2018, a trainer licensed by Racing Victoria and a person bound by the Rules.
2. As at 30 October 2018, it was an offence under AR 175(aa) of the Rules (as then in force) to engage in the conduct the subject of AR 229(1)(b).
3. By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.
4. As at 30 October 2018, you were the registered trainer of *Tosen Basil*.
5. As at 30 October 2018, *Tosen Basil* had been accepted to race in the 2018 Melbourne Cup on 6 November 2018.
6. On or about 30 October 2018, in breach of AR 231(2)(a) or AR 175(hh)(i) (as then in force), at your licensed stables at Warrnambool in the State of Victoria, you used an electric or electronic apparatus capable of affecting the performance of a horse in a race (the **Apparatus**), in that you applied the Apparatus to *Tosen Basil* on approximately nine occasions*.*
7. You applied the Apparatus to *Tosen Basil* with the intention of affecting *Tosen Basil*’s performance in, and thereby affecting the result of, future races in which *Tosen Basil* would race, including the Melbourne Cup on 6 November 2018.

**Charge (3): AR 229(1)(b) – *Yogi***

AR 229(1)(b) reads as follows:

***AR 229***

*(1) A person must not:*

*…*

*(b) engage in conduct that corrupts the outcome of a race or is intended to corrupt the outcome of a race, where;*

*(i) conduct “corrupts the outcome of a race” if it:*

*(A) affects or, if engaged in, would be likely to affect the  
outcome of any race; and*

*(B) is contrary to the standards of integrity that a reasonable person would expect of persons in a position to affect the outcome of a race;*

*(ii) “conduct” means an act or an omission to perform an act;*

*(iii) “engage in conduct” means:*

*(A) do an act; or*

*(B) omit to perform an act, and*

*(iv) “outcome” includes any result within the race and is not limited to winning or placing in the race;*

**Particulars of Charge**

1. You were at all relevant times, including on or about 30 October 2018, a trainer licensed by Racing Victoria and a person bound by the Rules.
2. As at 30 October 2018, it was an offence under AR 175(aa) of the Rules (as then in force) to engage in the conduct the subject of AR 229(1)(b).
3. By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.
4. As at 30 October 2018, you were the registered trainer of *Yogi*.
5. As at 30 October 2018, *Yogi* was nominated to race in the Lexus Stakes on 3 November 2018.
6. As at 30 October 2018, it was possible that *Yogi* would race in the Melbourne Cup on 6 November 2018.
7. On or about 30 October 2018, in breach of AR 231(2)(a) or AR 175(hh)(i) (as then in force), at your licensed stables at Warrnambool in the State of Victoria, you used an electric or electronic apparatus capable of affecting the performance of a horse in a race (the **Apparatus**), in that you applied the Apparatus to *Yogi* on approximately nine occasions*.*
8. You applied the Apparatus to *Yogi* with the intention of affecting *Yogi*’s performance in, and thereby affecting the result of, future races in which *Yogi* would race, including the Lexus Stakes on 3 November 2018 and the Melbourne Cup on 6 November 2018.

**Charge (4): AR 231(2)(a) – *Red Cardinal***

AR 231(2)(a) reads as follows:

***AR 231***

*…*

*(2) A person must not:*

*(a) use, or attempt to use, any electric or electronic apparatus or other device capable of affecting the performance of a horse in a race, official trial, jump-out or training gallop;*

**Particulars of Charge**

1. You were at all relevant times, including on or about 30 October 2018, a trainer licensed by Racing Victoria and a person bound by the Rules.
2. As at 30 October 2018, it was an offence under AR 175(hh)(i) of the Rules (as then in force) to engage in the conduct the subject of AR 231(2)(a).
3. By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.
4. As at 30 October 2018, you were the registered trainer of *Red Cardinal*.
5. On or about 30 October 2018, at your licensed stables at Warrnambool in the State of Victoria, you used an electric or electronic apparatus capable of affecting the performance of a horse in a race (the **Apparatus**), in that you applied the Apparatus to *Red Cardinal* on approximately seven occasions*.*
6. The Apparatus was designed to deliver an electric shock, and accordingly, was capable of affecting the performance of *Red Cardinal* in a race, official trial, jump-out or training gallop for the purposes of AR 231(2)(a), by reason of AR 231(3) of the Rules, and/or LR 66A(a) (as in force as at 30 October 2018).

**Charge (5): AR 231(2)(a) – *Tosen Basil***

AR 231(2)(a) reads as follows:

***AR 231***

***…***

*(2) A person must not:*

*(a) use, or attempt to use, any electric or electronic apparatus or other device capable of affecting the performance of a horse in a race, official trial, jump-out or training gallop;*

**Particulars of Charge**

1. You were at all relevant times, including on or about 30 October 2018, a trainer licensed by Racing Victoria and a person bound by the Rules.
2. As at 30 October 2018, it was an offence under AR 175(hh)(i) of the Rules (as then in force) to engage in the conduct the subject of AR 231(2)(a).
3. By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.
4. As at 30 October 2018, you were the registered trainer of *Tosen Basil*.
5. On or about 30 October 2018, at your license stables at Warrnambool in the State of Victoria, you used an electric or electronic apparatus capable of affecting the performance of a horse in a race (the **Apparatus**) in that you applied the Apparatus to *Tosen Basil* on approximately nine occasions*.*
6. The Apparatus was designed to deliver an electric shock, and accordingly, was capable of affecting the performance of *Tosen Basil* in a race, official trial, jump-out or training gallop for the purposes of AR 231(2)(a), by reason of AR 231(3) of the Rules and/or LR 66A(a) (as in force as at 30 October 2018).

**Charge (6): AR 231(2)(a) – *Yogi***

AR 231(2)(a) reads as follows:

***AR 231***

***…***

*(2) A person must not:*

*(a) use, or attempt to use, any electric or electronic apparatus or other device capable of affecting the performance of a horse in a race, official trial, jump-out or training gallop;*

**Particulars of Charge**

1. You were at all relevant times, including on or about 30 October 2018, a trainer licensed by Racing Victoria and a person bound by the Rules.
2. As at 30 October 2018, it was an offence under AR 175(hh)(i) of the Rules (as then in force) to engage in the conduct the subject of AR 231(2)(a).
3. By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.
4. As at 30 October 2018, you were the registered trainer of *Yogi.*
5. On or about 30 October 2018, at your licensed stables at Warrnambool in the State of Victoria, you used an electric or electronic apparatus capable of affecting the performance of a horse in a race (the **Apparatus**) in that you applied the Apparatus to *Yogi* on approximately nine occasions.
6. The Apparatus was designed to deliver an electric shock, and accordingly, was capable of affecting the performance of *Yogi* in a race, official trial, jump-out or training gallop for the purposes of AR 231(2)(a), by reason of AR 231(3) of the Rules and/or LR 66A(a) (as in force as at 30 October 2018).

**Charge (7): AR 231(1)(a) – *Red Cardinal***

AR 231(1)(a) reads as follows:

***AR 231***

*(1) A person must not:*

*(a) commit or commission an act of cruelty to a horse, or be in possession of any article or thing which, in the opinion of the Stewards, is capable of inflicting cruelty to a horse;*

**Particulars of Charge**

You were at all relevant times, including on or about 30 October 2018, a trainer licensed by Racing Victoria and a person bound by the Rules.

As at 30 October 2018, it was an offence under AR 175(n) of the Rules (as then in force) to engage in the conduct the subject of AR 231(1)(a).

By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.

As at 30 October 2018, you were the registered trainer of *Red Cardinal*.

On or about 30 October 2018, at your licensed stables at Warrnambool in the State of Victoria, you committed an act of cruelty to a horse, in that you applied an electric or electronic apparatus designed to deliver an electric shock to *Red Cardinal* on approximately seven occasions*.*

**Charge (8): AR 231(1)(a) – *Tosen Basil***

AR 231(1)(a) reads as follows:

***AR 231***

*(1) A person must not:*

*(a) commit or commission an act of cruelty to a horse, or be in possession of any article or thing which, in the opinion of the Stewards, is capable of inflicting cruelty to a horse;*

**Particulars of Charge**

1. You were at all relevant times, including on or about 30 October 2018, a trainer licensed by Racing Victoria and a person bound by the Rules.
2. As at 30 October 2018, it was an offence under AR 175(n) of the Rules (as then in force) to engage in the conduct the subject of AR 231(1)(a).
3. By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.
4. As at 30 October 2018, you were the registered trainer of *Tosen Basil*.
5. On or about 30 October 2018, at your licensed stables at Warrnambool in the State of Victoria, you committed an act of cruelty to a horse, in that you applied an electric or electronic apparatus designed to deliver an electric shock to *Tosen Basil* on approximately nine occasions*.*

**Charge (9): AR 231(1)(a) – *Yogi***

AR 231(1)(a) reads as follows:

***AR 231***

*(1) A person must not:*

*(a) commit or commission an act of cruelty to a horse, or be in possession of any article or thing which, in the opinion of the Stewards, is capable of inflicting cruelty to a horse;*

**Particulars of Charge**

1. You were at all relevant times, including on or about 30 October 2018, a trainer licensed by Racing Victoria and a person bound by the Rules.
2. As at 30 October 2018, it was an offence under AR 175(n) of the Rules (as then in force) to engage in the conduct the subject of AR 231(1)(a).
3. By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.
4. As at 30 October 2018, you were the registered trainer of *Yogi*.
5. On or about 30 October 2018, at your licensed stables at Warrnambool in the State of Victoria, you committed an act of cruelty to a horse, in that you applied an electric or electronic apparatus designed to deliver an electric shock to *Yogi* on approximately nine occasions.

**Charge (10): AR 229(1)(a)**

AR 229(1)(a) reads as follows:

***AR 229***

…

*(1) A person must not:*

*(a) engage in any dishonest, corrupt, fraudulent, improper or dishonourable action or practice in connection with racing;*

**Particulars of Charge**

You were at all relevant times, including on or about 30 October 2018, a trainer licensed by Racing Victoria and a person bound by the Rules.

As at 30 October 2018, it was an offence under AR 175(a) of the Rules (as then in force) to engage in the conduct the subject of AR 229(1)(a).

By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.

As at 30 October 2018, you were the registered trainer of *Red Cardinal*, *Tosen Basil* and *Yogi* (the **Horses**)*.*

On or about 30 October 2018, at your licensed stables at Warrnambool in the State of Victoria, you applied an electric or electronic apparatus to each of the Horses on numerous occasions*.*

In so doing, you engaged in action that was improper or dishonourable in connection with racing.

**JARROD MCLEAN**

**Charge (1): AR 227(b) [AR 229(1)(b)] – *Red Cardinal***

AR 227(b) reads as follows:

***AR 227***

*Without limiting any other powers, a PRA or the Stewards may penalise any person who:*

*…*

*(b) attempts to commit, aids, abets, counsels, procures, connives at, approaches or requests another person to commit, conspires with another person to commit, or is a party to another person who commits, a breach of the Rules.*

**Particulars of Charge**

1. You were at all relevant times, including on or about 30 October 2018, a trainer licensed by Racing Victoria and a person bound by the Rules.
2. As at 30 October 2018, it was an offence under AR 175(l) of the Rules (as then in force) to engage in conduct substantially similar to that which is the subject of AR 227(b).
3. By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.
4. As at 30 October 2018 you were a licensed trainer and a registered stable employee, employed as a foreperson by Darren Weir, the registered trainer of *Red Cardinal*.
5. As at 30 October 2018, *Red Cardinal* had been accepted to race in the Melbourne Cup on 6 November 2018.
6. On or about 30 October 2018, at Darren Weir's licensed stables at Warrnambool in the State of Victoria, you were a party to Darren Weir's use of an electric or electronic apparatus capable of affecting the performance of a horse in a race (the **Apparatus**), in that he applied the Apparatus to *Red Cardinal* on approximately seven occasions*.*
7. Darren Weir applied the Apparatus to *Red Cardinal* with the intention of affecting *Red Cardinal*’s performance in, and thereby affecting the result of, future races in which *Red Cardinal* would race, including the Melbourne Cup on 6 November 2018.
8. Darren Weir's actions were in breach of AR 229(1)(b) or AR 175(aa) (as in force as at 30 October 2018).
9. You were a party to Darren Weir's breach of AR 229(1)(b) or AR 175(aa) (as in force as at 30 October 2018).

**Charge (2): AR 227(b) [AR 229(1)(b)] – *Tosen Basil***

AR 227(b) reads as follows:

***AR 227***

*Without limiting any other powers, a PRA or the Stewards may penalise any person who:*

*…*

*(b) attempts to commit, aids, abets, counsels, procures, connives at, approaches or requests another person to commit, conspires with another person to commit, or is a party to another person who commits, a breach of the Rules.*

**Particulars of Charge**

1. You were at all relevant times, including on or about 30 October 2018, a trainer licensed by Racing Victoria and a person bound by the Rules.
2. As at 30 October 2018, it was an offence under AR 175(l) of the Rules (as then in force) to engage in conduct substantially similar to that which is the subject of AR 227(b).
3. By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.
4. As at 30 October 2018, you were a licensed trainer and a registered stable employee, employed as a foreperson by Darren Weir, the registered trainer of *Tosen Basil*.
5. As at 30 October 2018, *Tosen Basil* had been accepted to race in the Melbourne Cup on 6 November 2018.
6. On or about 30 October 2018, at Darren Weir's licensed stables at Warrnambool in the State of Victoria, you were a party to Darren Weir's use of an electric or electronic apparatus capable of affecting the performance of a horse in a race (the **Apparatus**), in that he applied the Apparatus to *Tosen Basil* on approximately nine occasions*.*
7. Darren Weir applied the Apparatus to *Tosen Basil* with the intention of affecting *Tosen Basil*’s performance in, and thereby affecting the result of, future races in which *Tosen Basil* would race, including the Melbourne Cup on 6 November 2018.
8. Darren Weir's actions were in breach of AR 229(1)(b) or AR 175(aa) (as in force as at 30 October 2018).
9. You were a party to Darren Weir's breach of AR 229(1)(b) or AR 175(aa) (as in force as at 30 October 2018).

**Charge (3): AR 227(b) [AR 229(1)(b)] – *Yogi***

AR 227(b) reads as follows:

***AR 227***

*Without limiting any other powers, a PRA or the Stewards may penalise any person who:*

*…*

*(b) attempts to commit, aids, abets, counsels, procures, connives at, approaches or requests another person to commit, conspires with another person to commit, or is a party to another person who commits, a breach of the Rules.*

**Particulars of Charge**

1. You were at all relevant times, including on or about 30 October 2018, a trainer licensed by Racing Victoria and a person bound by the Rules.
2. As at 30 October 2018, it was an offence under AR 175(l) of the Rules (as then in force) to engage in conduct substantially similar to that which is the subject of AR 227(b).
3. By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.
4. As at 30 October 2018, you were a licensed trainer and a registered stable employee, employed as a foreperson by Darren Weir, the registered trainer of *Yogi*.
5. As at 30 October 2018, *Yogi* was nominated to race in the Lexus Stakes on 3 November 2018.
6. As at 30 October 2018, it was possible that *Yogi* would race in the Melbourne Cup on 6 November 2018.
7. On or about 30 October 2018, at Darren Weir's licensed stables at Warrnambool in the State of Victoria, you were a party to Darren Weir's use of an electric or electronic apparatus capable of affecting the performance of a horse in a race (the **Apparatus**), in that he applied the Apparatus to *Yogi* on approximately nine occasions*.*
8. Darren Weir applied the Apparatus to *Yogi* with the intention of affecting *Yogi*’s performance in, and thereby affecting the result of, future races in which *Yogi* would race, including the Lexus Stakes on 3 November 2018 and the Melbourne Cup on 6 November 2018.
9. Darren Weir's actions were in breach of AR 229(1)(b) or AR 175(aa) (as in force as at 30 October 2018).
10. You were a party to Darren Weir's breach of AR 229(1)(b) or AR 175(aa) (as in force as at 30 October 2018).

**Charge (4): AR 227(b) [AR 231(2)(a)] – *Red Cardinal***

AR 227(b) reads as follows:

***AR 227***

*Without limiting any other powers, a PRA or the Stewards may penalise any person who:*

*…*

*(b) attempts to commit, aids, abets, counsels, procures, connives at, approaches or requests another person to commit, conspires with another person to commit, or is a party to another person who commits, a breach of the Rules.*

**Particulars of Charge**

1. You were at all relevant times, including on or about 30 October 2018, a trainer licensed by Racing Victoria and a person bound by the Rules.
2. As at 30 October 2018, it was an offence under AR 175(l) of the Rules (as then in force) to engage in conduct substantially similar to that which is the subject of AR 227(b).
3. By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.
4. As at 30 October 2018, you were a licensed trainer and a registered stable employee, employed as a foreperson by Darren Weir, the registered trainer of *Red Cardinal*.
5. On or about 30 October 2018, at Darren Weir's licensed stables at Warrnambool in the State of Victoria, you were a party to Darren Weir’s use of an electric or electronic apparatus capable of affecting the performance of a horse in a race (the **Apparatus**), in that he applied the Apparatus to *Red Cardinal* on approximately seven occasions.
6. The Apparatus was designed to deliver an electric shock, and accordingly, was capable of affecting the performance of *Red Cardinal* in a race, official trial, jump-out or training gallop for the purposes of AR 231(2)(a), by reason of AR 231(3) of the Rules and/or LR 66A(a) (as in force as at 30 October 2018).
7. Darren Weir’s use of the Apparatus was in breach of AR 231(2)(a) or AR 175(hh)(i) (as in force as at 30 October 2018).
8. You were a party to Darren Weir's breach of AR 231(2)(a) or AR 175(hh)(i) (as in force as at 30 October 2018).

**Charge (5): AR 227(b) [AR 231(2)(a)] – *Tosen Basil***

AR 227(b) reads as follows:

***AR 227***

*Without limiting any other powers, a PRA or the Stewards may penalise any person who:*

*…*

*(b) attempts to commit, aids, abets, counsels, procures, connives at, approaches or requests another person to commit, conspires with another person to commit, or is a party to another person who commits, a breach of the Rules.*

**Particulars of Charge**

1. You were at all relevant times, including on or about 30 October 2018, a trainer licensed by Racing Victoria and a person bound by the Rules.
2. As at 30 October 2018, it was an offence under AR 175(l) of the Rules (as then in force) to engage in conduct substantially similar to that which is the subject of AR 227(b).
3. By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.
4. As at 30 October 2018 you were a licensed trainer and registered stable employee, employed as a foreperson by Darren Weir, the registered trainer of *Tosen Basil*.
5. On or about 30 October 2018, at Darren Weir's licensed stables at Warrnambool in the State of Victoria, you were a party to Darren Weir's use of an electric or electronic apparatus capable of affecting the performance of a horse in a race (the **Apparatus**), in that he applied the Apparatus to *Tosen Basil* on approximately nine occasions.
6. The Apparatus was designed to deliver an electric shock, and accordingly, was capable of affecting the performance of *Tosen Basil* in a race, official trial, jump-out or training gallop for the purposes of AR 231(2)(a), by reason of AR 231(3) of the Rules and/or LR 66A(a) (as in force as at 30 October 2018).
7. Darren Weir's use of the Apparatus was in breach of AR 231(2)(a) or AR 175(hh)(i) (as in force as at 30 October 2018).
8. You were a party to Darren Weir's breach of AR 231(2)(a) or AR 175(hh)(i) (as in force as at 30 October 2018).

**Charge (6): AR 227(b) [AR 231(2)(a)] – *Yogi***

AR 227(b) reads as follows:

***AR 227***

*Without limiting any other powers, a PRA or the Stewards may penalise any person who:*

*…*

*(b) attempts to commit, aids, abets, counsels, procures, connives at, approaches or requests another person to commit, conspires with another person to commit, or is a party to another person who commits, a breach of the Rules.*

**Particulars of Charge**

1. You were at all relevant times, including on or about 30 October 2018, a trainer licensed by Racing Victoria and a person bound by the Rules.
2. As at 30 October 2018, it was an offence under AR 175(l) of the Rules (as then in force) to engage in conduct substantially similar to that which is the subject of AR 227(b).
3. By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.
4. As at 30 October 2018, you were a licensed trainer and a registered stable employee, employed as a foreperson by Darren Weir, the registered trainer of *Yogi*.
5. On or about 30 October 2018, at Darren Weir's licensed stables at Warrnambool in the State of Victoria, you were a party to Darren Weir's use of an electric or electronic apparatus capable of affecting the performance of a horse in a race (the **Apparatus**), in that he applied the Apparatus to *Yogi* on approximately nine occasions.
6. The Apparatus was designed to deliver an electric shock, and accordingly, was capable of affecting the performance of *Yogi* in a race, official trial, jump-out or training gallop for the purposes of AR 231(2)(a), by reason of AR 231(3) of the Rules and/or LR 66A(a) (as in force as at 30 October 2018).
7. Darren Weir's use of the Apparatus was in breach of AR 231(2)(a) or AR 175(hh)(i) (as in force as at 30 October 2018).
8. You were a party to Darren Weir's breach of AR 231(2)(a) or AR 175(hh)(i) (as in force as at 30 October 2018).

**Charge (7): AR 227(b) [AR 231(1)(a)] – *Red Cardinal***

AR 227(b) reads as follows:

***AR 227***

*Without limiting any other powers, a PRA or the Stewards may penalise any person who:*

*…*

*(b) attempts to commit, aids, abets, counsels, procures, connives at, approaches or requests another person to commit, conspires with another person to commit, or is a party to another person who commits, a breach of the Rules.*

**Particulars of Charge**

1. You were at all relevant times, including on or about 30 October 2018, a trainer licensed by Racing Victoria and a person bound by the Rules.
2. As at 30 October 2018, it was an offence under AR 175(l) of the Rules (as then in force) to engage in conduct substantially similar to that which is the subject of AR 227(b).
3. By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.
4. As at 30 October 2018, you were a licensed trainer and a registered stable employee, employed as a foreperson by Darren Weir, the registered trainer of *Red Cardinal*.
5. On or about 30 October 2018, at Darren Weir's licensed stables at Warrnambool in the State of Victoria, you were a party to Darren Weir committing an act of cruelty to a horse, in that he applied an electric or electronic apparatus designed to deliver an electric shock to *Red Cardinal* on approximately seven occasions.
6. Darren Weir's actions were in breach of AR 231(1)(a) or AR 175(n) (as in force as at 30 October 2018).
7. You were a party to Darren Weir's breach of AR 231(1)(a) or AR 175(n) (as in force as at 30 October 2018).

**Charge (8): AR 227(b) [AR 231(1)(a)] – *Tosen Basil***

AR 227(b) reads as follows:

***AR 227***

*Without limiting any other powers, a PRA or the Stewards may penalise any person who:*

*…*

*(b) attempts to commit, aids, abets, counsels, procures, connives at, approaches or requests another person to commit, conspires with another person to commit, or is a party to another person who commits, a breach of the Rules.*

**Particulars of Charge**

1. You were at all relevant times, including on or about 30 October 2018, a trainer licensed by Racing Victoria and a person bound by the Rules.
2. As at 30 October 2018, it was an offence under AR 175(l) of the Rules (as then in force) to engage in conduct substantially similar to that which is the subject of AR 227(b).
3. By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.
4. As at 30 October 2018, you were a licensed trainer and a registered stable employee, employed as a foreperson by Darren Weir, the registered trainer of *Tosen Basil*.
5. On or about 30 October 2018, at Darren Weir's licensed stables at Warrnambool in the State of Victoria, you were a party to Darren Weir committing an act of cruelty to a horse, in that he applied an electric or electronic apparatus designed to deliver an electric shock to *Tosen Basil* on approximately nine occasions.
6. Darren Weir's actions were in breach of AR 231(1)(a) or AR 175(n) (as in force as at 30 October 2018).
7. You were a party to Darren Weir's breach of AR 231(1)(a) or AR 175(n) (as in force as at 30 October 2018).

**Charge (9): AR 227(b) [AR 231(1)(a)] – *Yogi***

AR 227(b) reads as follows:

***AR 227***

*Without limiting any other powers, a PRA or the Stewards may penalise any person who:*

*…*

*(b) attempts to commit, aids, abets, counsels, procures, connives at, approaches or requests another person to commit, conspires with another person to commit, or is a party to another person who commits, a breach of the Rules.*

**Particulars of Charge**

1. You were at all relevant times, including on or about 30 October 2018, a trainer licensed by Racing Victoria and a person bound by the Rules.
2. As at 30 October 2018, it was an offence under AR 175(l) of the Rules (as then in force) to engage in conduct substantially similar to that which is the subject of AR 227(b).
3. By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.
4. As at 30 October 2018, you were a licensed trainer and a registered stable employee, employed as a foreperson by Darren Weir, the registered trainer of *Yogi*.
5. On or about 30 October 2018, at Darren Weir's licensed stables at Warrnambool in the State of Victoria, you were a party to Darren Weir committing an act of cruelty to a horse, in that he applied an electric or electronic apparatus designed to deliver an electric shock to *Yogi* on approximately nine occasions.
6. Darren Weir's actions were in breach of AR 231(1)(a) or AR 175(n) (as in force as at 30 October 2018).
7. You were a party to Darren Weir's breach of AR 231(1)(a) or AR 175(n) (as in force as at 30 October 2018).

**Charge (10): AR 229(1)(a)**

AR 229(1)(a) reads as follows:

***AR 229***

*(1) A person must not:*

*(a) engage in any dishonest, corrupt, fraudulent, improper or dishonourable action or practice in connection with racing; …*

**Particulars of Charge**

1. You were at all relevant times, including on or about 30 October 2018, a trainer licensed by Racing Victoria and a person bound by the Rules.
2. As at 30 October 2018, it was an offence under AR 175(a) of the Rules (as then in force) to engage in the conduct the subject of AR 229(1)(a).
3. By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.
4. As at 30 October 2018, you were a licensed trainer and a registered stable employee, employed as a foreperson by Darren Weir, the registered trainer of *Red Cardinal*, *Tosen Basil* and *Yogi* (the **Horses**).
5. On or about 30 October 2018, at Darren Weir's licensed stables at Warrnambool in the State of Victoria, you were a party to, and were knowingly involved in, Darren Weir's application of an electric or electronic apparatus to each of the Horses on numerous occasions in your presence, during a period in which you struck each of the Horses with a poly pipe numerous times and otherwise assisted in the handling of the Horses.
6. In so doing, you engaged in action that was improper or dishonourable in connection with racing.

**TYSON KERMOND**

**Charge (1): AR 227(b) [AR 229(1)(b)] – *Red Cardinal***

AR 227(b) reads as follows:

***AR 227***

*Without limiting any other powers, a PRA or the Stewards may penalise any person who:*

*…*

*(b) attempts to commit, aids, abets, counsels, procures, connives at, approaches or requests another person to commit, conspires with another person to commit, or is a party to another person who commits, a breach of the Rules.*

**Particulars of Charge**

1. You were at all relevant times, including on or about 30 October 2018, a stable employee registered by Racing Victoria and a person bound by the Rules.
2. As at 30 October 2018, it was an offence under AR 175(l) of the Rules (as then in force) to engage in conduct substantially similar to that which is the subject of AR 227(b).
3. By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.
4. As at 30 October 2018 you were a licensed stable employee, employed by Darren Weir, the registered trainer of *Red Cardinal*.
5. As at 30 October 2018, *Red Cardinal* had been accepted to race in the Melbourne Cup on 6 November 2018.
6. On or about 30 October 2018, at Darren Weir's licensed stables at Warrnambool in the State of Victoria, you were a party to Darren Weir's use of an electric or electronic apparatus capable of affecting the performance of a horse in a race (the **Apparatus**), in that he applied the Apparatus to *Red Cardinal* on approximately seven occasions*.*
7. Darren Weir applied the Apparatus to *Red Cardinal* with the intention of affecting *Red Cardinal*’s performance in, and thereby affecting the result of, future races in which *Red Cardinal* would race, including the Melbourne Cup on 6 November 2018.
8. Darren Weir's actions were in breach of AR 229(1)(b) or AR 175(aa) (as in force as at 30 October 2018).
9. You were a party to Darren Weir's breach of AR 229(1)(b) or AR 175(aa) (as in force as at 30 October 2018).

**Charge (2): AR 227(b) [AR 229(1)(b)] – *Tosen Basil***

AR 227(b) reads as follows:

***AR 227***

*Without limiting any other powers, a PRA or the Stewards may penalise any person who:*

*…*

*(b) attempts to commit, aids, abets, counsels, procures, connives at, approaches or requests another person to commit, conspires with another person to commit, or is a party to another person who commits, a breach of the Rules.*

**Particulars of Charge**

1. You were at all relevant times, including on or about 30 October 2018, a stable employee registered by Racing Victoria and a person bound by the Rules.
2. As at 30 October 2018, it was an offence under AR 175(l) of the Rules (as then in force) to engage in conduct substantially similar to that which is the subject of AR 227(b).
3. By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.
4. As at 30 October 2018, you were a licensed stable employee, employed by Darren Weir, the registered trainer of *Tosen Basil*.
5. As at 30 October 2018, *Tosen Basil* had been accepted to race in the Melbourne Cup on 6 November 2018.
6. On or about 30 October 2018, at Darren Weir's licensed stables at Warrnambool in the State of Victoria, you were a party to Darren Weir's use of an electric or electronic apparatus capable of affecting the performance of a horse in a race (the **Apparatus**), in that he applied the Apparatus to *Tosen Basil* on approximately nine occasions*.*
7. Darren Weir applied the Apparatus to *Tosen Basil* with the intention of affecting *Tosen Basil*’s performance in, and thereby affecting the result of, future races in which *Tosen Basil* would race, including the Melbourne Cup on 6 November 2018.
8. Darren Weir's actions were in breach of AR 229(1)(b) or AR 175(aa) (as in force as at 30 October 2018).
9. You were a party to Darren Weir's breach of AR 229(1)(b) or AR 175(aa) (as in force as at 30 October 2018).

**Charge (3): AR 227(b) [AR 229(1)(b)] – *Yogi***

AR 227(b) reads as follows:

***AR 227***

*Without limiting any other powers, a PRA or the Stewards may penalise any person who:*

*…*

*(b) attempts to commit, aids, abets, counsels, procures, connives at, approaches or requests another person to commit, conspires with another person to commit, or is a party to another person who commits, a breach of the Rules.*

**Particulars of Charge**

1. You were at all relevant times, including on or about 30 October 2018, a stable employee registered by Racing Victoria and a person bound by the Rules.
2. As at 30 October 2018, it was an offence under AR 175(l) of the Rules (as then in force) to engage in conduct substantially similar to that which is the subject of AR 227(b).
3. By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.
4. As at 30 October 2018, you were a licensed stable employee, employed by Darren Weir, the registered trainer of *Yogi*.
5. As at 30 October 2018, *Yogi* was nominated to race in the Lexus Stakes on 3 November 2018.
6. As at 30 October 2018, it was possible that *Yogi* would race in the Melbourne Cup on 6 November 2018.
7. On or about 30 October 2018, at Darren Weir's licensed stables at Warrnambool in the State of Victoria, you were a party to Darren Weir's use of an electric or electronic apparatus capable of affecting the performance of a horse in a race (the **Apparatus**), in that he applied the Apparatus to *Yogi* on approximately nine occasions*.*
8. Darren Weir applied the Apparatus to *Yogi* with the intention of affecting *Yogi*’s performance in, and thereby affecting the result of, future races in which *Yogi* would race, including the Lexus Stakes on 3 November 2018 and the Melbourne Cup on 6 November 2018.
9. Darren Weir's actions were in breach of AR 229(1)(b) or AR 175(aa) (as in force as at 30 October 2018).
10. You were a party to Darren Weir's breach of AR 229(1)(b) or AR 175(aa) (as in force as at 30 October 2018).

**Charge (4): AR 227(b) [AR 231(2)(a)] – *Red Cardinal***

AR 227(b) reads as follows:

***AR 227***

*Without limiting any other powers, a PRA or the Stewards may penalise any person who:*

*…*

*(b) attempts to commit, aids, abets, counsels, procures, connives at, approaches or requests another person to commit, conspires with another person to commit, or is a party to another person who commits, a breach of the Rules.*

**Particulars of Charge**

1. You were at all relevant times, including on or about 30 October 2018, a stable employee registered by Racing Victoria and a person bound by the Rules.
2. As at 30 October 2018, it was an offence under AR 175(l) of the Rules (as then in force) to engage in conduct substantially similar to that which is the subject of AR 227(b).
3. By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.
4. As at 30 October 2018, you were a licensed stable employee, employed by Darren Weir, the registered trainer of *Red Cardinal*.
5. On or about 30 October 2018, at Darren Weir's licensed stables at Warrnambool in the State of Victoria, you were a party to Darren Weir’s use of an electric or electronic apparatus capable of affecting the performance of a horse in a race (the **Apparatus**), in that he applied the Apparatus to *Red Cardinal* on approximately seven occasions.
6. The Apparatus was designed to deliver an electric shock, and accordingly, was capable of affecting the performance of *Red Cardinal* in a race, official trial, jump-out or training gallop for the purposes of AR 231(2)(a), by reason of AR 231(3) of the Rules and/or LR 66A(a) (as in force as at 30 October 2018).
7. Darren Weir’s use of the Apparatus was in breach of AR 231(2)(a) or AR 175(hh)(i) (as in force as at 30 October 2018).
8. You were a party to Darren Weir's breach of AR 231(2)(a) or AR 175(hh)(i) (as in force as at 30 October 2018).

**Charge (5): AR 227(b) [AR 231(2)(a)] – *Tosen Basil***

AR 227(b) reads as follows:

***AR 227***

*Without limiting any other powers, a PRA or the Stewards may penalise any person who:*

*…*

*(b) attempts to commit, aids, abets, counsels, procures, connives at, approaches or requests another person to commit, conspires with another person to commit, or is a party to another person who commits, a breach of the Rules.*

**Particulars of Charge**

1. You were at all relevant times, including on or about 30 October 2018, a stable employee registered by Racing Victoria and a person bound by the Rules.
2. As at 30 October 2018, it was an offence under AR 175(l) of the Rules (as then in force) to engage in conduct substantially similar to that which is the subject of AR 227(b).
3. By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.
4. As at 30 October 2018 you were a licensed stable employee, employed by Darren Weir, the registered trainer of *Tosen Basil*.
5. On or about 30 October 2018, at Darren Weir's licensed stables at Warrnambool in the State of Victoria, you were a party to Darren Weir's use of an electric or electronic apparatus capable of affecting the performance of a horse in a race (the **Apparatus**), in that he applied the Apparatus to *Tosen Basil* on approximately nine occasions.
6. The Apparatus was designed to deliver an electric shock, and accordingly, was capable of affecting the performance of *Tosen Basil* in a race, official trial, jump-out or training gallop for the purposes of AR 231(2)(a), by reason of AR 231(3) of the Rules and/or LR 66A(a) (as in force as at 30 October 2018).
7. Darren Weir's use of the Apparatus was in breach of AR 231(2)(a) or AR 175(hh)(i) (as in force as at 30 October 2018).
8. You were a party to Darren Weir's breach of AR 231(2)(a) or AR 175(hh)(i) (as in force as at 30 October 2018).

**Charge (6): AR 227(b) [AR 231(2)(a)] – *Yogi***

AR 227(b) reads as follows:

***AR 227***

*Without limiting any other powers, a PRA or the Stewards may penalise any person who:*

*…*

*(b) attempts to commit, aids, abets, counsels, procures, connives at, approaches or requests another person to commit, conspires with another person to commit, or is a party to another person who commits, a breach of the Rules.*

**Particulars of Charge**

1. You were at all relevant times, including on or about 30 October 2018, a stable employee registered by Racing Victoria and a person bound by the Rules.
2. As at 30 October 2018, it was an offence under AR 175(l) of the Rules (as then in force) to engage in conduct substantially similar to that which is the subject of AR 227(b).
3. By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.
4. As at 30 October 2018, you were a licensed stable employee, employed by Darren Weir, the registered trainer of *Yogi*.
5. On or about 30 October 2018, at Darren Weir's licensed stables at Warrnambool in the State of Victoria, you were a party to Darren Weir's use of an electric or electronic apparatus capable of affecting the performance of a horse in a race (the **Apparatus**), in that he applied the Apparatus to *Yogi* on approximately nine occasions.
6. The Apparatus was designed to deliver an electric shock, and accordingly, was capable of affecting the performance of *Yogi* in a race, official trial, jump-out or training gallop for the purposes of AR 231(2)(a), by reason of AR 231(3) of the Rules and/or LR 66A(a) (as in force as at 30 October 2018).
7. Darren Weir's use of the Apparatus was in breach of AR 231(2)(a) or AR 175(hh)(i) (as in force as at 30 October 2018).
8. You were a party to Darren Weir's breach of AR 231(2)(a) or AR 175(hh)(i) (as in force as at 30 October 2018).

**Charge (7): AR 227(b) [AR 231(1)(a)] – *Red Cardinal***

AR 227(b) reads as follows:

***AR 227***

*Without limiting any other powers, a PRA or the Stewards may penalise any person who:*

*…*

*(b) attempts to commit, aids, abets, counsels, procures, connives at, approaches or requests another person to commit, conspires with another person to commit, or is a party to another person who commits, a breach of the Rules.*

**Particulars of Charge**

1. You were at all relevant times, including on or about 30 October 2018, a stable employee registered by Racing Victoria and a person bound by the Rules.
2. As at 30 October 2018, it was an offence under AR 175(l) of the Rules (as then in force) to engage in conduct substantially similar to that which is the subject of AR 227(b).
3. By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.
4. As at 30 October 2018, you were a licensed stable employee, employed by Darren Weir, the registered trainer of *Red Cardinal*.
5. On or about 30 October 2018, at Darren Weir's licensed stables at Warrnambool in the State of Victoria, you were a party to Darren Weir committing an act of cruelty to a horse, in that he applied an electric or electronic apparatus designed to deliver an electric shock to *Red Cardinal* on approximately seven occasions.
6. Darren Weir's actions were in breach of AR 231(1)(a) or AR 175(n) (as in force as at 30 October 2018).
7. You were a party to Darren Weir's breach of AR 231(1)(a) or AR 175(n) (as in force as at 30 October 2018).

**Charge (8): AR 227(b) [AR 231(1)(a)] – *Tosen Basil***

AR 227(b) reads as follows:

***AR 227***

*Without limiting any other powers, a PRA or the Stewards may penalise any person who:*

*…*

*(b) attempts to commit, aids, abets, counsels, procures, connives at, approaches or requests another person to commit, conspires with another person to commit, or is a party to another person who commits, a breach of the Rules.*

**Particulars of Charge**

1. You were at all relevant times, including on or about 30 October 2018, a stable employee registered by Racing Victoria and a person bound by the Rules.
2. As at 30 October 2018, it was an offence under AR 175(l) of the Rules (as then in force) to engage in conduct substantially similar to that which is the subject of AR 227(b).
3. By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.
4. As at 30 October 2018, you were a licensed stable employee, employed by Darren Weir, the registered trainer of *Tosen Basil*.
5. On or about 30 October 2018, at Darren Weir's licensed stables at Warrnambool in the State of Victoria, you were a party to Darren Weir committing an act of cruelty to a horse, in that he applied an electric or electronic apparatus designed to deliver an electric shock to *Tosen Basil* on approximately nine occasions.
6. Darren Weir's actions were in breach of AR 231(1)(a) or AR 175(n) (as in force as at 30 October 2018).
7. You were a party to Darren Weir's breach of AR 231(1)(a) or AR 175(n) (as in force as at 30 October 2018).

**Charge (9): AR 227(b) [AR 231(1)(a)] – *Yogi***

AR 227(b) reads as follows:

***AR 227***

*Without limiting any other powers, a PRA or the Stewards may penalise any person who:*

*…*

*(b) attempts to commit, aids, abets, counsels, procures, connives at, approaches or requests another person to commit, conspires with another person to commit, or is a party to another person who commits, a breach of the Rules.*

**Particulars of Charge**

1. You were at all relevant times, including on or about 30 October 2018, a stable employee registered by Racing Victoria and a person bound by the Rules.
2. As at 30 October 2018, it was an offence under AR 175(l) of the Rules (as then in force) to engage in conduct substantially similar to that which is the subject of AR 227(b).
3. By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.
4. As at 30 October 2018, you were a licensed stable employee, employed by Darren Weir, the registered trainer of *Yogi*.
5. On or about 30 October 2018, at Darren Weir's licensed stables at Warrnambool in the State of Victoria, you were a party to Darren Weir committing an act of cruelty to a horse, in that he applied an electric or electronic apparatus designed to deliver an electric shock to *Yogi* on approximately nine occasions.
6. Darren Weir's actions were in breach of AR 231(1)(a) or AR 175(n) (as in force as at 30 October 2018).
7. You were a party to Darren Weir's breach of AR 231(1)(a) or AR 175(n) (as in force as at 30 October 2018).

**Charge (10): AR 229(1)(a)**

AR 229(1)(a) reads as follows:

***AR 229***

*(1) A person must not:*

*(a) engage in any dishonest, corrupt, fraudulent, improper or dishonourable action or practice in connection with racing; …*

**Particulars of Charge**

1. You were at all relevant times, including on or about 30 October 2018, a stable employee registered by Racing Victoria and a person bound by the Rules.
2. As at 30 October 2018, it was an offence under AR 175(a) of the Rules (as then in force) to engage in the conduct the subject of AR 229(1)(a).
3. By reason of AR 8(2)(e) of the Rules, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of the Rules.
4. As at 30 October 2018, you were a licensed stable employee, employed by Darren Weir, the registered trainer of *Red Cardinal*, *Tosen Basil* and *Yogi* (the **Horses**).
5. On or about 30 October 2018, at Darren Weir's licensed stables at Warrnambool in the State of Victoria, you were a party to, and were knowingly involved in, Darren Weir's application of an electric or electronic apparatus (the **Apparatus**) to each of the Horses on numerous occasions in your presence, during a period in which you assisted in the handling of the Horses by, among other things, holding the lead rope for each Horse, attaching blinkers to *Tosen Basil* and *Yogi*, removing blinkers from each Horse, and leading the Horses on and off a treadmill on which each Horse was situated when Darren Weir applied the Apparatus to the Horse.
6. In so doing, you engaged in action that was improper or dishonourable in connection with racing.

**Pleas:** Mr Darren Weir – Not Guilty to Charges 1, 2 and 3

Guilty to all other Charges

Mr Jarrod McLean and Mr Tyson Kermond – Not Guilty to Charges 1, 2, 3 and 10

Guilty to all other Charges

**DECISION IN RELATION TO CONTESTED CHARGES**

Mr Darren Weir, Mr Jarrod McLean and Mr Tyson Kermond are each facing ten charges.

Those charges involve alleged breaches of the following Rules of Racing Victoria:

Charges (1) to (3) inclusive – AR 229(1)(b)

Charges (4) to (6) inclusive – AR 231(2)(a)

Charges (7) to (9) inclusive – AR 231(1)(a)

Charge (10) – AR 229(1)(a)

In each instance, the Charges involve three horses trained by Mr Weir. Those horses are Red Cardinal (Charges 1, 4 and 7); Tosen Basil (Charges 2, 5 and 8); and Yogi (Charges 3, 6 and 9).

Charge 10 could be described as a more global offence of improper or dishonourable conduct involving the three horses.

At all material times, Mr Weir was the trainer of each of the three horses. Mr McLean, although a licensed trainer, was a registered stable employee working as a foreperson employed by Mr Weir. Mr Kermond was a licensed stable employee employed by Mr Weir.

They pleaded as follows:

Mr Weir – Not Guilty to Charges 1, 2 and 3.

Guilty to all other Charges.

Mr McLean and Mr Kermond – Not Guilty to Charges 1, 2, 3 and 10

Guilty to all other Charges.

Mr Albert Dinelli KC with Mr Angus Willoughby of Counsel appeared on behalf of the Stewards. Mr Ian Hill KC with Mr Matthew Stirling of Counsel and Ms Anna Dixon of Counsel appeared on behalf of Mr Weir.

Mr Damian Sheales of Counsel with Mr Tony Hannebery appeared on behalf of Mr McLean and Mr Kermond.

Pursuant to S. 50X of the *Racing Act* 1958, all questions of law have been determined by the Chairperson and Deputy Chairperson, Her Honour Kathryn Kings. Valuable assistance in relation to the cases was received from Member, Mr Des Gleeson.

The following decisions in relation to Charges 1, 2 and 3 in each instance are the unanimous findings of the Members of the Tribunal, as are the findings in relation to Charge 10 in the cases of Messrs McLean and Kermond. As is apparent, the findings are solely in relation to the contested charges where pleas of Not Guilty have been entered.

The Tribunal is indebted to all members of counsel participating and to those instructing them. The contested matters have been presented in a most efficient and thorough manner, with the focus being on the relevant portions of the evidence.

That evidence was partly comprised of three large volumes of records of interviews, records of charges, other documentary evidence and of video material. In addition, oral evidence was received from Mr Robert Cram, Chief Steward at the relevant time; Mr Rob Montgomery, the present Chief Steward; and Dr Andrew McLean, Equitation Scientist, engaged by the Stewards, and the sole expert called.

Further, a large amount of photographic evidence was tendered. The video of the alleged offending behaviour was shown several times.

At the outset, we would also point out that the behaviour at the core of all charges essentially took place on the one day, namely Thursday, 30 October 2018 and at the one location, namely the Warrnambool stables of Mr Weir. At the time, Mr Weir was one of the leading trainers in Australia, with his principal stables at Ballarat and large subsidiary stables at Warrnambool, where both Mr McLean and Mr Kermond were employed.

All three were present at the Warrnambool stables on 30 October 2018 and each played some role in the offending behaviour which occurred, resulting in pleas of guilty to the majority of the charges.

That offending behaviour was the administration of a “jigger” to each of the three horses. This took place at the Warrnambool stables. A jigger is a small, hand-held battery-operated device which effectively administers a small electric shock. In the present case, this was done whilst each of the three horses was on a walking or galloping machine at a time when it was operating at full speed or close to it. The administration of the jigger was accompanied by tapping with a plastic tube, calling out, whistling and the like. The activities are designed to equate roughly with what the horse will experience when put under pressure in a race. The horse’s exertion in the race is then presumed to increase at the relevant time, given the memory of the jigger and its “electric shocks”. Thus, at a crucial time, its speed and effort may allegedly increase.

Whether the administration in fact has any effect upon a horse’s effort and speed is considered by some to be speculative. However, it is illegal behaviour which, inter alia, raises issues of animal welfare.

It is also to be remembered that these were three high class thoroughbreds. Two were expected to run in Australia’s most famous race, the Melbourne Cup, on the following Tuesday, 5 November. The other, Yogi, was to run in the Lexus Stakes on Saturday, 2 November. If it won, that would qualify it for entry into the Cup field.

As matters eventuated, Yogi did not so win. Red Cardinal did run in the Melbourne Cup, and ran very poorly, a distant second last in the field of 24. Tosen Basil did not run in the Cup and in fact was retired. Effectively this was due to an injury unrelated to the present charges. Yogi ran seventh in the Lexus Stakes and thus did not qualify for the Melbourne Cup. It ran a fortnight later in the Sandown Cup, a much lower rated race, which it won, and went on to a reasonably successful career.

Thus, only one of the three horses ran in the Melbourne Cup, and that horse ran most unsuccessfully. The other two did not compete. Of course, the failure of the horses arguably does not have any immediate impact upon some aspects of the alleged illegality of the conduct.

2. The issues to be determined.

Many of the facts set out above are unchallenged. The appeals of those accused focused to a considered extent upon the facts in the context of AR 229, alleged breaches of which give rise to the charges. In particular, emphasis was placed upon the wording “engage in conduct which corrupts the outcome of a race or is intended to corrupt the outcome of any race”. We say at the outset that this is a somewhat complicated Rule, the operation of which is, at least at first glance, far from simple.

It is stated in the Rule that conduct corrupts the outcome of a race if it:

(A) affects, or if engaged in, would be likely to affect the outcome of any race; and

(B) Is contrary to the standards of integrity that a reasonable person would expect of persons in a position to affect the outcome of a race.

In relation to Charges 1, 2 and 3, in each instance the question to be determined becomes whether, on the basis of the *Briginshaw* test, it has been proven to our comfortable satisfaction that:

(A) the conduct (the use of a jigger) affected or was likely to affect the outcome of any race; and

(B) that such conduct is contrary to the standards of integrity that a reasonable person would expect of persons in a position to affect the outcome of a race. “Outcome” is not limited to winning or placing.

3. Have these somewhat messy requirements been satisfied to our comfortable satisfaction?

Firstly, in accordance with (A) above the conduct must affect or be likely to affect the outcome of any race. If so, then (B) would be considered.

We turn to AR 229(1)(b)(i)(A). Has it been established to our comfortable satisfaction that the conduct affects or would be likely to affect the outcome of any race?

This seems to us to be essentially an objective test or requirement. A trainer may have some illogical or superstitious, groundless belief in some conduct that he or she regards as affecting the performance of a horse. Even if that conduct satisfied the requirement of (B), in our opinion (A) would not be satisfied.

In relation to (A), the Stewards, in their opening submissions, stated that their case was based upon the second line of AR 229(1)(b) – an intention to corrupt the outcome of a race, whether or not such corruption in fact occurred.

We are of the view that the conduct must not only be proved to have been with the intention of corrupting a race, but had the capacity so to do – that is, that it would affect or was likely to affect the outcome of a race.

It seems to us that, whatever the intent of the trainer, the conduct must have the capacity or the likely capacity to so affect that outcome. The superstitious or illogical trainer earlier referred to may have formed a belief that illegally to break into the course the night before a race and sprinkle some four leaved clovers on the track will affect the horse’s performance. Such trainer may have committed the offence of trespass and his or her intention may have been to “corrupt” the race, but that is not sufficient. It would not have been shown that the conduct affected or would be likely to have affected the outcome of a race.

How does this analogy relate to the facts of the present case? The conduct of the three men charged breached the Rules of Racing. They are pleading guilty to such related charges. They used on the horses an apparatus. Like the hypothetical midnight visitor to the track with the clovers, they may have believed that what they were doing would enhance the performance of the horses.

However, there remain two questions in relation to the charges pursuant to AR 229(1)(b).

Firstly, was it intended to corrupt the outcome of a race? In each charge, reference is made to affecting the results of future races in which the individual horse would compete, but with some added words. For Red Cardinal and Tosen Basil, there is specific reference to “including the Melbourne Cup on 6 November 2018”. For Yogi, the reference is to the Lexus Stakes on 3 November 2018 and the Melbourne Cup on 6 November 2018. Of course, Yogi had to win the Lexus Stakes in order to qualify for a start in the Melbourne Cup.

Given the basis upon which the Stewards have prepared and presented the cases, the assertion of conduct intending to corrupt the outcome of any race seems to us to be specifically confined to the races nominated after the word “including”. The overall wording may be broader – “affect the outcome of any race”, but the questioning carried out in interviews by the Stewards and generally in the presentation of the cases was confined to the affected outcome being that to the Melbourne Cup, plus the Lexus Stakes, the qualifying race, in the case of Yogi.

There is no argument as to the application of the jigger with its electric shocks to each horse on 30 October 2018, nor as to the fact that theoretically the jigger was capable of affecting the performance of a horse in a race. All concerned are pleading guilty to Charges 4, 5 and 6. The only distinction between the Charges is that it is asserted in Charge 4 that the jigger was applied seven times to Red Cardinal and that in Charges 5 and 6 it was applied nine times to each of the other two horses.

All concerned are also pleading guilty to Charges 7, 8 and 9, namely that the application of the jigger was an act of cruelty designed to deliver an electric shock to each horse on the relevant number of times of such application.

For the moment, we leave to one side Charge 10. When the guilty pleas to Charges 4 to 9 inclusive are taken into account, the number of questions to be determined in relation to Charges 1, 2 and 3 is reduced accordingly.

For Charges 1, 2 and 3 essentially what has to be proved by the Stewards is that the admitted conduct corrupted or was intended to corrupt the outcome of a race – that is, affected or was likely to affect the outcome of a race or of races.

As stated previously, in our opinion an important ingredient of this is that the admitted conduct was capable of so corrupting.

If it is not established to our comfortable satisfaction (the *Briginshaw* test) that what occurred was likely to affect the outcome of the races specified, the application must fail.

We are not comfortably satisfied that the outcomes of the relevant races were in fact affected. Therefore, the cases of the Stewards succeed or fail on the “likely to affect” provision. It in turn succeeds or fails on the finding of the capacity of the jigger treatment given to the horses to affect the outcome of the races. If this is not so proven to our comfortable satisfaction, the horses are back in a situation of the “clover” trainer – treatment was given, but it was not established that such treatment was likely to affect the outcome of the races in question.

Accordingly, in our opinion the evidence given by Dr McLean is vital. It is his report, adopted by him in evidence, that potentially could supply the essential link – that is, that the jigger treatment had the potential, to our comfortable satisfaction, to affect the outcome of the races in question. If we are not comfortably satisfied that the treatment had such potential, we are back in the land of the imaginary trainer and the clover leaves and accordingly the relevant Charges must fail.

We say now that we are not particularly impressed with the evidence of Dr McLean. Firstly, whilst he may be qualified in relation to various aspects of animal welfare, his knowledge of and experience with racehorses and racing is limited. He watched the relevant Melbourne Cup once only and live on television, but freely admitted to having otherwise little direct contact with or particular understanding of the operations of the industry. This, of course, does not preclude him from expressing opinions in relation to aspects of the case of which he does have knowledge, but it does have some potential effect on some aspects of his evidence. However, he freely admits that he has very little knowledge of the racing industry as such.

Secondly, Dr McLean made some important concessions in his oral evidence, and particularly in cross examination. It is to be remembered that his area of expertise for the purposes of the current cases is the effects of pain, particularly in horses. We would refer to the following answers given mainly to Mr Sheales in cross-examination.

1. “The precise way it (the effects of the jigger) would show up after this kind of treatment in any particular event is something that is not clear” – see Transcript (hereafter referred to as (“T”) 84, Lines 26-7).
2. In answer to a question as to whether “likely” is very different to “possible”: “Well, “possible” is “likely” as far as I can see”. (T 88, Lines 6-7).
3. “So there’s a good chance that it (electric shock) could work and the horses could go faster, but there’s also a chance that it may not work”. (T88, Lines 21 and 22).
4. Again, in relation to “likely” and “possible”, and whether, to Dr McLean, they are the same: “They are to me, yes”. (T88, Lines 40-41).
5. In relation to a question concerning whether the manner or the circumstances surrounding the administration of the jigger to Yogi could be remembered by the horse weeks later when it won: “I don’t know, I honestly don’t know, I honestly don’t, but these are the sort of things that could affect that” (T90, Lines 4-5).
6. Following on from that answer, there was this exchange: Q: “You’re saying “could”…what does “could” mean? “Could” means “possible”…”Possible” means “who knows”? Correct? A: “Yes” (T90, Lines 7-9).
7. When further pressed concerning the difference between “possible” and “likely”: “Well, I think its semantics, to be perfectly honest” (T90, Lines 13-14) When pressed further concerning whether “possible”, “maybe”, “who knows” and “likely” are all the same. A: “But in this area its really hard to pinpoint. It’s somewhere between those. I mean, it includes “possible”, “likely”, “whatever”. (T90, Lines 19-21).
8. When questioned further about whether what had occurred with the jigger had any effect on Yogi in the Sandown Cup Q: A truthful answer is “I don’t know”. Correct? A: I don’t know (T90, Line 41).
9. Dr McLean – “Well, look, I’m not a racing expert” (T 94, Line 35).
10. Q: “So it is not true and it is not truthful evidence for you to say – when you say the word “possible”, you really mean “likely” – I suggest you know full well when you use those words, they have different meanings to you? A: Well, I think its semantics, to be perfectly honest”. (T94, Line 40).
11. “…severe pain can either result in hyperactivity or the early development of passive strokes, and there’s no given recipe with any animal”. Q: So you watched his run and you didn’t see anything remarkable about it? A: No, not that I recall” (T94, Line 45)
12. In relation to what Dr McLean had seen on the video of the horses being applied the “jigger” on the machine: “Certainly there was no panic to get off or anything like that” – (T108, Lines 34-35).
13. In relation to whether he watched the video of the race or the use of the jigger, there was no sign of an effect on the animals – “Yes, I couldn’t see any effect: In fairness, the horses were going so fast that I can’t see what effect they could show” (T111 – Lines 36-37).
14. “I’m not an expert in races. It’s an irrelevant thing for me”. (T112, Line 118).
15. When asked if, as a scientist, it was important to have the “jigger” tested: “Possibly, but I’m not an electrical engineer, so I don’t know much about the analogy of a torch to a jigger, all those technical aspects. I just know what it’s designed to do” – (T112, Lines 3-4).
16. “…I’m not an expert in races. It’s an irrelevant thing for me (T 112, Line 18).
17. In response to a question as to whether he had watched Yogi’s win in the Sandown Cup: “No I didn’t…I steer clear of those things because it just not – I’m not a – racing is not my expertise (T112, Lines 33,34).
18. Q: “So if that (whistling) was part of this classified conditioning, the jockeys would have to be in on it, wouldn’t they on race day? A: Maybe, possibly, yes. Q: Well, who else is going to whistle at them? A: Yes, possibly that’s true”. (T 113, Lines 13-16).
19. Q: “And here, from any testing point of view, we don’t know what the level of voltage or current emitted was, yes? A: Yes, we can’t say that for sure. Q: Or what the level of shock was, if any? A: No (T 113, Lines 36-43).
20. Q: You’re more on the psychological side? A: Yes (T114, Line 23).
21. After questions concerning some horses preferring particular tracks and being likely to do better at them. Q: That would come within your area of expertise? A: No (T115, Lines 1-3).
22. Further answers to questions by Mr Sheales in relation to the replication in a race of the circumstances at trackwork when a jigger was applied (the Birdsville case):

“…definitely it supports what I’m saying about fear learning, that is that context, its electrified – and I repeat the fact that this not the case here”. Q: Yes, exactly, that’s what I’m saying. It’s a world of difference? A: Yes (T115, Lines 38-43).

We have set out numerous answers by Dr McLean which, in our opinion, indicate a high level of uncertainty on his part as to the conduct of races and as to whether the treatment of the horses by Mr Weir and his colleagues in fact had any effect upon their performance.

The same could be said in relation to the vital and central issue involved in the Rule, namely, whether it has been established that the conduct affected or was likely to affect the outcome of any race. In our opinion the evidence presented by the Stewards falls well short of discharging the burden of proof, particularly bearing in mind the application of the *Briginshaw* test. We are not comfortably satisfied that the conduct of Messrs Weir, McLean and Kermond, whilst clearly breaching the Rules to which they are pleading guilty, has been proven in relation to the alleged “corruption” charges.

Dr McLean may have expertise in some areas, but not in at least some of those at the centre of this dispute. In any event, that evidence contains a high level of uncertainty as to whether any pain associated with the use of the jigger in this case would be likely to affect the outcome of the races in question or, indeed, any race.

In short, the evidence on behalf of the Stewards falls well short of discharging the burden of proof, either to the required standard of the *Briginshaw* test or generally. That is so in each of the three cases in relation to the alleged breaches of AR 229(1).

Whilst it is unnecessary to go beyond that, there is another issue which, were it necessary, would at least be a cause of concern.

AR 229(1)(b) is based upon corruption, actually or intended, of the outcome of a race. Was it intended to operate in any situation where the requirements of AR 229(1)(b)(A) and (B) are applicable?

“Corruption” is a strong word. Is AR 229(1) of such broad operation that it covers in any situation, big or small, conduct that is likely to affect the outcome of a race and is contrary to the “reasonable person” test contained in AR 229(1)(b)(i)(B)?

Let us take the example of excessive use of the whip. It is conduct that is intended to affect the outcome of a race and, in some circumstances, would be likely so to do. Some people would regard it as contrary to the standards of integrity expected of persons in a position to affect the outcome of a race. So can excessive use of the whip be a breach of AR 229(1)(b)? Would the same apply to a jockey wearing illegal spurs?

The words “corrupt” and “corruption” do not appear in the Dictionary contained in AR 2. These are strong words in general use, with definitions such as rotten, depraved, wicked (Oxford Dictionary) or behave in a way that is morally wrong especially by doing dishonest or illegal things in return for money or power (Collins Dictionary).

Further, in relation to the meaning of the word “corruptly”, we would refer to the decision in Field V R [2010] NZCA 556 as follows:

“To act corruptly under S. 262 (of the Crimes Act) I consider that the person concerned must (a) have a dishonest purpose and (b) intend to act in a way which can be described as morally wicked or depraved”.

Patently this observation was made in the context of a criminal charge, but it is an interesting comment and perhaps casts some light on the potential gravity of the word “corrupts”.

It is unnecessary to make a ruling in respect of this, given our earlier findings. However, it does have the potential to raise concerns.

Much the same can be said of the argument advanced by Mr Hill, Mr Stirling and Ms Dixon to the effect that Mr Weir’s intent was for his horses to race to their potential, but no more – that is, not above it, as might be argued in cases involving some prohibited performance enhancing substances. That argument is not without considerable merit, but whether, on its own, it is an answer to the charges is a contention need not be determined as part of this decision.

The bottom line is that we are not satisfied, comfortably or otherwise, that Charges 1, 2 and 3 have been made out. In particular, we are not comfortably satisfied that the required component of “likely to affect the outcome of any race” has been proven.

In relation to each person charged, Charge 1, 2 and 3 are dismissed.

Mr McLean and Mr Kermond are also contesting Charge 10. We are comfortably satisfied that in each instance, Charge 10 has been proven. We are comfortably satisfied that each was knowingly involved in the application of the jigger to the horses and took some part in the attention that was paid to each horse whilst this was happening. The video material seems to us to make this clear. We are comfortably satisfied that, in each instance, a breach of AR 229(1)(a) occurred. Their conduct was improper or dishonourable.

We shall discuss the timing of penalty submissions in respect of Charges 4 to 10.

Mark Howard

Registrar, Victorian Racing Tribunal