5 July 2024

**RACING VICTORIA**

**and**

**DARREN WEIR**

**and**

**JARROD McLEAN**

**and**

**TYSON KERMOND**

**Date of penalty hearing:** 3 June 2024

**Date of decision:** 5 July 2024

**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 – PENALTY**

The following are our decisions on penalty in the cases of Messrs. DarrenWeir, Jarrod Mclean and Tyson Kermond. We would refer to our decisions on liability delivered on 24 April 2024.

Whilst these decisions on penalty are being read out by me, they are our unanimous findings. Any questions of law have been dealt with by me and by Her Honour Kathy Kings, but with invaluable factual input throughout from Mr Des Gleeson. This is in accordance with S. 50 X of the *Racing Act* 1958.

We would refer to our decisions on liability and the factual matters discussed and determined therein. Such decisions essentially related to Charges 1, 2 and 3 to which the three persons charged successfully pleaded Not Guilty. Messrs. McLean and Kermond also pleaded Not Guilty to Charge 10, but each was found guilty in that regard. Mr Weir pleaded Guilty to Charge 10.

There are pleas of guilty to all remaining Charges by Mr Weir and to Charges 4-9 inclusive by Messrs. McLean and Kermond, with a previous finding against each of guilt in relation to Charge 10.

The remaining Charges are as follows. As against Mr Weir, Charges 4, 5 and 6 concern the use of an electric apparatus (a “jigger”) on each of three horses, those Charges are pursuant to AR 231(2)(a). Charges 7, 8 and 9 are pursuant to AR 231(1)(a) and involve an act of cruelty, namely the application of the jigger. Charge 10 is pursuant to AR 229(1)(a), which is something of a “catch all” provision relating to dishonesty, fraud and the like. In relation to Mr McLean Charges 4 to 9 inclusive are pursuant to AR 227(b) and that is also the situation in the case of Mr Kermond. Charge 10 is pursuant to AR 229(1)(a) also involves each of them.

All those Charges effectively concern the one comparatively brief course of action, involving each of the three persons charged and on the one day, namely 30 October 2018. We turn now to our decision in relation to the penalty for each individual. Apart from other matters, the issues of delay and totality will receive some attention.

We shall deal with the Charges against the three individuals separately, commencing with the case involving Mr. Weir. In each set of Charges, and save for Charge 10, we shall concentrate upon and discuss what could be described as a sample Charge. In relation to the potential gravity of and culpability for the six offences as such, and leaving to one side the distinctions between the involvement and culpability of the three persons charged, there is little to choose between the Charges. In each case, we select Charge 8 as being the Charge under discussion, solely because it contains the ingredient of cruelty and, in the case of *Tosen Basil,* use of the jigger on nine occasions, being the equal maximum instance of such use.

We turn now to a discussion of the Charges and penalties, dealing with each person in turn.

1. Mr Darren Weir

We say at the outset that, whether it be a question of law, mixed fact and law or general fairness, the concept of totality clearly operates in the case of Mr Weir.

On 6 February 2019, the Racing Appeal and Disciplinary Board (“the RAD Board”) imposed on Mr Weir a penalty of disqualification for four years, this being for the possession of electrical devices, commonly and hereinafter referred to as “jiggers”. They were found in Mr Weir’s house at Miners Rest on 30 January 2019. Thus, the matter came before the RAD Board very rapidly. The speed of the hearing itself was assisted by the fact that, very shortly before that hearing, the parties had essentially agreed upon the penalty to be imposed. Of course, the RAD Board was not bound by any such agreement, but, after some discussion, handed down a decision agreeing with that proposed penalty of disqualification for four years.

It is to be remembered that the Charges in the present case arose out of the video material of Mr Weir’s use of the jiggers on 30 October 2018. Thus, the events the subject of the two sets of decisions or cases (2018 and 2024) come from the same factual background. There has been no argument to the contrary by the Stewards. The use of the jiggers was on 30 October 2018 and Mr Weir was found in possession of them on 30 January 2019.

As stated, this seems to be a case where the principles of totality apply. That is so even though there was an unfortunate and basically unacceptably lengthy delay between the occurrence of the use of the jiggers and the ultimate hearing of the resultant Charges in relation to that use, part of which was the delay between the hearing concerning possession and the present hearing in relation to the “using” offences.

What then are the relevant principles of totality of sentences and how do they impact upon the present Charges involving Mr Weir?

In criminal law, the principle of totality applies when sentencing an offender for multiple offences or when sentencing an offender who is already serving an existing sentence. Put another way, when an offender is to serve more than one sentence, the overall sentence must be just and appropriate in light of the overall offending behaviour. That sentence should reflect the scope of an offender’s actions and be fair in light of the entire criminal conduct.

As was said by McHugh J in Postiglione v The Queen 189 CLR 295 at 308:

“…the court adjusts the prima facie length of the sentences downward in order to achieve an appropriate relativity between the totality of the criminality and the reality of the sentences”.

Put another way, the overall total, by way of total and partial concurrencies, should be a penalty that is just and appropriate.

Whilst these are brief summaries of the operation of the principles of totality in the context of the criminal law, it seems to us that they should be applicable in the context of disciplinary proceedings such as those currently before us. Indeed, no substantial argument to the contrary was advanced.

What then are the “totality” factors in this case?

Firstly, the penalty of disqualification for four years imposed on 6 February 2019 should be taken into account.

Secondly, Mr Weir has limited greatly any participation by him in racing since the expiry of the four year penalty in February 2023 and pending the hearing of the present Charges.

Thirdly, Mr Weir faced a considerable number of police Charges concerning the jiggers and animal welfare in the Magistrates Court. Most were not pursued. Ultimately, he pleaded guilty to cruelty and was fined $36,000 without a recorded conviction, this being on 14 December 2022. That should be taken into account.

Next, he has had these Charges and their predecessor (possession) hanging over him for approximately five and a half years. There is no suggestion that any part of that delay is in any way attributable to him. The same could not be said of the Stewards. Apart from anything else, there is no acceptable explanation as to why there was such a delay between the expiry of the four year period of disqualification in January 2023 and the laying of the present Charges in September of that year. It is to be remembered that, in the possession case, the discovery of the jigger or jiggers occurred in late January 2019. Mr Weir was interviewed on approximately 30 January. Charges were laid and the matter heard by the RAD Board on 6 February, 2019. A penalty of disqualification for four years was imposed. That may have been an exceptionally rapid sequence of events, but it demonstrates what can be achieved in a short time. It stands in stark contrast to the present case and particularly the delay after Mr Weir’s period of disqualification came to an end.

We turn now to our findings on penalty for Charge 8. This penalty is pursuant to AR 231(1)(a) and relates directly to the commission of an act of cruelty, namely the application of an apparatus designed to deliver an electric shock to the horse in question.

We appreciate that, in each instance, including Charge 8, there is no indication of any reaction by the horses to which the jigger was applied. Indeed, the evidence of Dr Andrew McLean, the expert witness called by the Stewards and who had viewed the relevant and clear video of the administration, ultimately his opinion was that he could not say whether the application had any effect on the particular horses at all.

That is not to minimise the gravity of the offending. The repeated application of the jigger to the horses represents acts of cruelty to which Mr Weir has pleaded guilty. It is behaviour which the industry will not tolerate. The reaction of individual horses to it may vary, but the use of a jigger remains a major offence which should attract a significant penalty.

Counsel for Mr Weir have argued that a specific circumstance or special circumstances, as referred to in LR 105, exist for the purposes of AR 283(6)(e) and that the otherwise mandatory minimum penalty of disqualification for two years should not be porposed. In detailed written submissions to which Mr Hill spoke, reference was made to various factors in support of this proposition. This relates to Charges 4, 5 and 6.

Considerable attention was directed to the lengthy delay which occurred in relation to the prosecution of these Charges. Mr Hill also emphasised the pleas of guilty by Mr Weir to the relevant Charges and his co-operation. The multiplicity of Charges, including police matters which he has faced and many of which were dropped, also received considerable attention.

A large number of most impressive character references was placed before us. We are prepared to say that, in our collective years performing this work, we have never seen such a powerful collection.

We also note that, in the interval between the expiry of the four year disqualification period and the present time, Mr Weir has pre-trained a considerable number of horses at his farm. This work is for others in the industry. The Stewards have at all relevant times known of this, having been notified of it by Mr Weir. There is no suggestion that this was in any way improper or a breach of the Rules. Indeed, the Stewards have visited his property and have seen what is occurring.

Next, given the extent of his work and the number of horses that he has trained over the years, along with their obviously high success rate, Mr Weir, a self-made trainer, has himself been an outstanding success. Further, particularly bearing in mind the size of his operation, his disciplinary record is very good.

Finally, we accept that he is genuinely remorseful. He has been essentially frank and co-operative with the Stewards. He has pleaded guilty to the present Charges and did so at an early stage after they were laid.

Thus, there are a number of mitigating factors operating.

However, we are of the opinion that there should be a disqualification and that it should be for the minimum period prescribed by AR 283(6)(e) referred to in relation to Charges 4, 5 and 6 – that is, for two years. That is the specified minimum penalty unless “special circumstances” exist.

Whilst, as set out above, there are a number of factors and circumstances that justify the imposition of the minimum penalty prescribed by the Rule, we are not of the view that they fall within the category of “special circumstance” as required and constitute an exception.

AR 283(6) is clear. Unless there is a finding that a special circumstance exists, in which case the penalty may be reduced, the specified period of disqualification must be imposed. For a breach of AR 231(2)(a), that period of disqualification is not less than two years for Charges 4, 5 and 6.

Mr Weir, a most experienced trainer of a huge number of horses, was not only the person in charge of the situation. He was the person who actually committed the acts of cruelty to *Tosen Basil*.

Whilst there are a number of very substantial matters in Mr Weir’s favour, the key ones of which have been set out earlier, the bottom line is that he was the person in charge of the horse, the stables and the situation. He was the boss. He was the “hands on” person who actually committed these serious offences and in the example that we have given involving *Tosen Basil*. He was in charge of, and was the administrator of, a procedure that is abhorrent and deserving of condemnation.

Accordingly, we are not of the opinion that sufficient, if any, special circumstances exist so as to justify a reduction of or alteration to the minimum period of disqualification set out in AR 283(6)(e) for Charges 4, 5 and 6. Because of the factors to which we have referred, the penalty which we impose is that minimum penalty of disqualification for two years over and above the disqualification for four years which Mr Weir has already served. It seems to us that a further disqualification for two years is a fair and appropriate penalty.

We impose a similar penalty in relation to each of the other Charges pursuant to AR 231(1) for the breaches involving *Red Cardinal* and *Yogi.* (Charges 7, 8 and 9 respectively). The observations made above in relation to Charge 8 and *Tosen Basil* are equally applicable to Charges 7 and 9. However, we further order that each such penalty of disqualification for two years be served concurrently with the penalty imposed in relation to *Tosen Basil.*

We also impose similar penalties for the breaches of AR 231(2)(a), which deals with the use of an electronic device (the jigger). Again, there are three Charges (Charges 4, 5 and 6) against Mr Weir, each involving one of the same three horses, and again we fix each period of disqualification at two years, each to be served concurrently with the penalty for Charge 8.

Thus, the end result of the totality of Charges 4-9 against Mr Weir is a period of disqualification for two years, this, of course, being additional to the four years disqualification already served.

Indeed, however we approach it, we are of the opinion that disqualification for a further two years, over and above the four years disqualification for the related offence of possession, is a fair and appropriate penalty.

2. Mr Jarrod McLean

We shall not recite again in full the facts and considerations in respect of the Charges.

It is sufficient to say that, on 30 October2018, Mr McLean was a licensed trainer who, in essence, ran the Warrnambool stables when Mr Weir, as head trainer, was not in attendance. Of course, on that day Mr Weir was present. Clearly Mr. Weir was in charge of what occurred. Mr McLean’s role involved such things as moving around the horse being subjected to the use of the jigger, giving it an occasional hit or flick with a hollow plastic tube or the like. He also assisted in positioning and securing horses where Mr Weir could reach them for the purposes of the jigger.

Mr McLean played nowhere near as significant a role as did Mr Weir, but nevertheless played an active part in what was taking place.

Being the person in charge of the Warrnambool stables when Mr Weir was not present, Mr McLean was in a position of some authority and responsibility. Unlike Mr Weir, he has not served any period of disqualification or, for that matter, suspension in relation to the Charges. (*Note: an argument has arisen subsequently as to the accuracy of this statement and further arguments are to be heard and determined at a later date. A similar issue has arisen in relation to Mr Weir and Mr Kermond*). Nevertheless, the prospect and reality of them have been hanging over him for some years. We also treat him as a person who had no relevant prior conviction at the time of the commission of these offences. We take into account the submissions of Mr Sheales on his behalf.

In our opinion, a period of disqualification is warranted.

There is no doubt but that Mr Weir was in charge of what was occurring in the Warrnambool stables on 30 October 2018. Mr McLean’s role was that of a subordinate. That is true both in relation to the pecking order and to the tasks performed. He did not actually use the jigger on any horse. The closest he came to that was the sticking or tapping of the horses rump with a plastic tube. Apart from being Mr Mclean’s superior, Mr Weir alone carried out the use of the jigger. Thus, he was in charge of all aspects of that use, both in relation to the ladder of authority and to the actual physical administration, performed, as stated, solely by him.

However, the fact remains that Mr McLean was taking an active role in the process, even if that role was smaller than that or Mr Weir. He was a registered trainer in charge of the Warrnambool stables in the absence of Mr Weir. He had responsibilities in that regard. There is no evidence that he objected to the use of the jigger by Mr Weir or opposed the process. Rather, he was co-operating with it and assisting to some degree.

We bear in mind the potential damage to the image of the industry. The actual suffering of the horses may not have been a major element in these cases, but the practice itself is abhorrent. Deterrence is a significant factor.

Our finding is that Mr McLean is disqualified on Charge 8 for a period of 18 months. A similar penalty is imposed for Charges 4, 5, 6, 7 and 9. However, those penalties are concurrent with the penalty for Charge 8.

The end result is disqualification for 18 months.

1. Mr Tyson Kermond

The role played by Mr Kermond is smaller again than that played by Mr McLean.

Mr Kermond is a young man who, at the relevant time, was employed as a stable hand at Warrnambool by Mr McLean, and hence by Mr Weir.

He was present with those gentlemen at the relevant time. He seems to have brought the horses into the vicinity of where the use of the jiggers took place and then remained there. Apart from that, his actual “hands on” involvement was minimal. His record contains no relevant blemish.

During the commission of these offences Mr Kermond was an employee stable hand acting in a very small role, in the presence of his immediate superior and what could be described as “the big boss”.

Nevertheless, that acting was also in relation to the use of an instrument of cruelty. As with the other offenders, the potential impact on the image of racing must be borne in mind.

We are of the view that a penalty of disqualification for six months is appropriate. As with Messrs. Weir and McLean, that penalty is imposed for Charge 8. A similar penalty is imposed for Charges 4, 5, 6, 7 and 9, but those penalties are concurrent with the penalty for Charge 8.

Thus, in relation to Mr Kermond, the bottom line for Charges 4-9 inclusive is disqualification for six months.

4. Charge 10 against each person

Charge 10 is pursuant to AR 229(1) and, in these cases, is in the nature of a “catch all“ provision – the engagement in dishonest, corrupt and the like action in connection with racing.

Mr Weir pleaded guilty to this offence and Messrs McLean and Kermond have been found guilty. In our opinion, the penalties again should be the same as for Charge 8 – namely, disqualifications for two years for Mr Weir, 18 months for Mr McLean and 6 months for Mr Kermond. Again, each of these penalties should be concurrent with the penalty for Charge 8.

**CONCLUSION**

The bottom line is that Mr Weir is disqualified for a further two years, over and above the time already served, making an overall total of 6 years disqualification in relation to these related offences. Mr McLean is disqualified for 18 months and Mr Kermond is disqualified for 6 months.

**NOTE**

The actual imposition and starting dates of penalties will be determined following the receipt of submissions from the parties and the consideration thereof. A directions hearing may be set down in this regard.

Mark Howard

Registrar, Victorian Racing Tribunal