

**REASONS FOR DETERMINATION OF**  
**THE RACING PENALTIES APPEAL TRIBUNAL**

<b><u>APPELLANT:</u></b>	<b>DAVID YOUNG</b>
<b><u>APPLICATION NO:</u></b>	<b>A30/08/780</b>
<b><u>PANEL:</u></b>	<b>MR D MOSSENSON (CHAIRPERSON) MR J PRIOR (MEMBER) MR W CHESNUTT (MEMBER)</b>
<b><u>DATE OF HEARING:</u></b>	<b>27 JULY 2015</b>
<b><u>DATE OF DETERMINATION:</u></b>	<b>27 JULY 2015</b>
<b><u>DATE OF REASONS:</u></b>	<b>31 JULY 2015</b>

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**IN THE MATTER OF** an appeal by **DAVID YOUNG** against a determination made by Racing and Wagering Western Australia Stewards of Harness Racing on 1 July 2015 imposing a disqualification from midnight on 6 July 2015 until 11 February 2016 for breach of Australian Harness Rule of Racing 267(2).

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Mr T Percy QC, instructed by Timpano Legal represented Mr D Young.

Mr R J Davies QC represented the Racing and Wagering Western Australia Stewards of Harness Racing.

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**INTRODUCTION**

- 1 An inquiry was instigated on 24 June 2015, by Racing and Wagering Western Australia (**RWWA**) Stewards of Harness Racing in relation to Mr David Young's two convictions in the Magistrates Court of dangerous driving in circumstances which subsequently occasioned grievous bodily harm. The Magistrate imposed sentences of imprisonment for

14 months in relation to each offence to be served concurrently. Both sentences were suspended for the full 14 months.

- 2 Harness Rule of Racing 267 states:

***Disqualification by conviction***

- (1) Subject to sub-rule (2) the Controlling Body may for such period and on such conditions as it thinks fit, disqualify a person who is convicted of a crime or an offence in any State or Territory of Australia or in any country.*
- (2) The Controlling Body shall disqualify a person who is convicted of a crime or an offence in any State or Territory of Australia or in any country and sentenced to a period of imprisonment.*

- 3 The Stewards dealt with the matter on the basis that Rule 267(2) required them to impose a penalty of disqualification for the period of the suspended jail sentences. To quote from the transcript, *"by the black letter of the law, you should be disqualified from now until that...jail suspended term is finished."*

- 4 Upon lodging his appeal, Mr Young applied for but was refused a suspension of operation of the disqualification penalty.

- 5 The grounds of appeal are:

- 1. Rule 267(2) of the Racing and Wagering Western Australia Rules of Harness Racing (the **Rules**) is void for uncertainty.*
- 2. Alternatively, the stewards' purported disqualification of the appellant pursuant to rule 276(2) of the Rules was ultra vires.*
- 3. Alternatively, the phrase "period of imprisonment" in rule 276(2) of the Rules does not include a suspended term of imprisonment.*
- 4. Alternatively, the disqualification imposed, being equivalent to the remaining suspended term, resulted in a disqualification which was, in all the circumstances, excessive and unreasonable, and not supported by evidence.*

**BACKGROUND TO THE PROCEEDINGS**

- 6 There was no dispute in relation to the background to the Stewards' proceedings. For simplicity sake we quote from the appellant's outline of submissions on this aspect as follows:

- 1. On 25 May 2013, the appellant was the driver of a vehicle involved in an incident which ultimately resulted in him being convicted of two counts of dangerous driving causing grievous bodily harm pursuant to section 59(1)(b) of the Road Traffic Act 1974 (WA).*
- 2. When renewing his harness training and driving licences in 2013, the appellant informed the stewards of the existence of the charges. The appellant was told that his licences would be unaffected and the stewards would review the matter after trial.*

3. *Similar discussions occurred in 2014 when the appellant again renewed his harness licences and also applied for a thoroughbred training licence.*
4. *On 12 December 2014, the appellant was sentenced to a total effective sentence of 14 months imprisonment suspended for 14 months.*
5. *On 24 June 2015, as a result of the appellant's voluntary disclosure of his conviction (in the course of renewal of his thoroughbred training licence), a steward's inquiry was held to determine what effect the appellant's conviction and sentencing would have on his harness licences.*
6. *The inquiry was conducted by Mr Carl Coady (Chief Steward), Mr Grant Frankling (Steward) and Mr Brad Bennetts (Steward). Also present, at the appellant's request, was Ms Sian Hughes (the appellant's partner).*
7. *The transcript of the inquiry reveals that the focus of the inquiry was the operation of rule 267 of the Rules. The appellant, however, was not given prior notice of the proposed application of rule 267 and was therefore not afforded an opportunity to properly address the matter (or seek legal advice regarding the rule's construction).*
8. *Further, during the course of the inquiry, when the appellant enquired as to whether he should seek legal advice he was expressly told by Mr Coady not to seek legal advice until a decision had been made (despite the fact that the stewards considered it necessary for them to seek legal advice).*
9. *On 25 June 2015, the appellant contacted Mr Brad Lewis (the Chief Thoroughbred Steward) in relation to the application for renewal of his thoroughbred licence. Mr Lewis told the appellant that the thoroughbred stewards were awaiting the outcome of the harness matters before making a determination. To date, the appellant has heard nothing more about his thoroughbred licence.*
10. *By a letter dated 1 July 2015 (which was handed to the appellant on 3 July 2015), the stewards advised that, pursuant to section 267 of the Rules, he would be disqualified from holding a licence as a harness racing trainer and driver from 6 July 2015 until 12 February 2016 (being the date upon which the appellant's suspended term of imprisonment expires).*

## **DETERMINATION**

- 7 At the conclusion of the appeal hearing the Tribunal determined the matter and by unanimous decision, upheld the appeal and quashed the disqualification.

## **REASONS**

- 8 As to the first ground the Tribunal is satisfied Rule 267(2) contains no power to set any period of disqualification. Further, it provides no discretion as to the length of the disqualification, nor any conditions which may be imposed.
- 9 Although the Stewards took the view that the period of disqualification should reflect the term of imprisonment we are satisfied the Rule as framed is unworkable and uncertain.

- 10 In those circumstances, we are satisfied Rule 267(2) is void for uncertainty and ground 1 is upheld.
- 11 The decision to disqualify Mr Young was clearly made by the RWWA Stewards and not by RWWA as the controlling body. The inquiry was conducted by the various Stewards who are identified in paragraph 6 of the Background. Mr Coady on behalf of those Stewards, advised Mr Young of the outcome of the Stewards' determination as is clear from paragraph 10 of the Background.
- 12 The Rule in question specifically provides for and empowers the "Controlling Body", not the Stewards, to impose the disqualification. RWWA is conferred the power to disqualify by section 44(1)(a) of the *Racing and Wagering Western Australia Act 2003* (WA). For these reasons there is merit in the ultra vires ground of appeal. Ground two is upheld.
- 13 It is unnecessary to decide grounds three and four.
- 14 In the light of these findings and determination we are satisfied this is an appropriate matter for the lodgement fees of the appeal and stay to be refunded to the appellant.



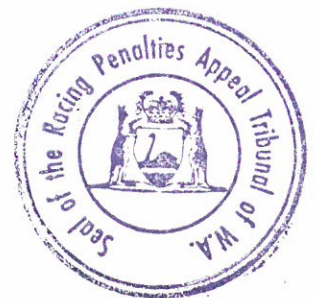
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**DAN MOSSENSON, CHAIRPERSON**



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**JOHN PRIOR, MEMBER**





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**WILLIAM CHESNUTT, MEMBER**