

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
ADMINISTRATIVE DIVISION

REVIEW AND REGULATION LIST

VCAT REFERENCE NO. Z795/2020

CATCHWORDS

Review and Regulation – *Racing Act 1958* (Vic), section 83OH(1) – application for review of penalties imposed by the Victorian Racing Tribunal – eight charges proven including in respect of: an attempt to stomach tube a horse which had been nominated to race on the same day; frustrating an enquiry or investigation; giving false or misleading evidence; administering an alkalinising agent within one clear day of the commencement of a race; and not keeping proper log books – periods of disqualifications and whether suspensions should be imposed instead – whether penalties to be served cumulatively or concurrently – quantum of fines and whether part to be suspended.

APPLICANT	Joseph Bajada
RESPONDENT	Harness Racing Victoria
WHERE HELD	Melbourne
BEFORE	A Dea, Senior Member
HEARING TYPE	Hearing via videoconference
DATE OF HEARING	22 June 2021
DATE OF ORDER AND REASONS	6 August 2021
CITATION	Bajada v Harness Racing Victoria (Review and Regulation) [2021] VCAT 878

ORDERS

Under section 51(2)(a) and (c) of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic):

- 1 The decision of the Victorian Racing Tribunal (VRT) made on 7 September 2020 to disqualify the applicant for two years in respect of a breach of Australian Harness Racing Rules (AHRR) 193(1) and one year in respect of a breach of AHRR 187(6) is affirmed.
- 2 The VRT's decision that those periods of disqualification be served cumulatively is affirmed. The total disqualification period will expire on 7 September 2023.
- 3 The VRT's decision to impose two fines of \$2,250 in respect of breaches of AHRR 196C(1)(b) is varied and substituted with a decision that each fine shall be \$2,000.



- 4 The VRT's decision as to the quantum of the monetary fines is otherwise affirmed.
- 5 The applicant must pay the sum of \$1,350 with the balance of \$4,500 suspended under AHRR 256(5)(a) for two years provided there is no further breach of the AHRR. The two year period commences on the day the applicant is re-licensed.

A Dea
Senior Member

APPEARANCES:

For Applicant	In person
For Respondent	Mr A Cusamano, solicitor



REASONS

- 1 In September 2020, Mr Joe Bajada was found to have breached the Australian Harness Racing Rules (AHRR).
- 2 The breaches were the result of Harness Racing Victoria (HRV) Stewards attending Mr Bajada's property on 20 June 2020 and seeing him with a piece of tubing inserted into one of his horse's nostrils and the other end in his mouth. A blue bucket contained liquid was seen beside Mr Bajada. During the course of the attendance, Mr Bajada kicked the bucket over with most, but not all, of the liquid spilling out. Mr Bajada was interviewed at that time and again later that night at Tabcorp Park Melton. Those interviews led to further charges of breaches of the AHRR.
- 3 In summary, the final charges related to:
 - An attempt to stomach tube a horse which had been nominated to race on the same day (charge 1);
 - Frustrating an enquiry or investigation by deliberately kicking over the bucket containing liquid and other items (charge 2);
 - Giving false or misleading evidence during the interviews with Stewards (charges 3 to 5);
 - Administering an alkalinising agent within one clear day of the commencement of a race (charges 6 and 7); and
 - Not keeping proper log books (charge 8).
- 4 The adverse findings were made by the Victorian Racing Tribunal (VRT) on 7 September 2020 after a hearing in which Mr Bajada pleaded not guilty to all alleged breaches, except for the breach in respect of the log book.
- 5 The VRT did not accept Mr Bajada's explanations for his conduct and, in particular, found his explanation as to why he was seen with the tubing inserted into the relevant horse's nostril and the other end in his mouth to be '*fanciful*'. It found other statements he made to the Stewards at the time of their attendance at his property and later that day to have been false and misleading. In the course of the interviews, Mr Bajada made admissions about administering an alkalinising agent to two horses within 24 hours of race day via their feed.
- 6 On 7 September 2020, the VRT imposed penalties which, as detailed below, included disqualifying Mr Bajada for a total of three years (in respect of charges 1 and 2) and imposing fines totalling \$6,350 (in respect of the other six charges).
- 7 Mr Bajada applied to this Tribunal for review of the penalty decision. At the hearing he was assisted by Mr Brian Kiese, another trainer. Mr Cusamano, solicitor, represented HRV.
- 8 I have decided to affirm the VRT's decision as to the disqualifications but have ordered that the payment of some of the fines be suspended for two



years provided there is no further breach of the AHRR. That two year period commences on the day the applicant is re-registered.

The material before the Tribunal

- 9 The material available to me included all of the documents presented to the VRT and submissions made on behalf of Mr Bajada.
- 10 The latter came in three forms.
- 11 First, Mr Damien Sheales, barrister, prepared written submissions for Mr Bajada although he was not representing him in the proceeding. Those submissions were sent in May 2021 and, in the main, addressed whether the disqualification periods should be served concurrently (rather than cumulatively). They expressly stated that Mr Bajada did not take issue with the individual penalties imposed for charges 1 and 2. They also submitted that a short period of disqualification should be imposed in place of the fines due to Mr Bajada's very limited finances.
- 12 On 18 June 2021, Mrs Bajada wrote to the Tribunal giving his background and raising a number of concerns about how she said HRV had dealt with Mr Bajada. In short, she claimed they had victimised him, discriminated against him due to his Maltese heritage and she contended the penalties imposed were disproportionate and inconsistent with others.
- 13 As mentioned, Mr Bajada was assisted at the hearing by Mr Kieseay, a fellow trainer and friend. It soon became apparent that Mr Bajada was disputing the disqualifications, both in principle and as to time. Mr Kieseay contended that Mr Bajada should have been suspended instead. He also disputed the quantum of two large penalties (of \$2,250 each for charges 6 and 7) and sought a suspension of payment of those given Mr Bajada's financial position. Mr Kieseay also asserted Mr Bajada was the victim of racial discrimination by HRV and made other complaints about its conduct.
- 14 Although the focus of aspects of Mr Bajada's case had changed late in the process, HRV's solicitor, Mr Cusamano, was able to respond and address each issue.
- 15 The background to the proceeding before me is best described through the VRT's reasons which I summarise below after referring to the terms of the relevant AHRR.

The VRT's decision

The relevant AHRR

- 16 *AHRR 193(1)* states a person shall not attempt to or stomach tube a horse nominated for a race or event within 48 hours of the commencement of the race or event.
- 17 *AHRR 187(6)* states a person shall not frustrate or endeavour to frustrate an inquiry or investigation.



- 18 *AHRR 187(2)* states a person shall not refuse to answer questions or to produce a horse, document, substance or piece of equipment, or give false or misleading evidence or information at an inquiry or investigation.
- 19 *AHRR 196C(1)(b)* states a person must not administer an alkalinising agent in any manner to a horse which is engaged to run in a race at any time within one clear day of the commencement of the race.
- 20 *AHRR 190B* states a trainer shall at all times keep and maintain a log book:
 - (a) Listing all therapeutic substances in his or her possession;
 - (b) Recording all details of treatment administered to any horse in his or her care and including as a minimum requirement:
 - (i) the name of the horse;
 - (ii) the date of administration of treatment;
 - (iii) the name of the treatment (brand name of active constituent);
 - (iv) the route of administration;
 - (v) the amount given; and
 - (vi) the name and signature of the person or persons administering and/or authorising the treatment.

The factual circumstances

- 21 At all relevant times Mr Bajada was the registered trainer of the horse *Upanatom*. On Saturday 20 June 2020, he entered *Upanatom* in Race 8 at the Tabcorp Park Melton harness race meeting.
- 22 Shortly prior to the race on 20 June 2020, Stewards conducted surveillance at Mr Bajada's training premises. While conducting that surveillance, Steward Mr Stephen Svanosio observed Mr Bajada tie up a horse and observed him to hold what appeared to be stomach tubing equipment.
- 23 Mr Svanosio and another Steward, Mr Daniel Borg, then commenced to approach the tie up area. While doing so, both Stewards activated their body worn cameras.
- 24 As Mr Svanosio approached the tie up area, he observed Mr Bajada at the head of the horse with one end of the stomach tube in his mouth and the other end in the nostril of the horse. Mr Svanosio observed that the tube was not entirely inserted into the horse's nostril, but was certainly partly inserted. Upon Mr Svanosio alerting Mr Bajada to his presence, Mr Bajada withdrew the stomach tube from the horse's nostril.
- 25 Mr Bajada was then questioned by Mr Svanosio: he was asked if the horse was *Upanatom* and Mr Bajada stated that it was not. Stewards then stated to him that the brand would be examined, whereupon Mr Bajada admitted that the horse was actually *Upanatom*.



26 Mr Bajada stated to the Stewards that he was not intending to stomach tube the horse. Mr Bajada stated that he had some spare time and that he decided to see if he could drench the horse, as he had tried to drench the horse on another day and it was very difficult.

27 Positioned directly beside Mr Bajada in the tie up area was a blue bucket containing a black funnel, a large plastic spoon and liquid. Stewards observed Mr Bajada kick over the blue bucket, while they were talking to him. Despite liquid spilling out of the bucket, there was sufficient liquid remaining in the bucket to be collected for analysis. Mr Bajada denied that he had deliberately kicked over the bucket and said that it was an accident.

28 The above conduct led to charges 1, 2 and 3.

29 The video evidence taken by both Stewards was shown to the VRT and was tendered as an exhibit.

30 Mr Bajada was subsequently interviewed at an enquiry held by the Stewards on 20 June 2020 at Tabcorp Park Melton. Mr Bajada again told Stewards that he wanted to see if he could put the hose in the nostril of the horse, as he had some spare time and had been unable to drench the horse in the past. Mr Bajada admitted to the Stewards that the tube was a little way into the nostril of the horse. Mr Bajada also admitted to the Stewards that he had the tube in his mouth at the other end.

31 Mr Bajada stated to the Stewards that the bucket contained only water, soap and mud. He told the Stewards that the bucket did not contain an alkalinising agent. The liquid from the blue bucket was subsequently analysed on 29 June 2020 and was found to contain an alkalinising agent. The Stewards alleged that Mr Bajada gave false or misleading evidence to them while at his premises.

32 The above matters led to charges 4 and 5.

33 Charges 6 and 7 arose from Mr Bajada's admissions that he had twice administered an alkalinising agent to *Upatom* within one clear day of when it was due to race (on 11 and 19 June 2020 respectively).

34 Charge 8 concerned Mr Bajada's log books which did not fully record the 11 and 19 June 2020 treatments. While they contained references to 'drenches', the entries were incomplete. Mr Bajada said he intended to write 'drip'.

The VRT's discussion of the evidence and findings of fact

35 The VRT stated that it was comfortably satisfied in all the circumstances that Mr Bajada was guilty of all charges. It said:

When the Stewards arrived at your premises, you had one end of the hose in the nostril of the horse and the other end in your mouth. You had a blue bucket within close proximity that contained an alkalinising agent. You lied to the Stewards on their arrival when you said that the horse was not *Upatom*. You gave a fanciful explanation when you

said that, as you had spare time shortly prior to when the horse was due to race, you just wanted to see if you could drench it as you had not been able to do so before. Your log books recorded that you had in fact drenched *Upanatom* on two occasions in the past. You told this Tribunal that there was a mistake in your log books and that you meant to write the word 'drip' not 'drench'. We do not accept your explanations. (Charge one)

The video taken by Stewards upon their arrival at your premises clearly shows that you deliberately kicked the blue bucket over. (Charge two)

We find charges one and two proven to the relevant standard. In our opinion you were caught red handed in attempting to stomach tube *Upanatom*.

We find to the relevant standard that you did give false evidence to the Stewards by stating that the horse in question was not *Upanatom*. (Charge three)

We find that you gave false or misleading information to the Stewards by saying that you had no intention to stomach tube *Upanatom*. (Charge four)

We find that you gave false or misleading evidence when you told the Stewards that the blue bucket only contained manure water and soap. (Charge five)

In respect of charges six and seven, you admitted to the Stewards at the enquiry held later that night at Tabcorp Park Melton that you did administer 30g of an alkalinising agent to *Upanatom*, both on 12 June and 20 June, within one clear day of when it was due to race. We find charges six and seven proven to the relevant standard. With respect to charge eight, you admitted to Stewards that your log book was not kept up to date. We find such charge proven to the relevant standard.

VRT decision on penalties

- 36 The VRT noted that Mr Bajada pleaded not guilty to charges 1 to 7. Those pleas removed any discount or lesser penalty that may have been available for a guilty plea.
- 37 As to his background and circumstances, the VRT noted Mr Bajada was almost 72 years of age. It noted that he had been involved with horses for effectively all of his working life. The VRT recorded that Mrs Bajada was also greatly interested and had two broodmares about to foal and a two-year-old. It added that Mrs Bajada had an interest in a couple of thoroughbreds which were in Sydney and leased out.
- 38 The VRT described Mr Bajada's involvement in harness racing as not being great given he only had 36 runners in the last three years.
- 39 As to his personal circumstances, the VRT referred to the fact that Mr Bajada had been suffering from cancer and had a number of health problems in the preceding three years.



40 Reference was made to Mr Bajada's prior conviction for a stomach tubing offence: on 15 September 2016 Mr Bajada was disqualified for 12 months, with that decision and period being upheld on appeal to this Tribunal. The 12 month suspension commenced on 1 January 2017.

41 The VRT was of the view that the principal offences (charges 1 to 7) had the potential to undermine public confidence in the integrity of harness racing. It said:

The evils of stomach tubing are well known, and must have been known to you, given your prior conviction.

Attempts to gain an unfair advantage and to make the Stewards life more difficult by telling them a litany of falsehoods deserves stern punishment, and particularly so when there has been a prior offence for stomach tubing only 3 years ago.

42 The VRT imposed penalties as follows:

- Charge 1 – attempted stomach tubing – disqualification for two years;
- Charge 2 – frustrating an enquiry – by kicking over of the bucket and repeated lying about it – disqualification for one year cumulatively upon charge 1;
- Charge 3 – false or misleading evidence, which was quickly corrected (regarding the name of the horse) – fined \$100;
- Charge 4 – false or misleading evidence in relation to the insertion of the stomach tube – fined \$700;
- Charge 5 – false or misleading evidence concerning the contents of the bucket – fined \$700;
- Charge 6 – administration of bicarbonates on 11 June 2020 – fined \$2,250;
- Charge 7 – administration of bicarbonates on 19 June 2020 – fined \$2,250; and
- Charge 8 – failure to maintain log book (for the second time) – fined \$350.

43 In addition, *Upanatom* was disqualified as a runner in Race 5 at Tabcorp Park Melton on 12 June 2020 and the finishing order amended accordingly. The VRT also ordered that any prize money be refunded.

44 I now turn to the issues in this proceeding which, as stated earlier, are concerned with the penalties only.

The Tribunal's powers on review

45 This proceeding arises under the *Racing Act 1958* (Vic) (Racing Act). Section 83OH(1) says:



A person whose interests are affected by a decision made by the Victorian Racing Tribunal may apply to VCAT for review of that decision in relation to a penalty imposed on the person by the Victorian Racing Tribunal.

- 46 Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) (VCAT Act) contains clause 66N. That clause says, despite section 51 of the VCAT Act,¹ in determining a proceeding for review of a decision of the VRT under section 83OH of the Racing Act '*in relation to a penalty*' imposed by the VRT, VCAT '*is bound by the findings of fact that were made by*' the VRT.
- 47 The consequence is that I am bound by the VRT's findings of fact as to Mr Bajada's breaches of the AHRR.
- 48 Section 50ZE(1)(b) of the Racing Act says that the VRT (and the Tribunal on review) may make any decision or order that it considers is required in the interests of justice, including the imposition of any penalty under the rules.
- 49 Two AHRR are relevant to the question of penalties.
- 50 First, AHRR 257 provides that, unless the Controlling Body or the Stewards (or the Tribunal on review) direct otherwise, a penalty by way of suspension or disqualification shall be served cumulatively to any other penalty of suspension or disqualification being served or ordered to be served.
- 51 Second, AHRR 256(5)(a) is relevant to the suspension of the fines imposed and provides that penalties other than a period of disqualification or a warning off under may be suspended for a period not exceeding two years upon such terms and conditions as the Controlling Body or Stewards (or the Tribunal on review) see fit. Related to that is AHRR 256(4) which provides that penalties, whether under AHRR 256 or any other rule, attach from the time they are imposed, except that the Controlling Body or the Stewards (or the Tribunal on review) may postpone such attachment.

Suspension instead of disqualification

Mr Bajada's position

- 52 At the hearing, Mr Bajada contended that he should be suspended, rather than disqualified. As I understood it, Mr Kiese contended that disqualification was unduly harsh where there was no positive swab and in comparison to other matters.
- 53 In particular, he referred to the decision in 2019 involving *Mr Tim McGuigan*, saying a suspension period of 12 months had been imposed. He also referred to the decision concerning *Ms Cassandra O'Brien*. The VRT

¹ The effect of section 51 of the VCAT Act is that, on review, VCAT stands in the shoes of the decision maker and can exercise *all* of its powers and functions.



imposed a period of suspension of 12 months with nine weeks suspended. Those and a number of other cases are discussed below.

54 Mr McGuigan was charged under AHRR 190 with presenting a horse to race with a TCO₂ concentration in excess of 36 mmol per litre in plasma. He made an early plea of guilty and cooperated with the Stewards. The VRT took into account his licence history dating back 33 years and his good standing and reputation in the harness racing industry. Working with racehorses was his main source of income. His licenses were suspended for 12 months, with none of that period being suspended.

55 Ms O'Brien was a 25-year-old, whose horse returned a positive swab after she had been registered as a trainer for only two months. A charge of administering alkalinising agents was brought against her. She contested that charge, and it was found not proved by the VRT. She pleaded guilty at an early stage to a second charge, under AHRR 190, of presenting a horse to race not free of alkalinising agents. In deciding to impose a suspension of 12 months with nine months suspended, the VRT had regard to Ms O'Brien's extensive health problems. She had a rare blood disease requiring fortnightly blood transfusions. She had had three strokes and had spent more than half her life in hospital, on one occasion on life support for six weeks. Her mental health deteriorated very significantly at times. The VRT appeared to give significant weight to those health issues. In determining penalty, it referred to her '*almost unique*' circumstances. I understand that decision is the subject of a review application by HRV to the Tribunal.

56 Mr Kieseys also referred to the decision involving *Mr Alfio Grasso*.² That matter came to the Tribunal on review of the penalty imposed by the VRT. Mr Grasso was found to have presented a horse to race which was not free of alkalinising agents in breach of AHRR 190. The VRT suspended Mr Grasso for 12 months, with the last three months of that period being suspended (for 24 months, pending no further breach of AHRR 190 of the Rules). At the time of the hearing, he had already served three months of his suspension. The VRT decided on suspension after taking into account the following:

- Mr Grasso was at a loss to explain the high TCO₂ reading. He sought to make his own inquiry as to a possible cause of the high reading. Since the breach in issue, none of his horses had been tested and shown a reading of TCO₂ over the permissible level;
- He had no history of transgressions against AHRR 190(1) in his long career as a hobby trainer;
- Mr Grasso's personal circumstances. He was then a 68-year-old single man relying on a pension. He grew dried feed, but the industry has been a difficult one in recent years. He was in dire financial

² *Grasso v Harness Racing Victoria* [2021] VCAT 657.



circumstances. He remained a hobby trainer but could only afford to lease the two horses that he now trains; and

- General deterrence and, to a far lesser extent, specific deterrence. The VRT also took into account the importance of keeping a level playing field by maintaining a drug free industry and recent penalties in like cases.

57 This Tribunal affirmed the VRT's decision.

58 Mr Kieseys also referred to a decision involving *Mr Ryan Duffy*. In that case, Mr Duffy had been charged with a breach of AHRR 193(1) in that he had attempted to stomach tube a horse within 48 hours of when it had been nominated to race. The VRT found Mr Duffy had breached that AHRR. Mr Duffy was also charged with a breach of AHRR 187(6) arising from him running away when Stewards attended the relevant property and so allegedly frustrating or endeavouring to frustrate an inquiry or investigation. Mr Duffy pleaded guilty to that charge. Another charge concerned a breach of AHRR 187(2) – that is, refusing to answer questions or to produce a horse, document, substance or piece of equipment, or give false or misleading evidence or information at an inquiry or investigation.

59 In its reasons, the VRT explained that Mr Duffy was not the principal participant in or instigator of what occurred – that person was identified as Mr Zac Steenhuis. The VRT nevertheless found that Mr Duffy actively assisted Mr Steenhuis in the attempted stomach tubing, which was interrupted by the arrival of the Stewards. The VRT accepted the submission of Mr Duffy's counsel that he was not the principal person or '*mastermind*' of what occurred. The VRT commented that '*In essence, you were in the wrong place at the wrong time and lent assistance*'.

60 As to penalty for the attempted stomach tubing, the VRT noted the above matters as to Mr Duffy's role, the fact he was only 25 years of age, had bright prospects in the industry and had no relevant prior convictions. Despite all of that, the VRT emphasised the role of general deterrence and the more limited role of specific deterrence, imposing a period of disqualification of 12 months. As for the running away, the VRT noted that the '*investigative work of the Stewards is difficult and time consuming enough without licensed persons behaving in this fashion*'. It took into account Mr Duffy's guilty plea but concluded that a period of disqualification was warranted, bearing in mind the importance of general deterrence. It imposed a disqualification period of three months, cumulative upon the other penalty. It imposed a \$1,000 fine in respect of the false evidence Mr Duffy gave Stewards.

61 As to *Mr Zac Steenhuis*, he was found guilty of two cases of stomach tubing; administering two '*bleeder shots*'; possessing and administering (twice) an unregistered product; giving false evidence; and directing or encouraging his cousin to breach the AHRR by giving false evidence. Mr Steenhuis had no prior offences and pleaded guilty to all but one of the 17

charges at an early stage. He was 23 years of age, had not renewed his license before the hearing and was facing financial challenges, including because of the COVID-19 pandemic.

62 Relevant here, the VRT imposed a disqualification for 18 months for the stomach tubing and noted that, if it were not for the early guilty plea and his obvious remorse, a considerably longer period of disqualification could have been considered. A \$1,000 fine was imposed for the giving of false evidence.

63 Reference was also made to the case of *Mr Brian Sylvia*. Mr Sylvia was charged with stomach tubing within 48 hours of a race (contrary to AHRR 193(1)) and with giving false evidence about that matter (contrary to AHRR 187(2)). He was charged with other related offences also. While Mr Sylvia offered a guilty plea at the hearing, the VRT noted his previous lack of cooperation with Stewards. It had regard to his good record over 40 years. It imposed a 15 month disqualification for the stomach tubing and a \$500 fine for the giving of false evidence. That decision was affirmed by this Tribunal.

64 Reference was also made to the cases of *Ms Ellen Tormey and Mr Glenn Douglas*. They were charged in respect of alleged stomach tubing. After being found guilty, Ms Tormey was disqualified for 18 months for the stomach tubing related breach and six months for a separate presentation offence with the latter to be served concurrently. Mr Douglas was disqualified for two years. Those decisions were the subject of a jurisdictional issue and they are due to be re-considered by this Tribunal, both on the question of proof of the charges and penalty.³

HRV's position

65 HRV contended that the disqualification penalty imposed by the VRT was appropriate and consistent with like cases. It relied on *Duffy, Steenhuis and Douglas and Tormey* as summarised above.

66 It also relied on the case of *Justice v Harness Racing Victoria*,⁴ a case I heard. In that case, Stewards arrived at the property to find Mr Justice immediately in front of the horse *Carload*. Next to Mr Justice and *Carload* were items generally used to stomach tube a horse, namely a green bucket, a clear plastic tube with a black funnel attached and a small white bucket filled with a green/yellow liquid. The Stewards left the car and walked towards Mr Justice at which time he stated to the Stewards 'Yep you've caught me. I put my hands up'. The Stewards formed the view on approaching Mr Justice that he was in the preparatory stages of stomach tubing *Carload*. Mr Justice made admissions and there was no dispute he intended to stomach tube the horse with a substance intended to address the fact *Carload* appeared to be heat affected and dehydrated. In doing so, Mr

³ See *Douglas v Harness Racing Victoria* [2021] VSCA 128.

⁴ [2019] VCAT 276.



Justice was intending to return him to his usual state of health rather than to improve his performance in the race.

- 67 Mr Justice, through his counsel, conceded a period of disqualification was appropriate but he sought six months rather than the 12 months imposed by the Racing Appeals and Disciplinary Board (RAD Board). After hearing evidence from Mr Justice as to his circumstances and about previous 40 year good record (no prior offences), I confirmed a 12 month disqualification was to be imposed as that was consistent with the then current range for like offences.
- 68 On the charge of breach of AHRR 187(6), HRV referred me to the decision involving *Mr David Vozlic*. In that case, Mr Vozlic furnished false information to the Stewards and caused the unauthorised disposal of the carcass of a horse with the result that there could only be a limited post-mortem autopsy and the cause of death could not be identified. The RAD Board imposed a two year disqualification, although that was a global penalty for another five charges.

Findings on comparable cases

- 69 As is apparent from the above summaries, some of the cases Mr Bajada relied on concerned other offences, such as administration and presentation, and so I leave those largely to one side. I have had regard to them only in the sense they demonstrate that, for those offences, early guilty pleas and cooperation or highly specific and special circumstances may lead to a suspension rather than a disqualification.
- 70 In respect of the attempted stomach tubing, the most similar case is *Justice*. As summarised above, despite Mr Justice's good past record and guilty plea and cooperation, he was disqualified for 12 months. The cases where there was actual stomach tubing also resulted in disqualifications – see *Steenhuis* and *Sylvia*.
- 71 *Duffy* can be readily distinguished because of the findings he was not the principal and was in effect following instructions. It is apparent from the facts summarised above that was not the case for Mr Bajada.
- 72 The above summaries show that both the VRT and this Tribunal have placed emphasis on disqualification being an appropriate outcome for the charges of the kind in issue to ensure the particular participant is deterred from engaging in similar conduct again and because it achieves the goal of general deterrence in order to promote a level playing field in the industry. I agree that is the appropriate starting point.
- 73 I am also satisfied that disqualification will be open when a person engages in conduct which has the effect of frustrating or endeavouring to frustrate an inquiry or investigation (in breach of AHRR 187(6)). Where the conduct is as blatant as Mr Bajada's, it will be a very likely consequence. Accordingly, I reject the submission that Mr Bajada ought to be suspended rather than disqualified.



The periods of disqualification

74 As set out above, Mr Bajada was disqualified for 12 months in respect of the attempted stomach tubing charge and one year for the frustration charge, to be served cumulatively.

Mr Bajada's position

75 Mr Kieseey did not specifically address the periods imposed other than to make general submissions to the effect they were unduly harsh. As I understood it, he sought a shorter period either overall or with a considerable period to be suspended pending no further breaches.

76 Mr Kieseey claimed that Mr Bajada had been discriminated against as a person with Maltese heritage. That proposition was strenuously denied by HRV. I make some comments about it later but have otherwise disregarded it when assessing penalties.

77 Mr Kieseey referred to the hardships associated with the restrictions on Mr Bajada as he was disqualified – in effect leaving him unable to care for his horses and socialise with family and friends. Those consequences are not directly relevant to the penalty to be imposed but I have addressed them separately later.

78 I note that Mr Kieseey contended Mr Bajada had never had a positive swab in the past – even if correct, that is not directly relevant to the charge in issue. He also referred to Mr Bajada having no prior offences – that is incorrect because, as mentioned, he was disqualified for 12 months for stomach tubing, commencing in January 2017.

79 In broad terms, Mr Kieseey contended the periods of disqualification did not '*pass the pub test*' and were clearly excessive when compared to the periods imposed for other substances such as cobalt. He contended Mr Bajada's conduct could not be compared to people who drug horses or otherwise try to change the outcome of races. Mr Kieseey asked the Tribunal to give Mr Bajada a '*fair go*' and to have regard to his love of horses and his recent ill health.

80 In addition to the matters canvassed above, I understood Mr Bajada to place significant weight on the financial and other consequences for he and his wife. I have summarised above how the VRT described Mr Bajada's circumstances and adopt the same.

81 In her letter to the Tribunal, Mrs Bajada described her husband's upbringing, noting he was born in Malta and came to Australia when he was 17. She explained how his parents had never screamed at their children even when disciplining them. She then commented that Mr Bajada had not been screamed at until the Stewards attended his property on 20 June 2020. She described them as '*jumping on him from the back of the farm, screaming at him and shouting like mad, bullying him like crazy as if he was killing somebody*'. I comment later on my review of the video footage



but confirm for now there was no evidence of such behaviour on the part of the Stewards.

82 Consistent with Mr Kieseys submissions, Mrs Bajada contended that the penalties imposed were disproportionate because of Mr Bajadas limited income and as compared to others. Mr Sheales written submissions stated that Mr Bajadas 2019/2020 income was around \$14,000. Mrs Bajada referred to him being on a pension and receiving only \$10,000 to \$14,500 per year.

83 Mrs Bajada said that her husband:

spent all his savings and superannuation money on the horses as he is crazy about horses and the stewards all they want is to bully him and discriminate him and dispel him out of the game of racing.

84 Mrs Bajada also referred to the claimed discrimination on the basis of race.

85 I have taken all of those submissions to amount to contentions that the periods of disqualification (and the financial penalties) were extremely harsh for Mr Bajada personally and that they were out of step with penalties for like conduct.

HRV's position

86 HRV maintained the periods of disqualification for each offence were appropriate and should be served cumulatively. I was referred to those cases it said were comparable in broad terms (*Justice* and *Sylvia* in particular) but noted where the participant had pleaded guilty and cooperated. It emphasised the VRT's findings against Mr Bajada concerning his dishonesty when confronted by the Stewards.

Findings

87 On the question of the periods of disqualification, I am satisfied each is appropriate.

88 On the attempted stomach tubing charge, it is plain from the VRT's decision that Mr Bajada was found to have been dishonest in his explanations as to what he was doing and why. Mr Bajada was disqualified for 12 months for a breach of the same AHRR in September 2016 and that decision was affirmed on review by this Tribunal in February 2017. He, better than many, knows the consequences of conduct of that kind.

89 Taken with his previous disqualification for the same breach, his continuing denial of the conduct and complete absence of remorse (except as regards the impact on him), I find it is appropriate to impose a lengthy period of disqualification to bring home to Mr Bajada his actions were unacceptable. The repetition of the same conduct shows that the 12 month disqualification did not achieve that goal.



90 A disqualification for two years will ensure other industry participants are on notice of the serious consequences of that behaviour, particularly when repeated.

91 Having viewed the relevant footage, I agree with the VRT's findings and HRV's submissions that Mr Bajada's act of kicking over the bucket was intentional and designed to displace the substance he intended to use.

92 Again, he has shown no remorse and has not backed away from his statements it was accidental. I am satisfied a disqualification period of 12 months is appropriate to emphasise to him and other participants that attempts to frustrate investigations will be met with significant consequences.

The disqualifications – cumulative or concurrent?

93 I set out earlier AHRR 257 which provides that, unless directed otherwise, a penalty by way of suspension or disqualification is to be served cumulatively to any other penalty of suspension or disqualification being served or ordered to be served. There is a discretion open to the Tribunal when deciding how to proceed.

Mr Bajada's position

94 As summarised above, Mr Bajada submitted that the disqualifications themselves were excessive and he also sought for them to be served concurrently. I understood Mr Bajada to place significant weight on the other matters canvassed above to support the submission the time should be served concurrently.

95 He also relied on written submissions prepared on his behalf by Mr Sheales. The submissions contended that charges 1 and 2 were part of a course of conduct and should be treated as such. If that approach was taken, it was submitted that it would be appropriate to direct that the disqualifications be served concurrently.

96 Mr Sheales submitted that many factors may affect the proper exercise of the discretion as to orders as to cumulation, concurrency or partial concurrency. He noted that long established principles include considerations as to whether the offences are temporally connected or properly viewed as a course of conduct. Mr Sheales referred to the following from the joint judgment of the Court of Appeal in *R v Rule*:⁵

The ordinary principles as to cumulation require that the sentencing judge should, as far as is practicable, identify episodes or transactions giving rise to specific counts or groups of counts and to recognise them by ordering at least a degree of cumulation.

On the other hand, the fact that offences are part of one continuing transaction is usually a good reason for ordering such concurrency. Where two or more offences are committed in the course of a single

⁵ [2008] VSCA 154 at paragraphs 50 to 51, citations omitted.

criminal enterprise, all sentences in respect of those offences are usually, though not always, made concurrent with each other.

97 It was Mr Sheales' contention that Mr Bajada's offending in respect of charges 1 and 2 was properly described as one course of conduct. He stated that Mr Bajada tried to avoid the Stewards taking possession of the contents of the blue bucket minutes after he was discovered committing the offending constituting charge 1. The submissions stated that the offending of charge 2 '*indivisibly arises as a result of the offending of charge 1 in circumstances where a man of mature years has been taken by surprise and did not have time for measured thought*'.

HRV's position

98 HRV disputed that characterisation of the relationship between the events leading to charges 1 and 2. It maintained its position that the two periods of disqualification ought to be served concurrently.

99 Mr Cusamano referred me to the Federal Court of Australia's decision in *Australian Building and Construction Commissioner v Menon*.⁶ At paragraphs 79 to 80, White J described the course of conduct principles as follows:

- (a) the purpose of the principle is to ensure that, having regard to all the circumstances (both factual and legal), a contravener is not penalised more than once for the same conduct;
- (b) in this way, the principle serves as a technique of analysis;
- (c) the application of the principle requires a careful evaluation of all the circumstances;
- (d) the principle does not require that two or more contraventions occurring in a single course of conduct be treated as a single contravention;
- (e) the principle does not have the effect that the maximum penalty for a single contravention becomes the maximum for all contraventions committed in the one course of conduct; and
- (f) the principle does not permit the Court to impose a single penalty in respect of multiple contraventions of a pecuniary penalty provision. Each contravention continues to attract its own separate penalty.

100 HRV also relied on the 3 November 2017 decision of the NSW Racing Appeals Tribunal (NSW Tribunal) involving Mr Joshua Osborn. Relevantly in that case, there were nine charges of breach of the rule that a driver must not bet on a race in which they participate. The NSW Tribunal decided that the appropriate penalty for each breach was six months disqualification but that was then reduced to three months after taking account of matters such as Mr Osborn's cooperation with Stewards and in

⁶ [2020] FCA 1418.



respect of the disciplinary proceeding. The reduction also took into account delay in the matter being finally dealt with.

101 The NSW Tribunal then considered whether the nine sets of three months suspension should be served cumulatively or concurrently applying the equivalent to AHRR. The NSW Tribunal said this at paragraphs 20 and 21:

This is a civil disciplinary hearing in which the criminal law principles of sentencing do not apply and in which the Tribunal must look to the future and to the appropriate message, as described, to be given in determining what is an appropriate penalty. Criminal law principles about cumulation have been embraced over the years in numerous civil penalty decisions about cumulative or concurrent. In essence, they are not greatly different. This Tribunal has expressed on a number of occasions that when there are a series of breaches and there has been no intervening act between the first and the last of those actions which might have caused a miscreant licensed person from stopping their conduct, or something may have caused them to reflect upon their conduct, and they elected not to do so, that cumulation is inevitable.

Absent that, however, there is a reason to consider why matters should be cumulative other than the expressed view of the rule-makers, which must be respected, that they should be cumulative. But does it lead to a fair outcome?

102 To answer the last question, the NSW Tribunal considered whether it would be a fair penalty to impose the penalties cumulatively (that is, nine times three months resulting in 27 months) having regard to the facts and circumstances of that matter and in respect of issues of parity. The NSW Tribunal concluded that applying the cumulative penalty was not appropriate. Instead, it applied the totality principle to conclude Mr Osborn was to be disqualified for a total of 12 months and so ordered some penalties to be served concurrently and for groups of the penalties to be served cumulatively.

103 HRV also referred me to the Tribunal's decision in *Leek v Racing Victoria Limited*.⁷ Mr Leek was charged with two offences – the first was for attempting to inject two horses on race day. The second was a charge of misconduct in destroying evidence by discharging the contents of a syringe onto the ground in the presence of three Stewards. The latter was described as a blatant attempt by Mr Leek to destroy evidence by discharging the syringe through his jacket pocket onto the ground, and immediately denying it was deliberate, having just denied he had a syringe in his pocket. The Tribunal referred to those actions as '*bizarre and disturbing*'.⁸

104 The Tribunal rejected the contention that the two actions were part of a course of conduct and so the penalties should be applied concurrently. The Tribunal noted that, while the actions the subject of the charges obviously

⁷ [2019] VCAT 683.

⁸ At paragraph 19.



occurred within a few minutes of each other, and both involved the same syringe, the attempt to inject was conceptually different to destroying evidence. To illustrate, the Tribunal commented that it was not like the situation of three charges for injecting three horses. It concluded that, although close in time, the two offences were discrete.⁹

- 105 HRV contended that, in Mr Bajada's case, the actions involved in the two charges were not part of one transaction or course of conduct. It noted that, on the findings of HRV, he was caught '*red-handed*' with the stomach tubing equipment and then two minutes and 20 seconds later he positioned himself near the bucket and, after taking two swings at it, tipped over the bucket and emptied nearly all of the contents. It contended Mr Bajada had time to consider his actions after the Stewards arrived and, applying measured thought, he kicked over the bucket to try to avoid its contents being available for analysis.
- 106 HRV further contended that the two charges were materially and conceptually different. Although they occurred within minutes of each other, HRV described them as discrete and that the arrival of the Stewards ought to be seen as the relevant intervening act.
- 107 HRV drew my attention to the fact that Mr Bajada had only had 36 starters in races between the earlier disqualification for the same offence which ended on 31 December 2017 and the date of these offences, 20 June 2020. As I understood it, HRV wished to emphasise that the same conduct was engaged a comparatively short time after Mr Bajada was re-licensed and in the context of limited involvement in the industry.

Findings

- 108 I agree with HRV's depiction of the actions involved in the two charges – they are materially different and discrete. That is partly demonstrated by comparison with the reaction of Mr Justice when Stewards arrived – he admitted he had been caught and figuratively put his hands up.
- 109 As is made plain from the video footage, after the Stewards arrived and some initial discussion occurred, Mr Bajada deliberately moved towards the bucket and took two swings to tip it over after he had coiled the tubing into his hands – he made a decision to frustrate or attempt to frustrate the investigation by doing so.
- 110 The next question is whether there is any other discretionary basis to conclude that the separate penalties should be served concurrently rather than cumulatively.
- 111 The decision in *Osborn* does not immediately assist because the breaches in that case were all of the same kind. In *Leek and Duffy*, the penalties were cumulative.

⁹ At paragraph 24.



112 I accept that, given Mr Bajada's age and his poor health, a disqualification of three years in total may be the end of his career as a trainer. That would be unfortunate. I also accept that any loss of income from that role would have a detrimental effect on him and his family more generally. That is also regrettable.

113 However, in the end I have concluded that cumulative penalties are appropriate for the egregious conduct displayed by Mr Bajada – not only by engaging in prohibited conduct by attempting to stomach tube a horse which was to run that day, but also very deliberately taking steps to frustrate their investigation. I agree with the VRT that a stern message must be sent to him and other participants that blatant conduct which undermines the industry and the role of the regulator will not be tolerated.

114 Mr Bajada has been disqualified since 8 September 2020 and no stay of that order was sought at this Tribunal. In those circumstances, I have affirmed the VRT's decision including its commencement from that date so the total disqualification period will end on 7 September 2023.

The monetary fines

115 The monetary fines imposed were as follows:

- Charge 3 – false or misleading evidence, which was quickly corrected (regarding the name of the horse) – fined \$100;
- Charge 4 – false or misleading evidence in relation to the insertion of the stomach tube – fined \$700;
- Charge 5 – false or misleading evidence concerning the contents of the bucket – fined \$700;
- Charge 6 – administration of bicarbonates on 11 June 2020 – fined \$2,250;
- Charge 7 – administration of bicarbonates on 19 June 2020 – fined \$2,250; and
- Charge 8 – failure to maintain log book (for the second time) – fined \$350.

116 As noted earlier, in the written submissions, Mr Sheales proposed that a one month suspension be imposed for each to be served concurrently but cumulative on the disqualification.

117 At the hearing, Mr Kieseley indicated that the primary objection was to the amount of the fines imposed in respect of charges 6 and 7 (breach of AHRR 196C(1)(b) – the administration of bicarbonates within one clear day of racing), particularly when the Stewards only knew about that because of Mr Bajada's admissions. He suggested Mr Bajada was being punished for being honest.



118 At the hearing, Mr Kieseay stated that not only did Mr Bajada not know about the rule but he volunteered the information to Stewards not believing he had done anything wrong. Mr Kieseay referred to Mr Bajada's limited English and issues with literacy and those factors causing difficulty with keeping up with rule changes generally.

119 I asked Mr Cusamano if he could say when AHRR 196C(1)(b) came in. He stated that it took effect in Victoria from 1 March 2018. Again, noting that the VRT found the charge proven, I confirm my view, as stated at the hearing, that it is for participants to ensure their knowledge of applicable rules is up to date.

120 HRV directed my attention to two other instances of fines being imposed in the same circumstances. In one case, the fine was \$2,000 (*Glenn Douglas* on 11 July 2018) and in the other was \$3,000 (*Peter O'Brien* on 13 March 2018). On that basis, HRV contended the fines imposed in this case were comparable.

121 As to the other fines, Mr Kieseay did not take issue with the quantum. He proposed that Mr Bajada pay the \$100 and \$350 fines and then pay the others in part with the majority to be suspended. Specifically, he proposed that Mr Bajada pay:

- \$250 for each of the two \$2,250 fines with the balance suspended for one or two years; and
- \$200 for each of the two \$700 fines with the balance suspended for one or two years.

122 I asked Mr Cusamano if I was correct to assume that Mr Bajada could not be re-licensed until all fines had been paid. He confirmed that was the case. He also referred me to AHRR 256(5)(a) which allows for penalties including fines to be suspended for a period not exceeding two years subject to any appropriate conditions.

123 In considering the question of the fines, I have been mindful of Mr Bajada's very limited financial resources, his age and his ill health. Those have been factors in how I have exercised my discretion so as to avoid the fines having a crippling impact.

124 I start with the nature of the conduct found proven. It is apparent from the nature of charges 3 to 8 that each concern serious misconduct which is inconsistent with the standards to be expected of industry participants.

125 I have decided to reduce the fines for charges 6 and 7 to \$2,000 to reflect Mr Bajada's honest disclosure but to also make plain he is admonished for the breach. I have made that decision well aware that the reduction of \$250 will not be significant for Mr Bajada in the overall scheme of things. I otherwise find the amounts of the fines are appropriate.



- 126 I will order that Mr Bajada pay the amounts he has nominated now – that is: \$100 for charge 3; \$400 in total for charges 4 and 5; \$500 in total for charges 6 and 7; and \$350 for charge 8. That totals \$1,350.
- 127 I will suspend the balance of the fines subject to the condition that there are no further breaches of the AHRR (of any kind) for two years. As Mr Bajada is disqualified for three years from the date of my orders, that condition will apply if and when he is re-licensed and is made under AHRR 256(4) which allows for the delay of the attachment of a penalty.

Other matters

- 128 Some other matters came up in the course of the hearing. For completeness, I address them briefly below.

The video footage

- 129 At the hearing, the video footage was played. While the factual findings of the VRT are not in issue before me, it is appropriate that I briefly address some of the complaints made about that footage.
- 130 It was suggested that the footage had been edited and that, despite requests, a complete copy had not been provided to Mr Bajada. The first proposition was refuted by Mr Cusamano and he stated he was unaware of any request for a copy of the footage. As I understood it, a copy had been provided previously.¹⁰ I expressed the view that, on my viewing, there was no sign of editing as the footage appeared to be continuous.
- 131 Mr Kiese (and Mrs Bajada) referred to the Stewards who attended Mr Bajada's property as 'screaming' at him and causing him to panic – that was said to explain some of his specific responses and to have caused him to be confused. It was also suggested they intimidated Mr Bajada by the way they spoke to him. As set out above, Mrs Bajada has said the Stewards jumped on her husband, screamed at him, shouted like mad and bullied him. There was no sign she was present when Stewards attended and so I take that description as being Mr Bajada's report to her of what he claimed occurred.
- 132 On my observation, the Stewards spoke rapidly on arrival, apparently in part because they were out of breath having run up to Mr Bajada. They also spoke loudly at times (apparently due to some frustration with Mr Bajada's answers) but I noted they remained an appropriate distance away. While measured conversation is always to be preferred, I saw nothing improper in the way the Stewards spoke to Mr Bajada and heard no screaming.
- 133 At a couple of points in the footage, Mr Bajada was asked not to step forward towards the Stewards. At the hearing, it was suggested that was a

¹⁰ I note that a similar complaint was made about access to the testing results of the liquid in the bucket. Those results were contained in the materials sent to both the Tribunal and Mr Bajada – Tribunal Book, page 82 (exhibit BN 8 to a Witness Statement made by Mr Brett Day which was before the VRT) and also in item 10 of the section 49 materials.

rather excessive or perhaps aggressive reaction. In my view, it was reasonable for the Stewards to wish to keep some physical distance from Mr Bajada – not because he was behaving in a threatening manner but because that was an appropriate way to behave in what was a charged situation. I noted the Stewards paused at least twice and invited Mr Bajada (and perhaps themselves) to take a deep breath so they could then talk about what was happening). There was no sign of any jumping or bullying for that matter.

134 Finally, Mr Bajada was said to have responded to the situation generally and questions in particular due to a sense of panic, worsened by English being his second language. While I do not know anything of Mr Bajada other than through interactions in this proceeding, he did not appear to me to be panicked on the video footage. I accept English may be his second language but I saw no indication that he did not understand what the Stewards were saying.

Allegations of systemic racism and discrimination

135 Mrs Bajada's letter dated 16 June 2021 to the Tribunal contained the following:

I cannot understand why the stewards are doing this to Joe. Joe never did anything wrong with the Harness Racing Board willingly – they treat him with discrimination as his background is Maltese. When I talk to other Maltese trainers, that's all they tell me. It's true: if you look at other trainers that did something inappropriate or against the rules of [HRV], the ones with a Maltese surname cop a penalty 3 times more than other trainers. The other trainers are all surprised and wouldn't believe it he was given such a harsh penalty and for what? – he was not even drenching the horse. You can see this racism if you look at the penalties imposed on various trainers.

These things should not be happening in this Country, not in 2021. It's a shame to the Harness Industry and of course to Australia.

136 At the hearing, Mr Kieseys made similar allegations, claiming that HRV treated people of Maltese background poorly and far worse than people who were of Caucasian background. That treatment was said to result in higher penalties. Mr Kieseys referred to meetings being held amongst the Maltese racing community and to advice being sought from a human rights lawyer. The suggestion was that it was readily apparent from a review of a list of the penalties imposed showed that Maltese Australians were treated more harshly.

137 In other oral submissions, Mr Kieseys contended that younger trainers and industry participants were treated more favourably than older trainers on the basis the latter were moving towards the end of their careers and HRV wanted to keep the younger trainers involved. That was also said to be relevant to the decisions regarding Mr Bajada and his treatment over time.



Mr Kieseay argued for consistency in decision making and equality of treatment.

- 138 Mr Kieseay referred to Mr Bajada other's financial circumstances and the challenges he faced in not being able to pay for legal representation, in contrast with high profile and younger participants. He indicated that had also led to harsher outcomes.
- 139 Unsurprisingly, HRV objected in '*the strongest possible terms*' to the way it had been characterised. Mr Cusamano (representing HRV) described the allegations as scandalous and baseless. He said HRV carried out its role with inclusion and diversity in mind.
- 140 As I explained to Mr Bajada and Mr Kieseay, my role is to make a fresh decision on the penalties to be applied given the binding findings of fact made by the VRT. I stated that, had I not been informed by Mrs Bajada's correspondence and Mr Kieseay's statements, I would not have been aware of Mr Bajada's Maltese background. I further explained my role was to ensure that Mr Bajada had a fair hearing and part of that was to balance any disadvantage in him not being legally represented. I further explained I considered consistency in decision making, in so far as that is possible, to be very important. I stated I would look at the decisions he had mentioned to consider how they sat with the VRT decision and HRV's submissions before me (and have done so). I also stated that concerns about systemic racism and like matters needed to be raised elsewhere.

The restrictions on disqualified participants

- 141 Mr Kieseay raised concerns about the impacts of the restrictions on disqualified participants such as Mr Bajada. He explained that those restrictions meant Mr Bajada was unable to feed or care for horses at his property, apparently including his wife's two brood mares and other retired horses. He described this as unfair given the horses were much loved and part of the family. He also described recent events where the horses were let out of a paddock and were then hit by a truck. I understood two horses were so severely injured that they had to be euthanised. Mr Kieseay seemed to say that event was connected to the limitations on Mr Bajada and his ability to care for them. He said Mr Bajada has asked for permission to provide some care for his horses but had received no reply from the VRT.
- 142 Mr Kieseay also explained that the restrictions meant Mr Bajada could not visit his brother or friends, all of whom are in the industry. Reference was made to Mr Bajada not even being able to meet his friends to play bocce. Mr Kieseay expressed concern for Mr Bajada's wellbeing and mental health, supported by like comments made by Mrs Bajada in the letter to the Tribunal mentioned earlier. Mr Kieseay asked for some compassion to be shown to Mr Bajada.
- 143 In response, Mr Cusamano stated that the restrictions which apply to disqualified participants are understood to be onerous and that they are



deliberate. I understood that to be because they are intended to deter participants from conduct outside the AHRR.

- 144 Having said that, Mr Cusamano also confirmed my understanding that the restrictions do not rule out *all* social contact with family and friends entirely but, in lay terms, are intended to ensure participants do not continue in the industry through their contact with others – in effect leading to backdoor participation and avoidance of the penalties imposed.
- 145 As I explained at the hearing, I have no power to decide on or alter those rules. Having said that, I asked Mr Cusamano to look into the request mentioned above and to have a response sent. I also encouraged Mr Bajada to look closely at the terms of the relevant AHRR.
- 146 After the hearing, Mr Bajada wrote to the Tribunal stating that HRV had refused his requests as summarised earlier. I can take the question no further.

A Dea
Senior Member

