RACING NEW SOUTH WALES APPEAL PANEL

IN THE MATTER OF THE APPEAL OF BRODIE LOY

Appeal Panel:	**Mr T Hale SC – Convener**
	Mr J Fletcher
	Mr P Losh
Appearances:	**Racing NSW: Mr J Walshe**
	Appellant: Mr J Byrnes, Solicitor
Date of Hearing:	**22 June 2018**
Date of Reasons	**06 August 2018**

REASONS FOR DECISION

Convenor: Mr T Hale SC (Mr J Fletcher and Mr P Losh concurring)

Introduction

1. Brodie Loy (the appellant) is a licensed jockey. On 29 January 2018 the appellant rode the horse "Midnight Mission" in Race 3 at Goulbourn.
2. On 5 April 2018 the Stewards (Mr J D Walshe and Mr C J Polglase), found the appellant guilty of the following breaches of the Australian Rules of Racing:
    (i) A breach of AR175(gg) which provides: *The Principal Racing Authority or the Stewards exercising powers delegated to them may penalise; Any person who makes any false or misleading statement or declaration in respect of any matter in connection with the administration or control of racing.*

(ii) Offence 2 a breach of AR175(g) which provides: *The Principal Racing Authority or the Stewards exercising powers delegated to them may penalise; Any person who gives at any interview, investigation, inquiry, hearing and/or appeal any evidence which is false or misleading in any particular.*

(iii) Offence 3 a breach of AR175(a) which provides: *The Principal Racing Authority (or the Stewards exercising powers delegated to them may penalise; Any person, who, in their opinion, has been guilty of any dishonest, corrupt, fraudulent, improper or dishonourable action or practice in connection with racing*

(iv) Offence 4 a breach of AR81A(1)(a) which provides: *Any rider commits an offence and may be penalised if -(a) a sample taken from him is found upon analysis to contain a substance banned by AR 81B*

3. The particulars of the offences are lengthy. The charges and the particulars are attached as Annexure "A". The facts supporting each of the charges are set out below and need not be set out at this point.
4. The appellant ultimately pleaded guilty to each of the offences. I say ultimately, because initially he denied the breaches. As will be explained below, it seems reasonably clear that the appellant only pleaded guilty to the offences at the hearing on 5 April 2018 when it was quite apparent that the evidence that the Stewards had obtained and had provided to the appellant established that the appellant had committed the breaches.
5. The Stewards imposed the following penalties:

(i) Offence 1, three months suspension from 9 February 2018 to 9 May 2018. The commencement of the penalty was back dated to 9 February 2018;

(ii) Offence 2, six months disqualification to be served concurrently with the suspension in offence 1, being disqualification from 9 February 2018 to 9 August 2018. Again, the commencement of the penalty was back dated;

(iii) Offence 3, six months disqualification to be served cumulatively with the suspension and disqualification for offences 1 and 2. The disqualification was to be served for the period commencing 8 August 2018 and ending 9 February 2019;

(iv) Offence 4, a suspension for a period of 9 months to be served cumulatively with charge 3. It was to commence on 9 February 2019 and to expire on 9 November 2019. Under the provisions of AR81D and on receipt of a satisfactory period of counselling, the Stewards stayed the final three months of that penalty, meaning that the appellant was eligible to return to ride on 19 August 2019. That is, on those conditions the period of suspension was reduced to six months.

6. The appellant appeals to this Panel pursuant to s.42 of the *Thoroughbred Racing Act, 1996*. The appeal is to be by way of a new hearing: see s.43. The appellant appeals only in respect of offences 1, 2 and 3. He appeals only against the severity of penalty. He does not appeal against conviction. Since the suspension of three months for Offence 1 was to be served, and has been served, concurrently with the disqualification of six months for Offence 3, the severity appeal is in reality against the cumulatively penalties of six months and six months for Offences 2 and 3: a

total disqualification of twelve months. There is no appeal in respect of the penalty for Offence 4, so even if the appellant were to be successful on appeal in relation to Offences 2 and 3, the appellant would be nonetheless suspended for a period of at least six months, subject to him complying with the conditions of the stay of the final three months of the suspension.

The Hearing

7. At the hearing before this Panel Mr J Walshe appeared on behalf of the Stewards. Mr J Byrnes, solicitor, with leave appeared for the appellant.
8. The Stewards adduced a considerable volume of evidence in relation to the charges. This included a bundle of documents, which became Exhibit A, containing the transcript of the hearing before the Stewards on 5 April 2018, together with the 40 exhibits that had been obtained or prepared for the inquiry, which numbered 255 pages. The exhibits included the transcripts of interviews conducted by the Stewards with the appellant and others in relation to the matter, the results of drug testing and inquiries into the appellant's use of his mobile phone and iPad.
9. At the hearing before the Panel the appellant did not give evidence. The appellant did tender as Exhibit "1" two letters from Tony Crisafi, Chief Executive Officer of NSW Jockeys Association dated 14 June 2018 and 18 June 2018, which might be termed references or testimonials to the appellant's qualities. I will return to Exhibit "1".
10. At the conclusion of the hearing I, on behalf of the Panel, announced that the decision of the Panel was that the appeal should be dismissed. I also announced on behalf of the Panel that due to the complexity of the matter we would publish the reasons for our decision later. These are those reasons.

The Background Facts

11. Factually, the evidence is complex. The following summary of the background facts is taken from Exhibit “A”.

12. The banned substance found in the sample taken from the appellant, which founded the charge under AR81A (to which the appellant pleaded guilty and in respect he does not appeal), was cocaine. At a high level of generality, Offences 1, 2 and 3 arose from the appellant’s knowledge or suspicion that on 29 January he had cocaine in his system, which testing would disclose.

13. The chronology of events relevantly begins on Saturday 27 and Sunday 28 January 2018. On Saturday 27 January he rode at the Queanbeyan meeting. On that evening he went out to dinner with friends. Before going to dinner he did two lines of cocaine from one of two bags that he had at home, each of which contained 1 gram of cocaine. He took the opened bag with him to dinner. After dinner, and while still out, he continued to consume cocaine from that bag until it was empty. When he came home that night he continued consuming cocaine from the second bag. On Sunday he finished the second bag. The appellant said at that time he had forgotten he was riding on Monday. He only had one ride on the Monday. The inference is that had he taken into account the fact that he had a ride on Monday he would not have ingested cocaine because of the risk that it might be detected in the event that he was required to provide a sample for testing. He was well aware on the Monday that he was likely to return a high reading if he was tested. Nonetheless he kept his commitment to ride.

14. There is some evidence from a fellow jockey, Nick Heywood, about a text message Mr Heywood received from the appellant on Sunday. In an interview with Stewards

on Tuesday 6 February 2018 Mr Heywood said that on the Sunday he received a text message from the appellant, which was:

> "Are you able to go to Goulburn early?"

Mr Heywood said this was "Obviously to see if they were swabbing, I'm not going to lie."

15. The appellant denied that he sent such a message or intended to communicate anything about swabbing. It is not necessary to resolve this issue, other than to say that the Stewards sought to obtain the appellant's phone to ascertain what message, if any, he had sent Mr Heywood.

16. As it turned out, the appellant arrived at Goulburn Race Course before Nick Heywood. The appellant rode the horse "Midnight Mission" in Race 3. It concluded at approximately 1.30pm. On one view of the evidence, the Stewards told the appellant prior to his ride that he would be required to provide a sample. In any event, it is clear that after the ride the appellant knew that he had been selected to provide a sample for testing.

17. During the race the appellant's horse bucked. The appellant says that he sustained an injury to his wrist. Following Race 3 the appellant was in the weighing room when Mr Polglase reminded him that he was to provide a sample of urine. Mr Polglase reminded the appellant of this as he was aware that this was the appellant's only ride. Mr Polglase said that the appellant acknowledged this but said that he required to be attended by ambulance officers as he had hurt his wrist. The ambulance officers were then requested to attend the jockey's room to attend the appellant. The Stewards then conducted an inquiry into the running of the race, in particular to inquire into what happened with the appellant's mount Midnight Mission. The transcript of that inquiry records the presence of an ambulance officer

who said that an ambulance was on its way to treat the appellant and take him to hospital.

18. The appellant left the jockey's room accompanied by two ambulance officers. Mr Polglase advised the appellant that he (Mr Polglase) would follow the ambulance to Goulburn Hospital as the appellant was yet to provide a urine sample as directed and that the sampling process would occur at the hospital. Mr Polglase advised the ambulance officers that he would follow the vehicle. Mr Polglase was clearly suspicious about whether the appellant had in fact sustained a wrist injury or whether he had feigned injury to avoid the test.

19. Mr Polglase followed the ambulance to Goulburn Hospital. On arrival, the ambulance reversed up to an unloading dock for patients. Mr Polglase parked his vehicle and proceeded to the main emergency room. He then introduced himself to the reception staff and advised them of why he was present. He told the hospital staff that he would be collecting a sample once the patient (the appellant) had been attended to. Sometime later Mr Polglase was joined by two other jockeys who had come to assist the appellant.

20. After waiting for some time outside the exit from the emergency room without having seen the appellant, Mr Polglase made inquiries of the hospital staff. Staff confirmed that the appellant had in fact been discharged. Rather than leaving from the usual patients' exit, where Mr Polglase was waiting, it seems that the appellant had left by an alternative exit through the maternity ward corridor. The inference to be drawn from this is that the appellant wished to avoid Mr Polglase and avoid giving a sample. The appellant clearly knew that Mr Polglase was waiting to obtain a sample from him.

21. The evidence indicates that the appellant arrived at Goulburn Base Hospital at 4.03pm and was discharged at approximately 4.45pm.

22. Having been told that the appellant had been discharged, Mr Polglase rang the appellant at 5.19pm. There was no answer. He rang again. There was no answer. At 5.37pm Mr Polglase received a call from the appellant. The appellant said that he walked out of the main entrance of the Goulburn Base Hospital and then took a taxi to Canberra. He said that he was going to another hospital as Goulburn Hospital had not detected any injuries with their tests and he wanted to know what was wrong with his wrist. Mr Polglase asked the appellant to confirm which hospital in Canberra he was going to. The appellant confirmed that he was headed to Canberra Hospital in Woden. As the trip from Goulburn Hospital to Canberra Hospital in Woden would take almost 90 minutes, Mr Polglase asked the appellant where he currently was on the highway. He was told “nearly in Canberra”. Mr Polglase advised the appellant that he was to contact him on arrival in Canberra Hospital, Woden and to remain there until such time as Mr Polglase attended that hospital and obtained a sample from him.

23. Mr Polglase then drove to Canberra Hospital, Woden. He proceeded to the Emergency Department waiting room. He found that the appellant was not present.

24. At 6:58 pm and again at 7:07 pm, Mr Polglase unsuccessfully attempted to contact the appellant on his phone. He left voice messages advising the appellant to contact him immediately. At 7:20 pm Mr Polglase received a call from the appellant. Mr Polglase told the appellant that he was at Canberra Hospital, Woden but could not locate him. The appellant said that the taxi which he had taken had broken down and that a friend had picked him up and taken him to the Calgary Hospital in Bruce. Mr Polglase issued the appellant with a further direction not to leave Calgary

Hospital until such time as he or Mr Walshe attended Calvary Hospital and obtained a urine sample. Mr Polglase then drove directly to Calgary Hospital in Bruce. He could not locate him in the waiting room. He telephoned the appellant at 7:47 pm but the call was unanswered. He left a voicemail message directing the appellant to contact him immediately. Shortly thereafter Mr Walshe arrived and joined Mr Polglase. A short time later the appellant returned a call to Mr Walshe. Ultimately the appellant provided a sample of urine at 8:45 pm. This was more than seven hours after Race 3 concluded, and after what may be described as dogged determination by Mr Polglase and Mr Walshe to ensure that the appellant did not escape his obligation to provide a sample. It is in this context that the subsequent events are to be viewed.

25. On Thursday 1 February 2018 at 2:45 pm Mr Walshe conducted an interview with the appellant. Amongst other things, Mr Walshe asked the appellant about the events after the appellant left the racecourse on Monday 29 January. He also asked about his injuries. During the course of the interview, Mr Walshe directed the appellant to hand across his phone in order that Mr Walshe might examine it for any calls or messages on Monday 29 January, which was the day that the appellant rode. Clearly, Mr Walshe wished to inspect the phone to see whether phone calls or messages on it might cast light on the events of Monday 29 January. The phone that the appellant provided was an iPhone X. Mr Walshe inspected it. There were no messages on it prior to Tuesday. Mr Walshe handed the phone back to the appellant.

26. On 6 February 2018 Stewards conducted an interview with jockey Nick Heywood, to which I have earlier referred. The Stewards were interested in the contact between the appellant and Mr Heywoord.

27. On Tuesday, 6 February 2018 Mr Polglase telephoned the appellant and gave him a direction to meet Mr Adam Spitzer at Merimbula and give Mr Spitzer his iPhone. Mr Polglase asked for a confirmation that the phone that the appellant was speaking on was the iPhone that he handed to Mr Walshe for inspection on 1 February 2018. The appellant said that it was not. He said that he had dropped his iPhone in the bath the previous Saturday (3 February), implying that it was no longer working. As later evidence proved, this was a lie. He was in fact speaking to Mr Polglase on the phone that Mr Walshe had inspected on 1 February 2018. When asked what phone he was speaking on the appellant said that it was "one of my old ones, like it's nearly new". He was asked to produce the damaged phone. He said that he could not remember where it was and that "I've even got on to Find My iPhone and it has not been able to do it either". These, of course, were also lies. Mr Polglase directed the appellant to hand to Mr Spitzer the phone that he was speaking from, although he could retain the sim card.

28. The lies told in this conversation are the foundation for Offence 1, to which the appellant pleaded guilty and in respect of which he was suspended for three months from 9 February 2018 to 9 May 2018. He served this suspension concurrently with the disqualification for Offence 2. His knowingly false statements to Mr Polglase clearly constituted false, misleading statements in respect of a matter in connection with the administration and control of racing, within the meaning of AR175(gg).

29. The evidence from iCloud imaging later established that after the telephone conversation with Mr Polglase the appellant searched on his iPad for phones for sale in Merimbula. Soon after he bought a Samsung Galaxy J1 mini phone from a shop in Merimbula for about $150. He gave that phone to Mr Spitzer representing that this was the phone that he had been directed to produce to him, namely the

phone on which the appellant had been speaking to Mr Polglase and which he had been using since Saturday 3 February 2018. This is the basis for Offence 3 to which the appellant ultimately pleaded guilty and in respect of which he was disqualified for six months from 9 August 2018 to 9 February 2019. This conduct was clearly a dishonest, fraudulent, improper and dishonourable action or practice in connection with racing, within the meaning of AR175(a).

30. At 10 am on Wednesday, 7 February 2018 Mr Walshe and Mr Polglase conducted a further interview with the appellant. At the commencement of this interview the appellant was warned about the significant sanctions for giving false evidence in an interview, which the appellant confirmed that he understood. Nonetheless, the appellant knowingly gave false evidence in that interview. Some of that false evidence was inconsistent with the false evidence he had previously given. For example, he said that when Mr Polglase rang him the previous day (Tuesday 6 February) he took the call on his iPad, whereas the previous day he told Mr Polglase that he had taken the call on his old/new phone. The more significant aspects of his deliberately false evidence during the interview of 7 February 2018 were:

    (a) he again stated that on Saturday 3 February 2018 he had dropped his iPhone in the bath, being the iPhone that Mr Walshe had inspected on Thursday 1 February, and that he did not know where that iPhone was;

    (b) he denied that the Samsung phone that he had provided to Mr Spitzer the previous day had in fact been bought in Merimbula the previous day, shortly before he met with Mr Spitzer.

There were many other lies that he told in that interview; for example in that interview the appellant falsely stated that on the Saturday or Sunday before the race on 29 January he did not consume any recreational drugs.

31. It is the deliberately false evidence in that interview that is the basis for Offence 2 to which the appellant pleaded guilty and was disqualified for six months from 9 February 2018 to 9 August 2018 and which was to be served concurrently with the three months suspension for Offence 1. The appellant clearly gave false and misleading evidence in an interview within the meaning of AR175(g).

32. On Thursday 8 February Mr Walshe sent an email to the appellant directing him to provide his telephone records for the period from and including 27 January 2018 until 7 February 2018 for a particular telephone number (the telephone number on which Mr Walshe and Mr Polglase had spoken to the appellant on Monday 29 January).

33. On 5 April 2018 the Stewards (Mr Walshe and Mr Polglase) conducted an inquiry into the sample obtained from the appellant at Calgary Hospital on the evening of 29 January, 2018. By 5 April the appellant had been provided with the 40 exhibits that had been obtained or prepared for the inquiry and which numbered 255 pages. These included iCloud imaging from the appellant's iPhone and iPad, detailed tower locations in respect of the appellant's mobile phone use and the results of the urine sample the appellant had given on 29 January, which identified the presence of cocaine.

34. It was only during this enquiry that the appellant admitted to the previous lies that he had told the Stewards. He also explained the presence of the cocaine in the sample he gave. He told the Stewards of his use of cocaine on Saturday and Sunday before the race. The appellant said that he lied about his phone and

dishonestly produced the Samsung Galaxy phone as the phone that he had been using because he was stressed and “there was a lot of personal stuff on there between me and my ex-partner”. It must have been apparent to the appellant when he read the detail in the exhibits the Stewards had compiled that the case against him was overwhelming and that he had little option other than to admit what he had done and plead guilty.

Submissions

35. On behalf of the appellant, Mr Byrnes drew attention to the obvious financial impact and hardship that the appellant would suffer if not permitted to ride until at least 19 August 2019. Mr Byrnes referred to the appellant’s personal circumstances and the appellant’s desire to provide for his young son. Mr Byrnes referred to the references (Exhibit 1) given by Mr Crisafi, Chief Executive Officer of the New South Wales Jockeys Association. He wrote of the appellant’s qualities and otherwise excellent character, his personal circumstances including his support for his son. Mr Crisafi also referred to the psychological demands made on the appellant and the fact that the appellant now accepts that he “went off the rails”. Mr Byrnes also referred to the letter of 20 June 2018 (Exhibit 2) from the appellant’s psychologist referring to the appellant’s now clear desire to transform himself for his own well-being, his family and career.
36. Mr Walshe on behalf of the Stewards emphasised the seriousness of the offences and that the penalty must be sufficient to amount to a deterrent to others who might be tempted to mislead the Stewards in the way that the appellant had done. Mr Walshe also provided schedules of the penalties for similar offences.

37. I should note that at the conclusion of the Stewards' submissions I stated on behalf of the Panel that the Panel would wish to adjourn briefly to consider whether we were considering increasing the penalty. In doing so I made reference to the decision of the Court of Appeal of New South Wales in *Parker v Director of Public Prosecutions* (1992) 28 NSWLR 282 and the decision of this Panel in the matter of *Tess Wilkes* (16 April 2018, a decision of the Panel comprised of myself, Mr Tuck and Ms Madsen). Mr Byrnes asked to be permitted to make a short summary of his submissions before we adjourned. The Panel permitted this. We then adjourned. On resuming I informed Mr Byrnes and the appellant that the Panel was giving active consideration to increasing the penalties that had been imposed. After a short adjournment to seek instructions, Mr Byrnes informed us that the appellant nonetheless wished to continue with the appeal.

Resolution

38. In the decision of the Victorian Racing Appeals Tribunal in the mater of *J Leek*, the Hon Judge Nixon (Chairman) gave a decision in relation to a breach of AR175(g) and 175(a). In that decision he said:

> "Licensed persons owe a duty to tell the truth. Of course, there will be many occasions when they do not do so, but when they are found out on matters such as this, and every matter has got to be looked at on its own facts, I view this persistent course of lying and the improper practice of endeavouring to persuade Alderman to come in on the lie, to be a serious offence. Those who lie like this must realise that they will suffer as a trainer, or as a licensed jockey, no doubt, financial detriment. They should think of that before they engage in this course of deception. It is very easy to lie. It is very difficult to determine when a person is lying, and as a

Judge of this court one quickly realises that, but here I have no hesitation in saying that the appeal should be dismissed, both as a deterrent to Mr Leek, Junior, and as a deterrent to others who might be minded to engage in similar courses of deception. The appeal money will be refunded"

39. This Panel in the matter of *Peter Robl* (24 February 2011, Mr J Hiatt (Chairman), Mr J Hickman and Mr J Fletcher) considered a breach of AR175(g). There the Panel emphasised that:

> "Further those who give false and misleading evidence at Inquiries of Appeals should expect severe sanctions, because such a breach hinders the proper administration of racing."

The Panel went on to say:

> "The betting breaches and the false and misleading evidence breaches go to the fitness of the Appellant to hold a licence, to cite Judge Perrignon in the Appeal of Cassidy (1995) 1213:
>
> 'Disqualification is a well-known and legitimate indeed a necessary safeguard to be adopted to secure the absence from racecourses of persons who have been found guilty of conduct seriously detrimental to the Rules of Racing is vital to the proper administration of racing.'
>
> Severe penalties in this case are justified having regard to the seriousness of the case and to serve both as a specific and general deterrent."

In that case the Panel imposed a total penalty of 12 months disqualification, of which six months disqualification was for a breach of AR175(g), to be served cumulatively with the other offences.

40. In the matter of *Noel Callow* of 3 April 2017 I, on behalf of the Panel comprised of myself, Mr T Carlton and Mr C Clare, emphasised the importance of deterrence at [41]-[43]. In particular I said at [42]:

> "Deterrence will have a broader application in relation to the rules of racing. The principles will extend not only to the protection of the public but also the promotion of the safety or horses and jockeys as well as the integrity of racing. In determining penalty, consideration may be given to the deterrent effect that the penalty might achieve in deterring a repetition of the offence and in deterring others who might be tempted to fall short of the high standards required of them under the rules of racing. The penalty may also be seen as publicly marking the seriousness of the offence".

41. In the present case Offences 1, 2 and 3 are of the utmost seriousness. The appellant deliberately gave false evidence to the Stewards on 6 and 7 February 2018. When directed by Mr Polglase to produce the phone that the appellant said he had been using since 3 February, the appellant deliberately sought to deceive the Stewards by buying a new phone and representing that this was the phone that he had been using since 3 February. Each of Offences 1, 2 and 3 demonstrate a high level of dishonesty deserving of the most severe of sanctions. Moreover, in the interview on 7 February 2018 the appellant was warned about the significant sanctions that might be imposed if he gave false evidence in that interview. Despite this, the appellant gave deliberately false evidence. He lied. We do not find convincing his explanation that he did so because of his concern about the personal information on his phone. Furthermore, his false evidence necessitated the Stewards expending substantial resources in investigating the appellant's conduct.

As I have pointed out, it was only when the appellant was confronted with the detailed evidence that had been accumulated against him that he admitted his guilt. We do not see his pleas of guilty as an indication of remorse but as a grudging acceptance of the inevitable. These matters led us to give serious consideration to increasing the period of disqualification for Offences 2 and 3. We were concerned that having regard to the principles referred to above and the penalties imposed in other cases, in the circumstances the penalties imposed by the Stewards might have been too lenient,

42. However, we did not take that course. We took the view that the penalties for Offences 1, 2 and 3 should simply be confirmed and the appeal otherwise dismissed. We were persuaded to that conclusion by the submissions of Mr Byrnes on behalf of the appellant. Most particularly we took into account the appellant's age, the fact that he acknowledged that at the time of the offences he "had gone off the rails" and was now being treated for the difficulties he had been going through, including for his cocaine use. We gave significant weight to the character evidence given by Mr Chrisafi, Chief Executive Officer of New South Wales Jockeys Association (Exhibit 1). We took into account that the appellant has been attending counselling sessions through the Jockeys Assistance Program. But for these matters, we would have increased the penalties for Offences 2 and 3.

MR J FLETCHER – I agree.

MR P LOSH – I agree.

ORDERS

The orders of the Panel are:

1. The appeal is dismissed.

2. The penalties imposed by the Stewards on 5 April 2018 are confirmed.
3. The appeal deposit is forfeited.

Annexure A

OFFENCE 1

AR 175. The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise;

(gg) Any person who makes any false or misleading statement or declaration in respect of any matter in connection with the administration or control of racing.

Particulars:
That you licensed jockey Brodie Loy did during a recorded telephone conversation with Stipendiary Steward Mr Chris Polglase at or around 12:00pm on 6 February 2018, make the following statements in relation to an iphone which was operated by yourself in the knowledge that those statements were false.

C G POLGLASE: Where is that physical phone now?

B LOY: It's destroyed. It was broken.

C G POLGLASE: Where is that physical phone that you dropped in the bath?

B LOY: Wouldn't know. I just chucked it in one of those deposit boxes and the phone is gone.

C G POLGLASE: Which deposit box? Do you remember where?

B LOY: No, I don't but, like I said, it would be gone now. It would be - I don't know where it would be now.

OFFENCE 2

AR 175. The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise;

(g) Any person who gives at any interview, investigation, inquiry, hearing and/or appeal any evidence which is false or misleading in any particular.

Particulars:
That you licensed jockey Brodie Loy did during a recorded interview with the SERA Stewards at Thoroughbred Park on 7 February 2018 provide the following evidence in the knowledge that such evidence was false:

J D WALSHE: Let's just talk about some aspects of Mr Polglase's telephone interview with you from yesterday and we've had a transcript prepared. You advised

Mr Polglase that on Saturday morning, so that was prior to the first day of the Sapphire Coast carnival--

B LOY: Yes, sir.

J D WALSHE: --that you had dropped your phone in your bath.

B LOY: Yes, sir.

J D WALSHE: That's your home bath at Lawson?

B LOY: Yes, sir.

J D WALSHE: And the phone has gone in terms of it didn't survive the water?

B LOY: No.

J D WALSHE: And you've advised that you put it in a deposit box. Have you been able to relocate that phone?

B LOY: No. I've even got onto Find My iPhone and it hasn't been able to do it either.

J D WALSHE: We'll come to that shortly, what sort of phone was that and I know that you did present it.

B LOY: A 7.

J D WALSHE: It was a 7?

B LOY: Yeah, iPhone 7.

J D WALSHE: Let's be clear. This phone, was it purchased yesterday, this Samsung?

B LOY: No.

J D WALSHE: No?

B LOY: No.

J D WALSHE: When was it purchased?

B LOY: I honestly couldn't tell you, sir. Like I said, it's an old phone, but new phone.

J D WALSHE: So why have you had that phone never ever used it?

B LOY: Well, I just hadn't used it, hadn't needed for it. I've had it for ages, but I haven't needed for it.

C G POLGLASE: Did you try and contact any other person or make any other calls?

B LOY: When, yesterday?

C G POLGLASE: Yes.

B LOY: At what time?

C G POLGLASE: At any time during the day.

B LOY: Yeah. When I got back home, got that phone up and running, logged in and I spoke to a few people, yeah.

C G POLGLASE: When you said you got the other phone up and running, which phone was that?

B LOY: The phone that Mr Walshe has now.

C G POLGLASE: The phone that Mr Walshe has now. You might just advise us as to when you got this phone and where?

B LOY: I've got it from the Telstra shop in Gungahlin.

C G POLGLASE: Telstra shop in Gungahlin, yesterday?

B LOY: No, not yesterday. I've had it for some time, but I use an iPhone 7 and needed to use it.

C G POLGLASE: If you had this iPhone and you've had that for some time--

B LOY: Because you need to connect it with WiFi and so on. So I get back and connected it yesterday. It's been in the case.

C G POLGLASE: Is there any reason if you had that, why would you be utilising--

B LOY: Because I use my iPad. I didn't need it and when I come back I set it all up and give it here to you today.

J D WALSHE: It just doesn't make sense. What number--

B LOY: Because I needed WiFi.

J D WALSHE: What number phone is this iPhone?

B LOY: X.

J D WALSHE: This is an X?

B LOY: This is an X.

J D WALSHE: Is that an updated model on the 7? Is this the latest version?

B LOY: It's the latest, yes, sir.

J D WALSHE: The simple question Mr Polglase is alluding to, why would you not have taken this phone as opposed to the Samsung?

B LOY: I didn't need it, sir. I didn't need it. Like I said, I wanted to go down there for a holiday. I didn't need it.

J D WALSHE: Why did you take it down with you if you didn't need it?

B LOY: Just in case.

J D WALSHE: Why wouldn't you take the iPhone--

B LOY: Because I didn't--

J D WALSHE: --the iPhone X?

B LOY: Like I said, sir, like I said, before, even in the inquiry I said I'm not enjoying riding at the moment, not loving it. I went down there to get a clear head space. Didn't want to actually take any devices like.

J D WALSHE: Are you being honest with us, Brodie Loy, with respect to the phone communications.

B LOY: Yes, sir, I'm being honest. I'm being honest with you, sir.

OFFENCE 3

AR 175. The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise;

(a) Any person, who, in their opinion, has been guilty of any dishonest, corrupt, fraudulent, improper or dishonourable action or practice in connection with racing.

Particulars:
That you licensed jockey Brodie Loy did commit an improper action in that on 6 February 2018 after being issued with a direction from Stipendiary Steward Mr Chris Polglase during a recorded telephone conversation on 6 February 2018, namely that

you were directed to provide to SERA Raceday Official Mr Adam Spitzer, on the abovementioned date, the mobile phone that you had been using since Saturday 3 February 2018, you did;

1. Use a mobile device belonging by you to conduct an internet search for mobile phone retailers in the Merimbula area.
2. Purchase a Samsung Galaxy J1 Mini from a retailer in Merimbula.
3. Provide Mr Adam Spitzer with the purchased Samsung Galaxy J1 Mini in the knowledge that it was not the phone you had been using since Saturday 3 February 2018.

OFFENCE 4

AR 81A. (1) Any rider commits an offence and may be penalised if -

(a) a sample taken from him is found upon analysis to contain a substance banned by AR 81B;

Particulars:
That you licensed jockey Brodie Loy did provide a sample of your urine at 8:45pm at Calvary Hospital, ACT on Monday 29 January 2018 after having ridden Midnight Mission in Race 3 at Goulburn Racecourse earlier that day, where, at that racecourse, you were given Stewards directions to provide a sample of your urine, such sample being found upon analysis to contain substances banned by AR81B, namely benzoylecgonine and ecgonine methyl ester, being metabolites of cocaine.