RACING APPEAL PANEL OF NEW SOUTH WALES

APPEALS OF WAYNE MARTYN AND BRYAN DIXON

Appeal Panel:	**Mr R. Beasley SC – Principal Member**
	Mr J. Murphy
	Mrs J. Foley
Appearances:	**Racing NSW – Mr Marc Van Gestel**
	Appellants – Mr Michael Callanan, Solicitor
Date of Reasons for Decision:	**4 October 2018**

REASONS FOR DECISION

The Panel

Introduction

1. On 24 May 2018, licensed trainer Bryan Dixon pleaded guilty to a breach of LR80A.

2. LR80A, which came into operation in September 2017, is in the following terms:

> "LR80A(1) A person must not, whilst driving a motor vehicle on a registered racecourse, public thoroughfare or grounds associated with a registered racecourse lead a horse from a motor vehicle in any manner including, but not limited to, by tethering a horse either behind or to the side of a motor vehicle or the use of any apparatus being towed by a motor vehicle;
>
> (2) Any person who breaches this rule, or is a party to breaching this rule, commits an offence and may be penalised."

3. The particulars of the charge against Mr Dixon were that "on the morning of Wednesday 2 May 2018 at 6.10am he was observed by Stewards to be leading the

gelding The Clash from a white Mitsubishi dual cab ute on Gilgandra Racecourse". Mr Dixon was penalised by regional Stewards by way of a 6-month suspension of his licence.

4. Also on 24 May 2018, licensed trainer Wayne Martyn pleaded guilty to a breach of LR80A. The particulars of the charge against Mr Martyn were that "on the morning of Thursday 26 April 2018 at 6.56am he was observed by Stewards to be leading the mare Sea Lady from a white four-wheel drive wagon on Coonabarabran Racecourse". Mr Martyn was also penalised by way of a 6-month suspension of his licence by regional Stewards.

5. Both trainers have appealed to the Panel against the severity of the penalty imposed on them. Their appeals were heard together, and they were both represented by Mr Michael Callanan, solicitor, of Rankin Ellison Lawyers. The Stewards were represented by Mr Marc Van Gestel, the Chairman of Stewards. At the commencement of the appeal hearings, Mr Van Gestel advised the Panel that the Stewards sought an increase of the penalty imposed on the Appellants by the regional Stewards. In lieu of a 6-month suspension of their licences, Mr Van Gestel submitted (for reasons outlined below) that a penalty of a 12-month disqualification should be imposed on each Appellant.

Facts relevant to Mr Dixon's Appeal

6. The factual background in relation to both appeals is similar. When questioned by Stewards at the Dubbo Racecourse on 24 May 2018, Mr Dixon admitted the factual matters particularised in the charge against him. He explained his actions as being caused by the fact that the horse The Clash refuses to walk on a walking machine: T3.129. He also has difficulty retaining track work riders, describing them as "impossible to get": T5.208. He has, however, subsequent to the charge being brought against him, purchased a walking machine: T5.250.

7. As mentioned above, LR80A came into operation in September 2017. Mr Dixon was aware of this because he had been advised that the rule was coming in during a phone call from Stewards on 22 August 2017: T3.120.

8. Mr Dixon has 20 horses in work, and has been a trainer for 35 years. Evidence was tendered as to his good character (see letter from Andrew Scheir, the President of the Gilgandra Jockey Club). He has only one blemish in relation to his training career, which occurred nearly 30 years ago. He pleaded guilty to the breach of LR80A at the first opportunity.

Circumstances of Mr Martyn's breach of LR80A

9. Like Mr Dixon, Mr Martyn admitted the factual circumstances in relation to the particulars of the charge brought against him. He also told Stewards of the difficulty of obtaining track work riders: T4.170-.205. He too was advised that the rule was coming in through a phone call from Stewards made on 22 August 2017: T3.140.

10. Mr Martyn has been a trainer for 30 years, and has an unblemished record. Evidence was also tendered of his good character – see the letter from Stuart Rodgers, the President of the Coonabarabran Jockey Club Inc. His only source of income is from horse training. Through his counsel Mr Callanan, he indicated that he could not afford to purchase a walking machine. He admitted, again through Mr Callanan, that he had on one further occasion led a horse from is vehicle subsequent to being charged for the matter now before the Panel.

Other Evidence

11. Both Appellants relied on a statement of Glenn Burge dated 30 August 2018. Mr Burge is the Chief Executive of the NSW Trainers Association. His statement went in part to an assertion that there was a lack of consultation with the NSW Trainers Association about the bringing in of LR80A. He also outlines in his statement concerns that trainers have generally about LR80A, which are set out at paragraphs 19, 20, 41 and 42 of his statement.

12. While all of the matters raised by Mr Burge in his statement may be relevant matters for him to take up as the CEO of the Trainers Association with Racing NSW concerning the potential impacts of LR80A, they are not matters that amount to any

form of defence (in fairness, the matters were not put forward as a defence to a breach of the rule as the Appellants did not change their plea), nor are they in a general sense relevant to what penalty should be imposed on the Appellants, whose appeals have to be dealt with on their own set of facts.

Submissions of the Stewards

13. Mr Van Gestel described the offending of both Appellants here as a serious breach of the rule. He said both contraventions of the rule were aggravated as the Appellants had ignored oral advice given to them by Stewards that the rule was coming into operation. The breaches were therefore deliberate and calculated. Further, Mr Martyn's offending was aggravated again by his admission that he had engaged in the practice of leading a horse from his vehicle after being charged with the breach of LR 80A.

14. Mr Van Gestel further submitted that the conduct prohibited by the rule has the capacity to cause a terrible accident which would severely damage the image of Racing. Further, neither Appellant demonstrated any contrition as they both were at pains to complain to Stewards about the nature of the new local rule. Mr Van Gestel was also concerned that the penalty imposed on the Appellants must set a proper precedent for a breach of this new rule, to ensure that it has an appropriate deterrent effect. He submitted that only a disqualification of 12 months would achieve the purpose and object of penalising licenced persons for a breach of this kind of LR 80A.

Submissions of Mr Callanan

15. Mr Callanan emphasised the difficulties facing country trainers in keeping their horses fit. There is a lack of track work rider availability, and there is a high cost involved to purchase equipment such as a walking machine. Although not strictly relevant to the penalty that should be imposed, Mr Callanan noted that it was still legal to lead a horse from the back of a motor vehicle on private property. Further, there was no evidence that the rule was brought in to address a particular problem that the practice of leading horses behind a motor vehicle has caused. There was no

evidence of significant injuries to horses through this practice, and he submitted that there is a greater risk of injury to a horse when it is being ridden in track work or during a race. He emphasised the good character of the Appellants, and the fact that it is a first offence. He described the penalty of a 6-month suspension as excessive.

16. In Mr Callanan's submission, the appropriate penalty for both Appellants was either a fine, or a period of suspension of no more than one month.

Determination of Panel

17. The fact that the Stewards did not tender evidence of an injury or incident that has led to the introduction of LR80A is, in our view, irrelevant. Common sense says that an injury could be caused by this practice. Whether or not Local Rule 80A should have been brought in is not a matter for the Panel, and we express no view about the matters raised by Mr Burge in his statement. They may be relevant to take up with Racing NSW, but in the main are not relevant to our deliberations. The only observation we would make is that neither Stewards nor the people charged with drafting the Rules of Racing need wait for an accident or incident to occur before banning any particular practice. We accept the submission of Mr Van Gestel that were a horse to be injured while being led from a vehicle, it could well result in damaging publicity for the racing industry.

18. The fact is that LR80A came into operation in September last year. It is an aggravating factor that both Appellants were made well aware of the rule coming in, and deliberately chose to ignore the prohibition on the conduct that has seen them plead guilty to a breach of LR80A. The Panel agrees with the Stewards that it is a very serious matter for licensed persons to breach one of the rules of racing in the deliberate and calculated manner that both Appellants have. The Panel does not ignore the difficulties the Appellants face in obtaining track work riders, or the expense of equipment such as walking machines, but licensed persons have no option but to obey the rules of racing.

19. Having said that, we do not agree with the Stewards that first offending under this rule is a breach for which the appropriate penalty is a disqualification. We consider

that a 12-month disqualification would be an excessive penalty to impose. On the other hand, we disagree with the submission made by Mr Callanan that a fine or a one-month suspension is appropriate. Penalties imposed for breaches of the rules of racing are imposed primarily to uphold the interests and integrity of racing. A penalty of a fine or a one-month suspension would be insufficient, in our opinion, to achieve that goal. On the other hand, a 12-month disqualification would be excessive. It is also contrary to the interests of racing to impose penalties that are so severe that they are out of proportion with the conduct involved.

20. We are of the view that the 6-month suspension imposed by the regional Stewards was the appropriate penalty for each Appellant. Where we differ slightly from the regional Stewards who penalised the Appellants, however, is that in our view they are entitled to a further discount for pleading guilty.

21. The regional Stewards did apply a discount for early plea for Mr Martyn – they reached a 6-month suspension having said they "considered a 12-month suspension" (T11 L549), but then discounted for cooperation, plea and good record. Similarly, the Stewards in the Dixon matter stated that they "could start the penalty ... at the 12-month mark, be it disqualification or suspension" (T 18 L 853), but again discounted for plea, cooperation and good record.

22. In our view, the appropriate starting point for penalty in these cases is a 6 months suspension. While the breach of the rule was deliberate, it is a first offence for both Appellants, and neither breach was aggravated by any injury to a horse. While the Appellants engaged in knowing breaches of the rule, we do not consider that the conduct they engaged in can properly be characterised as corrupt or dishonest. To the extent that it may be relevant, a six-month suspension for first offending will have a deterrent effect. The Appellants have very good records, and cooperated with Stewards. A six-month penalty is therefore the starting point for these breaches of LR 80A. They then are entitled to a discount for their guilty pleas. Those pleas of guilty were made at the earliest opportunity and have been maintained on this appeal. It is quite irrelevant, in our view, that the Appellants have complained about the rule, or even that they think it is a bad or unnecessary rule. They are entitled to that view. They are also entitled to an appropriate discount for their early plea,

which in our view should be a 25% discount. We would therefore reduce the 6-month suspension we would otherwise impose to a 4 month and two-week suspension to take into account their early plea.

23. In the appeal of Dixon, we make the following orders (the Stewards and Mr Callanan should note that the Panel considers them free on each appeal to agree a different start and end date for the suspensions if this Friday is inconvenient, and the Panel will revise the orders accordingly):

(1) Appeal against severity allowed.

(2) In lieu of the penalty of a 6-month suspension of his licence, the Appellant's licence is suspended for a period of 4 months and two weeks.

(3) That suspension is to commence on Friday 5 October 2018, and will expire on 19 February 2019, on which day the Appellant may resume training.

(4) Appeal deposit to be refunded.

24. In the appeal of Martyn, I make the following orders:

(1) Appeal against severity allowed.

(2) In lieu of the penalty of a 6-month suspension of his licence, the Appellant's licence is suspended for a period of 4 months and two weeks.

(3) That suspension is to commence on Friday 5 October 2018, and will expire on 19 February 2019, on which day the Appellant may resume training.

(4) Appeal deposit to be refunded.

4 October 2018