APPEAL – 661

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR P HOGAN (MEMBER)

APPELLANT:	**RAYMOND JOHN MILLER**
APPLICATION NO:	**A30/08/661**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)** **MR P HOGAN (MEMBER)** **MS K FARLEY (MEMBER)**
DATE OF HEARING:	**6 DECEMBER 2006**
DATE OF DETERMINATION:	**23 JANUARY 2007**

IN THE MATTER OF an appeal by Raymond John Miller against the determination made by the Racing and Wagering Western Australia Integrity Assurance Committee on 20 September 2006 issuing a warning off notice pursuant to Regulation 72(1) of the Racing and Wagering Western Australia Regulations 2003.

Mr S W O'Sullivan appeared for the Appellant.

Mr R J Davies QC appeared for the Racing and Wagering Western Australia Integrity Assurance Committee.

INTRODUCTION

This is an appeal against a determination of the Racing and Wagering Western Australia Integrity Assurance Committee ("the IAC" or "the committee") to issue a warning off notice to the Appellant.

The Appellant has had a long time involvement in the racing industry. He has also had a long time involvement in breaches of the Rules of Racing and in breaches of the criminal law. Soon after the Appellant's sentencing on his most recent criminal conviction, the Racing and Wagering Western Australia Chairman of Stewards reported to the IAC. The report recommended that the IAC exercise its powers under section 44(1)(e) of the Racing and Wagering Western Australia Act 2003 ("the Act"), and issue a warning off notice to the Appellant.

The IAC invited the Appellant to show cause why a notice should not be issued. He took up the invitation, and a hearing took place on 8 September 2006. The IAC adjourned to consider its decision. On 20 September 2006, the IAC wrote to the Appellant, notifying him that it had determined to exercise its powers and issue a warning off notice. In written reasons for decision, also dated 20 September 2006, the IAC said:

> *"...As a result it has been determined that the provisions of Regulation 72 have been met in full and the IAC does exercise its powers under section 44(1)(e) of the Act by hereby issuing a "warning off notice" to Mr Raymond Miller."*

The Appellant lodged a notice of appeal dated 2 October 2006. The grounds of appeal are in a separate document dated 26 October 2006.

THE GROUNDS OF APPEAL

The grounds of appeal are as follows:

1. THAT the hearing on 8 September 2006 conducted by the INTEGRITY ASSURANCE COMMITTEE which resulted in the appealed determination was conducted in circumstances leading to a reasonable apprehension of bias against the Appellant, which circumstances are set out in the Affidavit of the Appellant to be filed herein.

2. THAT 27 days after the said determination the Committee purported to publish reasons for the determination which reasons are deficient in that they do not deal with the arguments and

materials put before the Committee by the Appellant and do not adequately or at all set out how it is that the Appellant's mere presence on a racecourse could be prejudicial to the proper control and conduct of racing.

3. THAT in so far as the Committee found that the Appellant's presence on a racecourse is prejudicial to the proper control and conduct of racing the finding was against the material before the Committee and no reasonable Committee could reach such a conclusion on the material.

4. THAT the Committee failed to give any or any proper weight to the evidence before it that the Appellant had been entitled to attend race meetings since the year 2001 (which was the year of the offences of which he was convicted before Jackson DCJ and a jury) and that for much of the period from 2001 to the present he had been a licensed person in Victoria without any adverse findings or damage to the racing industry.

5. THAT the Committee failed to give any or any proper weight to the evidence that the Appellant had a firm offer of a job in the racing industry in Victoria where he proposed to reside.

6. THAT the Committee failed to give any or any proper weight to the undoubted fact that for the Appellant to work in the racing industry in Victoria he would be subject to the licensing regime in that State.

7. THAT the Committee failed to give any or any proper weight to the evidence that the Appellant would be out of the jurisdiction of Western Australian stewards and away from Western Australian people involved in racing who may know him; in which circumstances a finding that the Appellant's presence on a racecourse may give the appearance that racing is not being properly controlled is without substance.

8. THAT the Committee failed to set out the standard of proof by which it decided the matter.

9. THAT the Committee in making the determination upon the material before it can only have employed a standard of proof less than is required in a serious matter affecting a person's livelihood.

10. THAT the Committee erred in finding that the Appellant's presence on a racecourse is prejudicial to the proper control and conduct of racing because such a finding was not available on the material before it; indeed there was no material before the Committee as to the view of any member of the racing industry (apart from the stewards) or of the public and no material to suggest whether persons involved in the racing industry (apart from the stewards) know or care about the Appellant.

11. That the Committee gave no or no sufficient weight to the fact the Appellant is not a licensed person in WA, nor does he seek to be, and accordingly has no need for regular interaction with the stewards.

12. THAT the Committee has given no or no proper weight to the evidence that the handling of horses is the Appellant's only skill and that to deprive him of the opportunity to become licensed in another jurisdiction is to deprive him of the opportunity to earn his livelihood.

13. THAT the Committee failed to give any or any proper weight to the fact that such a determination would frustrate the rehabilitative intention of Jackson DCJ when he sentenced the Appellant.

14. THAT the Committee gave no or no proper weight to the effect of such a determination upon a person in the Appellant's position due to the restriction on his contact with many relatives in the racing industry and other persons similarly involved and his inability to work for those persons even in a non horse related capacity.

15. THAT the Committee gave no or no proper weight to the ineffectiveness of a warning off notice in a modern environment to prevent misconduct in relation to racing where the reality is that a person so minded could cause considerable trouble without breaching a warning off.

16. THAT the Committee gave no or no proper consideration to whether or not, if it was appropriate to warn off the Appellant, the warning off should be for a finite period.

17. The Appellant seeks the setting aside of the Determination to warn him off.

THE APPELLANT'S BACKGROUND

The Appellant was aged 48 years at the time he was warned off. His background was conveniently summarised in a document which he tendered at the show cause hearing. That document was the reasons for decision of the Administrative Division of the Victorian Civil and Administrative Tribunal, in a separate racing matter concerning the Appellant's application to be licensed in that State. The written reasons are dated 8 September 2006, although the hearing was in 2003. I summarise below the Appellant's history, and I acknowledge that it comes from the reasons delivered by her Honour Judge Davis, Vice President of the Victorian Tribunal.

The Appellant comes from a Western Australian family which has been involved in horse racing for many years. In October 1979 he was disqualified in Western Australia for 10 years, for an offence of being in possession of an electrical contrivance at Belmont Park Racecourse. From 1983 to 1987 he was employed in Victoria as a licensed stable hand, albeit working under some restrictions required by the Victorian Racing Club. The Appellant made unsuccessful attempts to obtain restricted trainer's licences in WA in 1985 and 1988.

In 1988 the appellant was warned off from 2 racecourses in WA for a period of 6 months. In April 1988 he was disqualified in WA for 5 years for corruptly offering another trainer money to prevent that trainer's horse from racing on its merits. In February 1996 he was granted a stable employee's licence in WA for 3 months.

In 1998 the Appellant was convicted of possession of amphetamine with intent to sell or supply. He was sentenced to 7 years imprisonment. He was released on work release and then to parole in early 2001, with a parole period of 2 years. He worked as a barrier attendant

at trials run by the WA Turf Club. In August 2001 he applied unsuccessfully for a stable hand's license in WA.

In July 2002, the Appellant was permitted to leave WA on parole to go to Victoria. He worked for a Victorian trainer as a stud manager in charge of breeding, a position he held for 15 months without any adverse incident. He applied to Racing Victoria for a strapper's licence, but was refused in June 2003. That decision was the subject of the application to review, heard by her Honour Judge Davis of the Victorian Tribunal. Her Honour set aside the decision to refuse, and on 16 October 2003 substituted a decision granting the appellant registration as a stable hand subject to certain restrictions.

The Appellant's history since his release to parole in early 2001, as summarised above, omits an important fact relevant to this appeal. On 6 December 2001, the Appellant committed 2 criminal offences of making threats with intent to prevent a person from doing an act which he was lawfully entitled to do. The conduct the subject of the offences, referred to in more detail below, was directly related to the racing industry. The process of investigation, committal and trial took some time to complete. The Appellant ultimately was convicted of the offences in October 2005 in the District Court at Perth. On 20 October 2005, he was sentenced to suspended imprisonment on count 1, and fined on count 2.

The Western Australian Stewards had known of the offences since 7 December 2001, and took no action. This was because the Appellant was out of the jurisdiction and living in Victoria, and then when he returned to Western Australia the subject matter was pending in the criminal court. The behaviour of the Appellant in December 2001 was not held against him in the Western Australian racing jurisdiction until after 20 October 2005, which was the date he was finally sentenced in the criminal court. The Chairman of Stewards' report to the IAC followed soon after, on 3 November 2005. The show cause notice was dated 25 November 2005. It then took almost a year further for the show cause hearing to take place before the IAC. The hearing took place on 8 September 2006. The Stewards in their submissions to the IAC relied on all of the Appellant's past wrongdoings up to and including

to commission of the offences in December 2001. The Appellant relied on the absence of wrongdoing since December 2001, and his steps towards rehabilitation since then. The Tribunal sits now to hear this matter, based on events (the Appellant's wrongdoings) which ceased 5 years ago.

THE DECISION TO WARN OFF

The Committee delivered written reasons for its decision to warn off the Appellant. At this stage, it is convenient to note only the final paragraph of those reasons:

> *"As a whole, the IAC considered that Mr Miller's criminal and racing record demonstrates that he is a person whose presence on a race course is prejudicial to the proper control and conduct of racing. As a result it has been determined that the provisions of Regulation 72 have been met in full and the IAC does exercise its powers under section 44(1)(e) of the Act by hereby issuing a "warning off notice" to Mr Raymond Miller."*

The most recent criminal convictions, the making of threats, assumed the greatest significance in the arguments and submissions before the IAC. This was because they were the trigger for the November 2005 decision to invite the Appellant to show cause, even though the conduct itself occurred in October 2001.

THE MAKING OF THREATS – THE GROSVENOR LANE INQUIRY

In 2001, the horse Grosvenor Lane was trained by Mr J J Miller, who is the Appellant's father. There were 2 young people working at Mr J J Miller's premises, as stable hands. They were Mr Dorrington and Mr O'Donnell. Both were unlicensed. The Appellant was also working at the premises, and was on parole.

24 November 2001 was a race day. Grosvenor Lane was to start in a race on that day. On that morning, at the training premises, Grosvenor Lane was drenched. The stable hand Dorrington assisted the Appellant and another person to carry out the process. The stable hand O'Donnell did not witness the drenching, but he was nearby and was aware of some of

the surrounding circumstances. A blood sample taken from Grosvenor Lane prior to its starting in race 2 on that day reported an elevated level of carbon dioxide. The Stewards began an inquiry into that finding of an elevated level of total carbon dioxide in the blood.

After notification of the finding, and before the inquiry sat to take evidence on 7 December 2001, the Appellant engaged in the conduct which led to his convictions, and ultimately the warning off 5 years later.

On the morning of 3 December 2001, both young stable hands were at work. They were both leaving in their motor vehicles at about 7.30 am. The Appellant approached Mr O'Donnell and gave him a blank statutory declaration form. He wanted Mr O'Donnell to fill out the document with what had happened at the premises on the morning that Grosvenor Lane had been drenched. He wanted Mr O'Donnell to omit anything about his knowledge of Grosvenor Lane being drenched. The Appellant also approached Mr Dorrington and gave him a statutory declaration form. He told Mr Dorrington to fill it out to say that the horse was not drenched.

Unbeknown to the Appellant, the approaches were reported the next day 4 December 2001 to the Western Australian Turf Club investigator, Mr O'Reilly. Mr O'Reilly took statements from both young men.

The Stewards' inquiry was due to begin taking evidence on 7 December. On the evening of 6 December, the Appellant contacted Mr Dorrington and arranged a meeting. Mr Dorrington met the Appellant and another man outside a hotel in the Rockingham area. Mr Dorrington made a further statement to the Turf Club investigator regarding this meeting as well.

The statement was read into evidence at the Steward's inquiry the next day. The relevant part, omitting a name not relevant to this decision, appears at page 42 of the transcript of the Stewards' inquiry. It is as follows:

> *" I was asked to follow them outside so I did thinking that my wages were going to be passed over to me. I was told by Raymond Miller and also by (name omitted) that if I*

appear (sic) on the stand tomorrow to give a statement at the WA, at the Western Australian Turf Club tomorrow that harm would come to me. What they did say to myself, what did they say to myself (sic) it was on the line that if I appeared on the stand that all the bikies as well as a lot of his other mates (sic) and that if I did appear he would get locked up and other people will come looking for me. I feared for my life at this time"

The Appellant then got Mr Dorrington to take him to the home of the other young stable hand, Mr O'Donnell.

Mr O'Donnell also made a statement regarding his meeting with the Appellant on the evening of 6 December. That statement as well was read into evidence at the Steward's inquiry the next day. The relevant part, again omitting a name not relevant to this decision, appears at page 54 of the transcript of the Stewards' inquiry. It is as follows:

"Raymond Miller said to me that if questions were asked that we know what to say and they did need the Stat. Dec. that I had filled out. They also said that if they found out that I had said something to anyone and if they find out that Raymond Miller has a lot of friends and Raymond Miller will be in the shit big time. (Name omitted) said that if anything was to happen to Raymond Miller, that he (name omitted), would sort them out himself. I felt as though both Raymond Miller and his mate (name omitted) were threatening me."

The conduct of the Appellant in threatening the two stable hands in 2001 was the subject of his criminal trial and ultimate convictions in October 2005. It was also directly related to the Stewards inquiry into the elevated level of total carbon dioxide found in Grosvenor Lane. It was also the most recent and the last of the Appellant's wrongdoings relied on by the IAC in its decision to warn off the Appellant.

THE STEWARDS' REPORT TO THE IAC

The Chairman of Stewards reported to the IAC by letter dated 3 November 2005. The letter referred only to the Appellant's conduct in relation to the Grosvenor Lane inquiry, and his subsequent trial and sentencing. The letter concluded with a recommendation to the IAC that the Appellant be warned off.

THE NOTICE TO SHOW CAUSE

The notice to the Appellant was dated 15 November 2005. The IAC proposed to exercise its powers against the Appellant on wider grounds than those referred to it by the Chairman of Stewards. The relevant part of the notice is as follows:

> *"The IAC proposes to exercise these powers against you on the grounds that by virtue of:*
>
> *a) your personal history in racing, specifically;*
>
> *(1) Disqualification under A.R. 175 relating to being in possession of electrical contrivance at Belmont Park Racecourse on Saturday 6 October 1979. (Appeal dismissed 16 November 1982)*
>
> *(2) Disqualification A.R. 175(b) for corruptly offering a sum of money to prevent the colt "NATIONAL SYMBOL" from winning. – 15 April 1988 (Appeal Dismissed 15 February 1989)*
>
> *b) the conviction recorded against you by the Perth District Court in October 2005 on two counts for making threats with intent to prevent or hinder a person from doing an act that they were lawfully entitled to do;*
>
> *c) the following convictions recorded against you*
>
> *(1) stealing – 1982;*
>
> *(2) false pretences – 1983;*

(3) misleading a policeman – 1988

(4) assault occasioning bodily harm – 1994

(5) false name – 1996

(6) disorderly conduct – 1997; and

(7) possession of amphetamine with intent to sell or supply and declared to be a drug trafficker – 1998

you represent as a person whose presence on a racecourse is prejudicial to the proper control of racing"

THE SHOW CAUSE HEARING

At the hearing, the Appellant was represented by Mr O'Sullivan. The Stewards were represented by Mr Davies QC. In its written reasons for decision dated 20 September 2006 the IAC accurately summarised the submissions which had been made to it by both parties. The relevant parts of the reasons are as follows:

"4. Submissions by Mr Miller

Mr O'Sullivan, appearing on behalf of Mr Miller, submitted that under Regulation 72(1) of the Regulations the fundamental basis of the IAC's inquiry is to form the opinion that the attendance of a person at a racecourse may be prejudicial to the proper conduct or control of racing or any other lawful activity carried out at a racecourse. He stated that what the inquiry involved was "feared future conduct" or an "apprehension that something is going to happen" which is related to Mr Miller's presence on a racecourse which will be prejudicial to the control of racing.

Mr O'Sullivan also submitted that the decision before the IAC was a serious decision because if he was warned off, the IAC would be placing a restriction of movement upon Mr Miller because it would stop Mr Miller from going on any

racecourse and effectively denying him the right to work in the racing industry. He also stressed that this was a serious matter because Mr Miller is a skilled horse handler and he is able to work in this industry, which is a field which represents the only expertise he has.

Mr O'Sullivan stated that the decision to be made was not one of punishment but rather protective of the racing industry and the public. Therefore when deciding, the IAC needs to consider whether the decision will be effective.

In relation to the matters raised in the Stewards' report, Mr O'Sullivan submitted that Mr Miller has moved on from the offences referred to in there.

Mr O'Sullivan submitted that the threatening conduct, the subject of the District Court criminal proceeding referred to above, occurred off a racecourse. Further, it was submitted that Mr Miller's racing related offences all occurred when he has not been a licensed person. Therefore, it was submitted that the remedy for the conduct does not fit and therefore is inappropriate.

In relation to the transcript of the Stewards' inquiry, Mr O'Sullivan submitted that the fact that it contains unsworn evidence, and that Mr Miller was not there during all of the inquiry should be taken into account by the IAC.

In relation to the District Court Transcript, which reflects the sentencing by Judge Jackson after Mr Miller was convicted, Mr O'Sullivan submitted that because of the circumstances of the crime committed, it does not support the conclusion that Mr Miller should be warned off. Those circumstances, which were recognised by Judge Jackson, were that the threats were not accompanied by violence or weapons, and they were committed after Mr Miller had been drinking and therefore a custodial term of imprisonment was not appropriate. Mr O'Sullivan submitted that Judge Jackson had a less serious view than would appear from the transcript of the Stewards' inquiry.

Mr O'Sullivan then referred to comments by Judge Jackson that Mr Miller has stayed out of trouble since 2001.

Mr O'Sullivan also made submissions in relation to a successful appeal by Mr Miller to the Victorian Civil and Administrative Tribunal ("VCAT") in relation to a decision by the Victorian racing authorities to refuse to licence him in Victoria. On 16 October 2003 Vice President Judge Davis made an order to grant Mr Miller a licence. In relation to the transcript of the VCAT proceedings, Mr O'Sullivan stated:

- *it demonstrated that VCAT refused to consider the upcoming threat trial because it had not at that stage been heard;*

- *Judge Davis stated that since July 2002 Mr Miller worked without incident as stud manager in Victoria;*

- *Mr Miller's negative record in the racing industry is an old one, albeit serious one; and*

- *there comes a point where it is appropriate to consider the efforts made by Mr Miller to rehabilitate himself.*

Mr O'Sullivan stated that Mr Miller had held the licence without a problem until it expired when he was back in Western Australia. Due to injury Mr Miller did not renew the licence.

Mr O'Sullivan also submitted that the confidence placed upon Mr Miller by Her Honour in granting the licence has not been misplaced because he has not offended in any way against the civil or the criminal law since 2003 and he has not offended in any way against any rule of racing.

Mr O'Sullivan stated that Mr Miller proposes to leave Western Australia and go to Victoria, to apply for a licence there as a stable hand and work in that position and rehabilitate himself. He stated that Mr Miller has no desire to go onto a racecourse in Western Australia, that he has a future in Victoria and a possibility of working within the racing industry there and that he can make a fresh start in Victoria.

He also submitted that by making a decision to warn off Mr Miller, the IAC would deprive him of the chance to work as a stable hand in Victoria and also deprive the Victorian authorities of the decision making ability to decide on whether he should be licensed there.

Mr O'Sullivan also stated that in terms of control, the control upon Mr Miller as a licensed person would be more effective than the control the industry would have by warning him off and outlawing him. Therefore, he submitted that Mr Miller is worthy of a chance, and that the purpose of Judge Jackson's suspended sentence was to give Mr Miller the opportunity to rehabilitate himself. The only way in which Mr Miller can do this is in a working environment within the racing industry.

Mr O'Sullivan then submitted that Mr Miller is a talented horse handler, and in support of this tendered a number of references. Mr O'Sullivan also stated that Mr Miller has established a good record with the Stewards in Victoria and feels that he would be able to persuade them to licence him and he would be able to keep faith with the trust that licensing would put with him. By moving to Victoria, Mr Miller will be moving away from a difficult family environment which will assist with his rehabilitation.

Mr O'Sullivan also submitted that warning off is not an effective way of dealing with Mr Miller and he would be a better servant of the industry if he was controlled within it.

In making the submissions; Mr O'Sullivan tendered several references in support of Mr Miller which were considered in detail by the IAC.

5. Submissions on behalf of the Stewards

On behalf of the Stewards, Mr Davies QC submitted that the concept of the warning off power is that the IAC is to form an opinion that the attendance of Mr Miller at a racecourse may be prejudicial to the proper conduct or control of racing. Therefore there is no need for an affirmative decision, but rather that the conduct may be prejudicial to the proper conduct or control of racing. This is much wider than control of a particular race

meeting or, more significantly, the particular race meeting on the occasion of Mr Miller's attendance on the course.

Mr Davies also submitted that the warning off power is much wider and more subtle than merely asking what Mr Miller could do on a racecourse. He submitted that the question of prejudice to the proper control is one which encompasses what may be the appearance of the ability of the Stewards and RWWA to control a person who transgresses in racing, as well as the appearance that is generated by the mere fact that allowing that person to continue to attend racecourses who has carried out an affront to the control of the Stewards and attempts of the Stewards to investigate and control important matters. The affront they will have delivered would be to the proper conduct and control of racing by very significant and specific breaches of the Rules of Racing and the criminal law. Allowing such people to attend a racecourse will prejudice the proper control, albeit in a subtle way.

In relation to the decision of Judge Davis, Mr Davies submitted that Judge Davis specifically excluded from consideration the criminal matter which was not finalised. Therefore her decision was made without being able to take into consideration the material relating to the criminal matter before Judge Jackson.

Mr Davies submitted that the material not considered by Judge Davis, but established by Judge Jackson was that Mr Miller endeavoured to suborn and threaten witnesses to a Stewards inquiry.

Mr Davies also submitted that the evidence established before Judge Jackson showed Mr Miller's conduct and attitude towards legitimate endeavours of the Stewards to resolve an important matter. Mr Davies submitted that in addition to the matter before Judge Jackson, there is a "chain of anti-racing matters" relevant to Mr Miller. These include:

- *in 1979, being disqualified for 10 years as a result of being found guilty by the Stewards of possessing an electrical contrivance at Belmont Park, which in Mr Davies' submission is something that "strikes at the heart of the control of racing ; and*

- *in 1988 a conviction and disqualification for 5 years for corruptly offering a sum of money to a trainer to prevent a horse from winning, which in Mr Davies' submission also "strikes at the heart of the proper control of racing".*

In relation to Mr O'Sullivan's submissions about the unsworn nature of the evidence shown in the Stewards' inquiry, Mr Davies submitted that its purpose is to give the colour of how serious the conduct was, which was later established in the trial before Judge Jackson.

In relation to the District Court Transcript, Mr Davies submitted that the following was established:

- *the allegation by Mr Dorrington that Mr Miller had done an illegal act in terms of racing regulation and an inquiry was instituted;*

- *the inquiry threatened to bring consequences on Mr Miller's father's business;*

- *Mr Miller took it upon himself to present two people also involved in the offence with a statutory declaration and told them to fill it in and make it clear to the racing authorities that what in fact happened had not happened;*

- *Mr Dorrington refused to complete the statutory declaration and was threatened by Mr Miller;*

- *Mr Miller set out on a course of conduct over a period of days to prevent the regulatory authority involved in racing from finding out the truth.*

Mr Davies submitted that this finding was that Mr Miller's conduct was directed specifically to endeavouring to thwart the efforts of the Stewards to control racing.

In relation to the submission by Mr O'Sullivan that Judge Jackson gave Mr Miller a chance. Mr Davies submitted that this decision was not to jail Mr Miller and therefore this was significantly different to a decision to warn off someone. The matter before the IAC involves taking away the privilege of attending a racecourse. It is not the serious consequences that flow to someone as a result of a criminal conviction and resulting incarceration.

In relation to the decision to be made by the IAC Mr Davies submitted that it has never been appropriate to make a warning off decision on the basis of what the person can actually do on the course. Rather, the IAC must decide it on a much wider and more subtle basis of how will that person's presence on the course impact upon the proper control of racing. Mr Davies stated that the question to be asked was whether racing would be prejudiced by allowing persons with Mr Miller's record against the criminal law and the against the proper control of racing onto the course.

Mr Davies again submitted that Mr Miller is a person who sets out on a prolonged course of endeavouring to thwart the Stewards' proper control of racing."

THE REASONS FOR DECISION OF THE IAC

Immediately following the summary of the submissions, the IAC gave its reasons for decision. The reasons are as follows:

"The following are the IAC's reasons for this determination.

The Committee wishes to make it clear from the outset that whilst it encourages Mr Miller's efforts at rehabilitation and quest to set upon a path distinct from that of the past, the Committee's responsibility resides strongly in the need to protect, the integrity and image of the Racing Industry.

The IAC very carefully considered the submissions and other material put to it by both Mr O'Sullivan and Mr Davies in this matter. The IAC agreed with Mr

O'Sullivan's submission that the Warning Off Power is not one of punishment but rather it was one given to it to protect the racing industry.

After considering the submissions made by both parties, the IAC considers that both Mr Miller's criminal record, as well as his record relating to the racing industry may make his attendance at a racecourse prejudicial to the proper control of racing.

In making this decision the IAC was particularly mindful of the maintenance of the integrity of racing and the role and duties of the Stewards in controlling racing, which are critical to its functioning. This involves the ability of the Stewards to do their job without any interference or hindrance, and the perception by others that they were able to do their job without interference. In doing their job, the Stewards require the assistance and participation of those involved in the industry.

The IAC's decision in the current matter particularly turned on the findings of Judge Jackson, referred to in the District Court Transcript, that Mr Miller attempted to suppress evidence and intimidate a witness who was assisting the Stewards investigate a racing matter. The IAC considers that this was particularly serious, and agrees with Mr Davies that Mr Miller went on a course of conduct to prevent the regulatory authority in racing from finding out the truth. Such behavior undermines, or has the potential to undermine the integrity of racing.

Mr Miller's conduct was found by the District Court to be specifically directed to endeavouring to thwart the efforts of the Stewards to control racing. The IAC is of the same view. As such, the IAC considers that this behaviour threatens the integrity of the racing industry because it strikes directly at the role of the Stewards in controlling racing. Further, the IAC considers that having such a person who behaves in this manner attend racecourses may give the appearance that racing is not being properly controlled.

In relation to the decision by VCAT to grant Mr Miller a licence in Victoria, The IAC considered that this decision was made before the criminal conviction of Mr Miller in

relation to the threatening behaviour referred to above, and as such was specifically not considered by VCAT.

As a whole, the IAC considered that Mr Miller's criminal and racing record demonstrates that he is a person whose presence on a race course is prejudicial to the proper control and conduct of racing. As a result it has been determined that the provisions of Regulation 72 have been met in full and the IAC does exercise its powers under section 44(1)(e) of the Act by hereby issuing a "warning off notice" to Mr Raymond Miller."

I note that the show cause notice said that the IAC proposed to exercise its powers on the basis that the Appellant represented as a person *"...whose presence on a racecourse is prejudicial to the proper control of racing."* The warning off was made on the basis that the Appellant was a person *"...whose presence on a race course is prejudicial to the proper control and conduct of racing."* No issue is taken with the committee's decision being based on the additional criterion of conduct.

"WARNING OFF" - GENERALLY

Regulation 72(1) of the Racing and Wagering Western Australia regulations 2003 is in the following terms:

(1) If RWWA is of the opinion that the attendance of a person at a racecourse may be prejudicial to the proper conduct or control of racing or any other lawful activity carried on at a racecourse, RWWA may exercise its powers under section 44(1)(e) of the Act against the person by giving a notice (a "warning off notice") to the person.

By section 44(1)(e) of the Act, the effect of a warning off notice is to prohibit the person affected from *"...attending or taking part in a race meeting or entering upon and remaining on a racecourse at which racing is conducted or any licensed racecourse."* By Australian Rule of Racing (AR) 7A, the Principal Racing Authority in each State and Territory may in its absolute discretion refuse to grant any licence or permit to a warned off person, or may

refuse to register such a person. By AR 183, a person warned off is subject to the same disabilities as a person disqualified.

By a combination AR 180 and AR 181, the Principal Racing Authority is required notify other Principal Racing Authorities in Australia of a warning off, and to keep a list of warned off persons which is circulated to those other Authorities. We were informed by Counsel for the Stewards at the hearing of this appeal that Principal Racing Authorities in Australia do adopt the warnings off from other States and Territories. However, it is clear that there is no requirement on any Principal Racing Authority to do so. It remains a matter of discretion for each Authority.

The Principal Racing Authority in each State is also empowered by AR 181 to circulate its list to other Clubs as it thinks fit. Should Clubs overseas decide to adopt the warning off, it could effectively amount to a world wide ban.

It is necessary then to know something of the meaning of the phrase "warn off" and the purpose of the exercise of the power.

There is a dearth of authority on the meaning of the phrase "warn off". However, in a speech to the New South Wales Legislative Assembly on the introduction in that State of the Thoroughbred Racing Board Amendment Bill in 1998, the Minister for Gaming and Racing commented on the history of the power. The Honourable Minister said that the power of a controlling body of racing to warn a person off a racecourse had its origins in 1666 in England during the reign of Charles II. Apparently, Charles II had his own racing stables at Newmarket and controlled thoroughbred racing himself. If any person was found to be cheating or guilty of fraud in racing or betting, he was warned off Newmarket Heath. Gradually this principle of warning off was extended to other places where racing was conducted and by the early part of the twentieth century the term *"warned off Newmarket heath"* was said to mean *"undesirable on the turf and unfit to associate with the gentlemen of the turf"*.

It can be seen therefore that warning off became a wider concept than simply a prohibition from going on to the racecourse, and it included a prohibition from associating with others in the racing industry. In my opinion, this is reflected in the fact that once a person is warned off, he is prevented from associating with others in the racing industry by virtue of the provisions of AR 182 (referred to below).

Over time, the powers and responsibilities of the Stewards grew in keeping with the growth and development of the sport. Without tracing the history of the power and the basis on which it was exercised, it is sufficient to note that the basis for the exercise of the power in Western Australia no longer lies simply in a finding that a person is *"undesirable on the turf and unfit to associate with the gentlemen of the turf"*. What is required now is a finding that *"...the attendance of a person at a racecourse may be prejudicial to the proper conduct or control of racing."* That may well include an adverse finding as to character, but clearly the basis for the exercise of the power is no longer limited to that criterion alone.

To be warned off is not to suffer a punishment. Warning off is a necessary measure taken to protect the racing industry and the public interest in racing from persons whose presence may be prejudicial in the manner described. That was the approach urged on the IAC by Counsel for the Appellant, and it was correctly accepted by the IAC in its reasons for determination. This approach is consistent with that which is ordinarily taken when disciplinary tribunals exercise powers such as are under consideration here. ***Grljusich -v- Andrews*** [2003] WASCA 206 per the Court at paragraph 135 ; ***Ziems -v- Prothonotary of the Supreme Court of New South Wales*** (1957) 97 CLR 279 per Dixon C J at 286; Kitto J at 298.

THE GROUNDS OF APPEAL

1. THAT the hearing on 8 September 2006 conducted by the INTEGRITY ASSURANCE COMMITTEE which resulted in the appealed determination was conducted in circumstances leading to a reasonable apprehension of bias against the Appellant, which circumstances are set out in the Affidavit of the Appellant to be filed herein.

The Appellant filed an affidavit on 30 November 2006. In it, he deposes that The Chairman of Stewards and his Counsel were in the IAC hearing room on the day of the hearing, without the Appellant or his Counsel being present. He deposes that this occurred shortly before the commencement of the hearing. He says that he and his Counsel arrived first, and were required to wait outside while the IAC prepared for the hearing. The Chairman of Stewards and his Counsel arrived, and went straight in. After an interval, the Appellant and his Counsel were ushered in to the hearing room and found that the Chairman of Stewards and Counsel for the Stewards were seated and ready to proceed. The Appellant deposes that he has no way of knowing what occurred in the hearing room prior to his entry. He further deposes that after the hearing, the Chairman of Stewards and Counsel for the Stewards left the hearing room but remained for a short period within the private area of the committee office. The Appellant says in his affidavit that:

> *"....I fear that there may have been bias against me and contend that the decision appealed against should be set aside on the basis of apprehended bias"*

In ***Ebner v The Official Trustee in Bankruptcy*** [2000] HCA 63, GLEESON CJ, McHUGH, GUMMOW AND HAYNE JJ said at paragraph 7:

> *"The apprehension of bias principle may be thought to find its justification in the importance of the basic principle, that the tribunal be independent and impartial. So important is the principle that even the appearance of departure from it is prohibited lest the integrity of the judicial system be undermined. There are, however, some other aspects of the apprehension of bias principle which should be recognised. Deciding whether a judicial officer (or juror) might not bring an impartial mind to the resolution of a question that has not been determined requires no prediction about how the judge or juror will in fact approach the matter. The question is one of possibility (real and not remote), not probability. Similarly, if the matter has already been decided, the test is one which requires no conclusion about what factors actually influenced the outcome.*

No attempt need be made to inquire into the actual thought processes of the judge or juror."

The IAC was not acting judicially, but nevertheless was bound to apply the rules of natural justice. Those rules can include a requirement that there be no apprehended bias. Counsel for the Stewards did not argue otherwise on the hearing of this appeal, but did submit that on the facts of this case no situation of apprehended bias arose. There was no appearance of bias sufficient to give rise to an apprehension.

Certainly, the Appellant's unchallenged evidence in his affidavit is that he is apprehensive, in that he fears that there may have been bias. But it is not his apprehension which is determinative. In my opinion, there is nothing in the facts deposed to which could give rise to an apprehension of bias. All that occurred is that the parties came to the committee room to have the hearing, and the Chairman of Stewards and his Counsel went in first. They were there in the presence of the IAC members for a period of time, not specified in the Appellant's affidavit, before the Appellant and his Counsel came in. There is no suggestion that the Chairman of Stewards and his Counsel were in any way in the presence of IAC members after the hearing, in the private area of the committee office. The situation can be contrasted to that which arose in the well known case of ***Stollery -v- The Greyhound Racing Control Board*** (1972) 128 CLR 509. In that case, an interested party was present throughout the evidence and deliberations of the Board, in the absence of the aggrieved person.

In my opinion, all that can be made of the Appellant's affidavit is that the Appellant is aggrieved at his perception that the Chairman of Stewards and his Counsel were treated deferentially, and he was not.

I would not uphold this ground of appeal.

2. THAT 27 days after the said determination the Committee purported to publish reasons for the determination which reasons are deficient in that they do not deal with the arguments and materials put before the Committee by the Appellant and do not adequately or at all set out how it is that the Appellant's mere presence on a racecourse could be prejudicial to the proper control and conduct of racing.

Ground 2 is in two parts. The first part which requires consideration is that which is expressed second, namely the general question of how in any case presence on a racecourse could be prejudicial to the proper control and conduct of racing. The insertion of the phrase "mere presence", which is not contained in the regulation, makes it appropriate to consider the regulation in general terms before relating it to this particular case.

At the show cause hearing, Counsel for the Appellant accepted the fact that the "warning off" concept is a very old one. Counsel said at page 10 of the transcript that warning off in older times would have been a very effective way to stop anybody interfering with a race meeting. It was submitted that the position now is very different. Counsel said at page 10 *"So saying that you cannot do something on a racecourse is not going to help you very much"*.

I would agree that the literal result of warning off, in times of modern communication and mobility, has little efficacy. A person so minded could improperly interfere with the conduct of racing in a myriad of ways off the track. Examples are provided by the Appellant's own conduct under consideration here. He prevailed upon 2 people to refrain from giving a correct evidence at a Stewards inquiry. The record of convictions shows that the Appellant was convicted in April 1988 of corruptly offering a trainer money to prevent a horse from running on its merits. None of this conduct necessarily occurred on the track.

At this appeal, the Appellant maintained his proposition that warning off is an ineffective method of control, as can be seen by his ground 15:

> *"15. THAT the Committee gave no or no proper weight to the ineffectiveness of a warning off notice in a modern environment to prevent misconduct in relation to racing*

where the reality is that a person so minded could cause considerable trouble without breaching a warning off."

This in my opinion is a pointer to the fact that the purpose and effect of warning off is now far wider than simply a prohibition from going on to the track, as it used to be historically. Licensing and association with licensed persons are now also affected by being warned off. AR 7A prevents the warned off person from being licensed, a disability which goes beyond the physical parameters of the racecourse. By AR 183, a person warned off is subject to the same disabilities as a person disqualified, which includes all the matters enumerated in AR 182. AR 182 is in the following terms:

*" **AR.182.** (1) Except with the consent of the Principal Racing Authority that imposed the disqualification, and upon such conditions that they may in their discretion impose, a person disqualified by the Stewards or a Principal Racing Authority shall not during the period of that disqualification:-*

(a) Enter upon any racecourse or training track owned, operated or controlled by a Club or any land used in connection therewith;

(b) Enter upon any training complex or training establishment of any Club or licensed person;

(c) Be employed or engaged in any capacity in any racing stable;

(d) Ride any racehorse in any race, trial or test;

(e) Enter or nominate any racehorse for any race or official barrier trial whether acting as agent or principal;

(f) Subscribe to any sweepstakes;

(g) Race or have trained any horse whether as owner, lessee or otherwise;

(h) Share in the winnings of any horse;

(j) Participate in any way in the preparation for racing or training of any racehorse.

(2) Except with the consent of the Principal Racing Authority that imposed the disqualification, no person who in the opinion of the Principal Racing Authority or the Stewards is a close associate of a disqualified person shall be permitted to train or race any horse."

By a combination AR 182 and AR 183 therefore, a person warned off is prohibited from engaging in the industry in any way, both on and off the racecourse.

I acknowledge that both Regulation 72(1) and section 44(1)(e) are written in terms of "attendance at a racecourse", and on the face of them do not either permit or require the IAC to go further and consider other aspects of involvement in racing which may be prejudicial to the proper conduct or control of racing. However, the disabilities associated with being warned off, having the force and effect of part of the Rules of Racing, are a clear indication in my opinion that the section and regulation are not meant to confine themselves to presence at the racecourse as a criterion, to the exclusion of other criteria.

It follows that the IAC did not have to answer the question, or give reasons, as to how the Appellant's mere presence could be prejudicial. The enquiry was not one as to how mere presence on the track could be prejudicial. The enquiry was one as to whether the Appellant's involvement in the racing industry both on and off the track may be prejudicial to the proper conduct or control of racing.

It is true that the IAC did place importance on the fact of "mere" presence on the racecourse, in that the Appellant may simply be seen by members of the racing public to be present on the racecourse. The IAC said (emphasis added):

"...the Committee's responsibility resides strongly in the need to protect, the integrity and image of the Racing Industry."

"This involves the ability of the Stewards to do their job without any interference or hindrance, and the perception by others that they were able to do their job without interference."

"Further, the IAC considers that having such a person who behaves in this manner attend racecourses may give the appearance that racing is not being properly controlled."

However, by placing importance on that criterion, the IAC did not abandon others. The IAC, comprised as it is of members with an expert association with the racing industry, must be assumed to know the wider purpose and effect of warning off.

I would not uphold this part of ground 2.

The first part of this ground of appeal complains that the IAC's reasons are deficient, in that they do not deal with the arguments and materials put before it. The law on sufficiency of reasons is clear enough. In ***Re Gillet and Others; Ex Parte Rusich*** [2001] WASCA 111, Murray J said at paragraph 10:

" I would only add the observation that in the context of the exercise of a statutory right of appeal or review, it has often been said that the failure to give reasons for decision or the failure to give adequate reasons for decision, will only constitute appealable error in a case where the decision-maker fails entirely to give reasons or gives reasons which are so inadequate that the essential reasoning process behind the decision is not exposed, thereby depriving the litigant of the capacity to know why the result occurred and effectively rendering nugatory the right of appeal: see ***Garrett v Nicholson*** *(1999) 21 WAR 226 per Owen J at par [73] - par [74] and* ***QBE Insurance Ltd v Moltoni Corp Pty Ltd*** *(2000) 22 WAR 148 per Murray J at par [112] - par [113]."*

Similar statements of principle were expressed by Miller J in that case.

In my opinion, the reasons given by the IAC were sufficient in the context of this case. Importantly, none of the evidence was in dispute. The evidence put up by the Appellant was

not challenged, and the evidence put up by the Stewards was not challenged. There were no findings of fact to be made, and no assessments of credibility to be made. Neither party challenged the other party's submissions on the purpose and effect of the legislation. The IAC set out in some detail the submissions made by both parties, which indicates that there was no relevant fact which was overlooked. The IAC then proceeded to apply the facts to the regulation, in what was essentially an exercise in balancing the evidence of Appellant's efforts at rehabilitation as against the seriousness of the offending conduct over many years. That is exactly what was required in the decision making process in this case. It cannot be said that the appellant was deprived of the capacity to know why the result occurred.

I would not uphold this part of ground 2.

3. THAT in so far as the Committee found that the Appellant's presence on a racecourse is prejudicial to the proper control and conduct of racing the finding was against the material before the Committee and no reasonable Committee could reach such a conclusion on the material.

This ground of appeal is expressed in general terms and adds nothing to the other grounds. There was no issue of any substance raised by Counsel in support of it. I would not uphold this ground of appeal.

4. THAT the Committee failed to give any or any proper weight to the evidence before it that the Appellant had been entitled to attend race meetings since the year 2001 (which was the year of the offences of which he was convicted before Jackson DCJ and a jury) and that for much of the period from 2001 to the present he had been a licensed person in Victoria without any adverse findings or damage to the racing industry.

5. THAT the Committee failed to give any or any proper weight to the evidence that the Appellant had a firm offer of a job in the racing industry in Victoria where he proposed to reside.

6. THAT the Committee failed to give any or any proper weight to the undoubted fact that for the Appellant to work in the racing industry in Victoria he would be subject to the licensing regime in that State.

12. THAT the Committee has given no or no proper weight to the evidence that the handling of horses is the Appellant's only skill and that to deprive him of the opportunity to become licensed in another jurisdiction is to deprive him of the opportunity to earn his livelihood.

These four grounds of appeal can be considered together. Each complains that the Committee gave no weight or no proper weight to different facts and circumstances. As I have noted above, there were no findings of fact to be made because the evidence was not in dispute.

The IAC clearly did take into account the facts and circumstances referred to in these grounds. That is evidenced by the fact that the IAC summarised in detail the submissions on those facts. With respect to ground 4, at page 6 of the reasons the IAC referred to the Appellant's recent lack of racing convictions in Victoria. With respect to ground 5, at pages 6 and 7 the IAC referred to the Appellant's offer of work in Victoria. With respect to ground 6, at page 7 the IAC referred to the submission that the Appellant would be subject to the Victorian licensing regime. With respect to ground 12, at page 5 the IAC referred to the submission that the Appellant's only expertise is in the racing industry. That the IAC did take all those matters into account is further evidenced by the opening paragraphs of its reasons under the heading "Determination by the IAC". The IAC said:

> *"The Committee wishes to make it clear from the outset that whilst it encourages Mr Miller's efforts at rehabilitation and quest to set upon a path distinct from that of the past, the Committee's responsibility resides strongly in the need to protect the integrity and image of the Racing Industry.*

The IAC very carefully considered the submissions and other material put to it both by Mr O'Sullivan and Mr Davies in this matter....."

The IAC was called on to make a discretionary judgement. The IAC recognized that fact because in its reasons it balanced the evidence on behalf of the Appellant as against that relied on by the Stewards, and gave reasons why it preferred to act on the recommendation of the Stewards. In the end, the IAC determined that the factors relied upon by the Stewards outweighed those relied upon by the Appellant. Some of the factors referred to which the IAC saw as important in balancing those put up by the Appellant were as follows:

"...the IAC considers that both Mr Miller's criminal record, as well as his record relating to the racing industry may make his attendance at a racecourse prejudicial to the proper control of racing"

"...the IAC was particularly mindful of the maintenance of the integrity of racing and the role and duties of the Stewards in controlling racing"

"...Mr Miller attempted to suppress evidence and intimidate a witness who was assisting the Stewards investigate a racing matter. The IAC considers that this was particularly serious..."

"..having such a person who behaves in this manner attend racecourses may give the appearance that racing is not being properly controlled"

In my opinion, it has not been demonstrated that the IAC was in error in attributing the weight which it did to the matters complained of in these grounds. The IAC is comprised of members with an expert association with the racing industry, and is best placed to determine the seriousness of the Appellant's conduct. Those members determined that the matters personal to Mr Miler were outweighed by the factors which were relied upon by the Stewards.

It was submitted to the IAC that the Appellant intended to go to Victoria, and live there with the hope of resuming work within the racing industry. Grounds 5,6 and 12 are predicated o

the assumption that he will be returning to Victoria. It is important to remember that the Principal Racing Authority in Victoria is not bound to adopt the warning off in this State. In my opinion, it is mistaken to assume that the Appellant will be prevented from working in Victoria because of the decision by the IAC in this State. The IAC made reference to the Appellant's efforts at rehabilitation, which included his recent lack of offences in Victoria. However, the IAC did not and could not assume that the disabilities imposed on the Appellant here by the warning off would automatically apply in Victoria. This remains the fact despite the practice among the Principal Racing Authorities to adopt warning off determinations from other States and Territories.

I would not uphold these grounds of appeal.

7. THAT the Committee failed to give any or any proper weight to the evidence that the Appellant would be out of the jurisdiction of Western Australian Stewards and away from Western Australian people involved in racing who may know him; in which circumstances a finding that the Appellant's presence on a racecourse may give the appearance that racing is not being properly controlled is without substance.

11. That the Committee gave no or no sufficient weight to the fact the Appellant is not a licensed person in WA, nor does he seek to be, and accordingly has no need for regular interaction with the stewards.

These grounds can be considered together

Ground 7 focuses on the IAC's finding, noted above, that the Appellant's presence could give the appearance that racing is not being properly controlled. Ground 11 is related, in that the IAC in its reasons was concerned at the "perception by others" that the Stewards should be able to do their job without interference. Implicit in this ground is the assertion that the Appellant would not be interacting with the Stewards, and therefore there could be no perception that they were not doing their job properly. Both grounds rest on the evidentiary foundation that the Appellant intends to leave the State.

It is true that the evidence was to the effect that the Appellant had been in Victoria, had a job offer back in Victoria, and intends on going there. However, it was by no means certain that the Appellant would in fact go to Victoria and remain there indefinitely. The evidence was also to the effect that he is from Western Australia, and still has family ties here. He is free to move around Australia, as is any other person. In my opinion, it would be remiss of the IAC were it to consider that there was no efficacy in a warning off simply on the Appellant's stated intention.

I would not uphold these grounds of appeal.

8. THAT the Committee failed to set out the standard of proof by which it decided the matter.

9. THAT the Committee in making the determination upon the material before it can only have employed a standard of proof less than is required in a serious matter affecting a person's livelihood.

These two grounds can be considered together.

The IAC did not set out the standard of proof which it applied. However, that in itself would not ground a successful appeal, if in fact it did apply the correct standard. Ground 9 asserts that it could not have applied the correct standard, because the matter affected the Appellant's livelihood, and (impliedly) because the decision was adverse to him.

The ordinary standard of proof required of a party who bears the onus in a non-criminal matter is proof on the balance of probability. On the other hand, the strength of the evidence necessary to establish a fact or facts on the balance of probabilities may vary according to the nature of what it is sought to be proved. Authoritative statements have often been made, for example, to the effect that clear or cogent or strict proof is necessary where so serious a matter as fraud is to be found. The High Court in the case of ***Briginshaw -v- Briginshaw*** (1938) 60 CLR 336 at 362 stated that the strength of evidence necessary to establish a fact or facts on the balance of probabilities may vary according to the nature of what is being

sought to be proved. In other words, clear or cogent proof may be necessary where a serious matter is being decided.

In this case, the facts were not in dispute. However, the IAC was required to form its ultimate conclusion, namely whether the Appellant should be warned off, on the balance of probabilities as understood in the ***Briginshaw*** sense. In my opinion, the IAC did apply the correct standard of proof, bearing in mind that the decision was one which could affect the Appellant's livelihood. The IAC expressly said that it took into account the submissions made by both parties, which included that the Appellant's only expertise was in the Racing industuy (page 5 of the reasons for decision).

I would not uphold these grounds of appeal.

10. THAT the Committee erred in finding that the Appellant's presence on a racecourse is prejudicial to the proper control and conduct of racing because such a finding was not available on the material before it; indeed there was no material before the Committee as to the view of any member of the racing industry (apart from the stewards) or of the public and no material to suggest whether persons involved in the racing industry (apart from the stewards) know or care about the Appellant.

This ground assumes that the purpose and effect of warning off is only to maintain the perception that the authorities are exercising control, and to protect the image of racing. If that were so, then perhaps there should have been some evidence that persons have or do not have that perception. However, as I have endeavoured to explain above, the enquiry was not one as to how mere presence on the track could be prejudicial. The enquiry was one as to whether the Appellant's involvement in the racing industry both on and off the track may be prejudicial to the proper conduct or control of racing. As such, whether there is any person who is demonstrated to hold the perception becomes of secondary importance.

In any event, the IAC would not be expected to receive evidence from members of the public or other persons involved in the racing industry in order to determine what perception would

arise should the appellant not be warned off. The members are appointed because of their close and expert association with the industry and are entitled to bring their expertise to the decision making process.

I would not uphold this ground of appeal.

13. THAT the Committee failed to give any or any proper weight to the fact that such a determination would frustrate the rehabilitative intention of Jackson DCJ when he sentenced the Appellant.

His Honour Judge Jackson did say that if the Appellant was to receive a custodial term to be served immediately, it would result in a "disaster" for his employment prospects in Victoria. However, that was by no means the dominant sentencing consideration in His Honour's decision not to imprison the Appellant. It was only one of a number of factors which His Honour took into account. In any event, The IAC was engaged in a completely different exercise than that undertaken by His Honour in sentencing the Appellant. The IAC was concerned with balancing the need to protect the racing industry against the fact that the Appellant's livelihood could be taken away if he was warned off. In carrying out its function, the IAC was entitled to have regard to what happened in the criminal court, but was by no means bound to lend its support to any unstated intention which may be interpreted from the sentence imposed.

I would not uphold this ground of appeal.

14. THAT the Committee gave no or no proper weight to the effect of such a determination upon a person in the Appellant's position due to the restriction on his contact with many relatives in the racing industry and other persons similarly involved and his inability to work for those persons even in a non horse related capacity.

As I have observed above, the IAC is comprised of members with an expert association with the racing industry, who must be assumed to know the wider purpose and effect of warning off. They know the Rules and what would happen if the Appellant was to be warned off.

I would not uphold this ground of appeal

15. THAT the Committee gave no or no proper weight to the ineffectiveness of a warning off notice in a modern environment to prevent misconduct in relation to racing where the reality is that a person so minded could cause considerable trouble without breaching a warning off.

This ground asserts that a warning off is ineffective as a mechanism to control or regulate the conduct of racing. This proposition would be correct, were it not for the disabilities referred to in AR 182 which follow from being warned off. Once the Appellant had been warned off, he was prevented (so far as possible) from engaging in conduct off the track as well as on the track.

I would not uphold this ground of appeal.

16. THAT the Committee gave no or no proper consideration to whether or not, if it was appropriate to warn off the Appellant, the warning off should be for a finite period.

There is no power in section 44(1)(e) of the Act or in Regulation 72(1) to warn off for a finite period. Further, should a finite period be applied it would give the determination the character of being a penalty, which it undoubtedly is not.

I would not uphold this ground of appeal.

CONCLUSION

For all of the above reasons, I would not set aside the determination to warn off and I would dismiss the appeal.

PATRICK HOGAN, MEMBER

APPEAL – 661

DETERMINATION OF

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT:	**RAYMOND JOHN MILLER**
APPLICATION NO:	**A30/08/661**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)** **MR P HOGAN (MEMBER)** **MR K FARLEY (MEMBER)**
DATE OF HEARING:	**6 DECEMBER 2006**
DATE OF DETERMINATION:	**23 JANUARY 2007**

IN THE MATTER OF an appeal by Raymond John Miller against the determination made by the Racing and Wagering Western Australia Integrity Assurance Committee on 20 September 2006 issuing a warning off notice pursuant to Regulation 72(1) of the Racing and Wagering Western Australia Regulations 2003.

Mr S W O'Sullivan appeared for the Appellant.

Mr R J Davies QC appeared for the Racing and Wagering Western Australia Integrity Assurance Committee.

This is a unanimous decision of the Tribunal.

The appeal is dismissed.

Seal of the Racing Penalties Appeal Tribunal of W.A.

Mr D MOSSENSON, CHAIRMAN

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR D MOSSENSON (CHAIRMAN)

APPELLANT:	**RAYMOND JOHN MILLER**
APPLICATION NO:	**A30/08/661**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)** **MR P HOGAN (MEMBER)** **MS K FARLEY (MEMBER)**
DATE OF HEARING:	**6 DECEMBER 2006**
DATE OF DETERMINATION:	**23 JANUARY 2007**

IN THE MATTER OF an appeal by Raymond John Miller against the determination made by the Racing and Wagering Western Australia Integrity Assurance Committee on 20 September 2006 issuing a warning off notice pursuant to Regulation 72(1) of the Racing and Wagering Western Australia Regulations 2003.

Mr S W O'Sullivan appeared for the Appellant.

Mr R J Davies QC appeared for the Racing and Wagering Western Australia Integrity Assurance Committee.

I have read the draft reasons of Mr P Hogan, Member.

I agree with those reasons and conclusions and have nothing to add.

Seal of the Racing Penalties Appeal Tribunal of W.A.

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MR D MOSSENSON, CHAIRMAN

APPEAL – 661

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF Ms K FARLEY (MEMBER)

APPELLANT:	**RAYMOND JOHN MILLER**
APPLICATION NO:	**A30/08/661**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)** **MR P HOGAN (MEMBER)** **MS K FARLEY (MEMBER)**
DATE OF HEARING:	**6 DECEMBER 2006**
DATE OF DETERMINATION:	**23rd January 2007**

IN THE MATTER OF an appeal by Raymond John Miller against the determination made by the Racing and Wagering Western Australia Integrity Assurance Committee on 20 September 2006 issuing a warning off notice pursuant to Regulation 72(1) of the Racing and Wagering Western Australia Regulations 2003.

Mr S W O'Sullivan appeared for the Appellant.

Mr R J Davies QC appeared for the Racing and Wagering Western Australia Integrity Assurance Committee.

I have read the draft reasons of Mr P Hogan, Member.

I agree with those reasons and conclusions and have nothing to add.

Seal of the Racing Penalties Appeal Tribunal of WA

KAREN FARLEY, MEMBER