

RACING PENALTIES APPEAL TRIBUNAL DETERMINATION

APPELLANTS: MS EMILY QUARTERMAINE

APPLICATION NO: 25/164

PANEL: MR PHILLIP GLEESON (PRESIDING MEMBER)
MS KELLY ZHANG (MEMBER)
MR BENJAMIN WILLESEE (MEMBER)

DATE OF HEARING: 1 JULY 2025

DATE OF DETERMINATION: 19 AUGUST 2025

IN THE MATTER OF an appeal by EMILY QUARTERMAINE against a determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing (Stewards) on 27 December 2024 to impose a fine of \$2,500 with \$1,000 suspended for a period of 12 months for breach of Rule AR 228(d) of the Rules of Thoroughbred Racing (Rules)

Ms Quartermaine appeared in person.

Ms Venetia Bennett appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

Result of the Appeal

1. Following the hearing of the appeal on 1 July 2025, the parties were informed that the Appellant's appeal against her conviction and the penalty imposed were dismissed.
2. At the time, it was explained to the parties that written reasons for that decision would follow. The reasons for that decision are as follows.

Overview of the Appeal

3. Ms Quartermaine was charged with an offence under AR 228(d) under the Rules in that Ms Quartermaine, being an owner/licensed track work rider and thus a person bound to the rules of racing, posted a video on a social media platform, namely TikTok, which contained a profanity directed to and about employees of Racing and Wagering Western Australia (RWVA) that was offensive.
4. At a Stewards inquiry on 27 December 2024, Ms Quartermaine accepted that she had posted the video to TikTok but pleaded not guilty to the charge on the basis that:
 - a. everything that she said in the video was true;
 - b. her actions had not brought the racing industry into disrepute;

- c. the impugned reference in the video was not, in context, a profanity (and therefore not offensive within the meaning of AR 228(d)); and
 - d. the reference in the video was not directed to RWWA or its officials.
5. Having watched the video (and having had regard to a transcript of it) and having heard evidence and submissions from Ms Quartermaine, the Stewards notified Ms Quartermaine that they had found her guilty and imposed a fine of \$2,500 with \$1,000 of the fine being suspended on condition that Ms Quartermaine does not incur any further offences relating to publishing materials that are an offence under any rules of racing
 6. By Notice of Appeal dated 2 January 2025, Ms Quartermaine appealed against the conviction and the penalty. The sole ground of appeal was described by Ms Quartermaine as her disagreeing with the decision as to conviction and penalty.

Background

7. Ms Quartermaine is a licensed Trackrider and an owner of a number of horses. The number of horses owned by Ms Quartermaine was not a matter in evidence.
8. On or about 20 December 2024,¹ Ms Quartermaine posted a 1 minute 59 second video to TikTok in which she said:

...

I just wrote a nice shouty email to RWWA recapping on how they demonised me in an inquiry stating that my claims were false and baseless.

So I told them, I've sent the video to their investigator and their head steward, showing, and it wasn't the video I put on TikTok either, it's one that actually probably shows it a lot better, how skinny this one particular horse is, not including the ringworm on another one, the other one, another one there that is slightly underweight as well.

I'm like, tell me it's baseless now, cunts - ha.

Like tell me it's fucking baseless now.

Do you care about the industry?

Do you care about animal welfare?

Or do you just care about shutting people like me up?

Hmmm, very ironic, isn't it?

I was like, as you can see, I was like, this is why we don't bother to use RWWA in animal welfare issues because DPIRD decided to let you take over.

So you didn't conduct an investigation. Your vet didn't actually examine any bar two horses on the property.

¹ This was the date relied upon in the charge and the hearing. Having regard to the evidence relating to the comment of Ms Rodd, see paragraph [13] below, it would appear that the video was, in fact, posted no later than 18 December 2024. The date of the posting is not relevant to the charge, the decision, or the matters for consideration on the appeal. Accordingly, for consistency, the same date is adopted in the background to these reasons.

If she'd done her job properly and you'd actually looked, you would have noticed all this.

I was like, but youse couldn't do your job properly, so you failed, and this is where we're at.

...

9. Superimposed onto the video throughout was the text:

I just want to take the time to appreciate RWWA doing all they can to sweep animal welfare under the rug.

10. On 23 December 2024, Mr Denis Borovica wrote to Ms Quartermaine notifying her that the Stewards considered that the content of the video was such as to give rise to a charge under AR 228(d) of the Rules and advising that an inquiry into the charge was to be held on 27 December 2024. .
11. The hearing took place on 27 December 2024. In effect, the hearing was done in two parts. First, the Stewards considered the documentary evidence and various submissions made by Ms Quartermaine. Then, after an adjournment, Ms Quartermaine identified additional evidence that she wanted to raise with the Stewards.
12. The documentary evidence at the hearing was the video itself, a transcript of the video, and a screenshot of Ms Quartermaine's TikTok page "Breeder_Diaries" showing that as at 27 December 2024 the video had been viewed 7,516 times.
13. Ms Quartermaine also gave evidence using her mobile phone in respect of a comment that a Ms Rodd had posted in response to the video on 18 December 2024 and to her response to that comment.
14. The exchange between Ms Quartermaine and Ms Rodd was described at the hearing as being, in terms:

Ms Rodd: *"Bruh, I don't think calling RWWA c***" is a smart idea, hahahaha"*

Ms Quartermaine: *"haha, did I, or was I directing at individuals? [with a thinking emoji]"*

15. Ms Quartermaine made the submission that this exchange made it quite clear that she was implying that the comment was not directed to RWWA but was directed at "other individuals". The submission was otherwise not expanded on.
16. Having considered the material and Ms Quartermaine's submissions, the Stewards found Ms Quartermaine guilty and fined her 2,500 with \$1,000 suspended.

The Appeal

17. By Notice of Appeal dated 2 January 2025, Ms Quartermaine appealed against the conviction and the penalty imposed on the basis that she "disagreed" with the decision.
18. At the hearing of the appeal, Ms Quartermaine represented herself and made submissions explaining the bases on which she disagreed with the Stewards decision.
19. Ms Quartermaine's submissions focussed on:

- a. the fact that AR 228 is described as a section dealing with “conduct detrimental to racing” and her submission that it had not been proven that her comments were detrimental to the interests of racing;
 - b. the proposition that the language used in the TikTok video was not offensive; and
 - c. the suggestion that the video was directed to a “broader group” than RWWA.
20. Ms Bennett, on behalf of the Stewards, filed written submissions in opposition to the appeal and made brief oral submissions supplementing the matters addressed in writing during the hearing.
21. The Stewards submissions set out the relevant principles that apply in appeals and otherwise explained the bases as to why no error had been made in the finding of guilt or the penalty imposed.
22. At the risk of oversimplification, the Stewards position was that,
 - a. on the question of conviction, the process of fact finding, examination of the evidence, and application of the Rules to the facts as found contained no legal or factual error; and
 - b. on the question of penalty, the fine imposed was comfortably with the range of sanctions properly available to the Stewards,and, as a result, the appeal should be dismissed.

Determination of the appeal

23. Although put on the basis that she disagreed with the decision, having regard to the submissions Ms Quartermaine made before the Tribunal, her grounds of appeal against conviction can be fairly understood as:
 - a. the Stewards erred in finding that the comments in the TikTok video were obscene, offensive, or abusive;
 - b. the Stewards erred in finding that the comments in the TikTok video were directed at RWWA; and
 - c. further, and in any event, the Stewards had failed to establish that the comments were detrimental to the interests of racing.
24. In support of the first ground, Ms Quartermaine directed the tribunals attention to the decision of *Abbott v Lim* [2017] NSWDC 231.
25. *Abbott v Lim* involved an appeal from a decision of a Magistrate to convict Mr Lim of behaving in an offensive manner in a public place contrary to section 4(1) of the *Summary Offences Act 1988* (NSW).
26. In that case, Mr Lim had been charged as a result of his standing at an intersection in an inner city Sydney suburb wearing a sandwich board that said:

On the front:

PEACE SMILE

PEOPLE CAN CHANGE

“TONY YOU CVN’T..”

LIAR, HEARTLESS, CRUEL

PEACE BE WITH YOU

f DANNY’S PAGE

And on the back:

TRICKY LYING

TONY YOU CVN’T

SCREW EDUCATION

HEALTH, JOBS &

THE ENVIRONMENT

CHILDREN’S CHILDREN’S

FUTURE

SMILE

f DANNY’S PAGE

27. The references to the letter V in the above were, in fact, upside down rounded capital As. The allegation was that by writing the word can’t in that way Mr Lim had called the then Prime Minister a cunt. Which is the same word, or at least one of the same words, that Ms Quartermaine used in the video.

28. Speaking by reference to the relevant provision under the New South Wales Act, AC Scotting J found that (at [21] – [26]):

For behaviour to be offensive, it must be likely to provoke reactions such as anger, disgust, resentment or outrage.

The behaviour must arouse a significant emotional reaction.

It is not enough that the conduct is hurtful, blameworthy or improper even though that might offend someone.

The reasonable person is reasonably tolerant and understanding and reasonably contemporary in his or her reactions.

The use of an offensive word will not be prima facie offensive. Whether or not the language is offensive will depend on the application of an evaluatory standard after due consideration of the circumstances and the context.

Conduct capable of amounting to an offence should be limited to conduct at the high end of the range that could be considered “offensive”. The purpose of section 4 is to protect members of the public from undue disturbance of the use and enjoyment of public places. (Citations omitted)

29. His Honour went on to find that (at [46]-[53]):

As a matter of law, the impugned word is not necessarily offensive, even when used in a public place.

The impugned word is often used as a derogatory term to describe a person of any gender. In this use, it is best described as an expletive, rather than as an intensive or it being used for its literal significance.

...

The impugned word is now more prevalent in everyday language than it has previously been. It is commonplace in movies and television entertainment, although it is not without restriction in that context. The impugned word is of ancient English origin and featured in Shakespeare's Hamlet. The prevalence of the impugned word in Australian language is evidence that it is considered less offensive in Australia than other English speaking countries, such as the United States. However, that also appears to be changing as is evidenced from the increase in American entertainment content featuring the impugned word.

References to the impugned word are often included in print media, usually a reference to a direct quote with the "u" or the "un" removed. This treatment of the word does little to alleviate the meaning to be conveyed and is directed more at decorum than avoiding offence that may be caused by the publication of the impugned word.

It was also open to read the front of the sandwich board as a play on words, comparing the similarity in the pronunciation of the word "can't" and the impugned word. This is particularly demonstrated by the inclusion of the apostrophe in the relevant position. The front of the sandwich board is capable of being construed as being clever or light hearted and thereby removing or reducing the force of the impugned word. It is also capable of being read as the word "can't".

I am not satisfied beyond reasonable doubt that a reasonable person considering all of the circumstances of the case would have had a significant emotional reaction such as anger, disgust, resentment or outrage to the appellant's conduct. Whilst the conduct was inappropriate and in poor taste, I am not satisfied beyond reasonable doubt that it was offensive, or so offensive as to be considered in the high end of the range of what would be considered to be offensive.

30. As Counsel for the Stewards pointed out, the decision in *Abbott v Lim* was made in a criminal context where a different standard applies. That is reflected in his Honour's reasons for decision.
31. Beyond that, it was also made in the context of legislation that makes it an offence to conduct oneself "in an offensive manner" in a public place and where one will not have conducted themselves in an offensive manner "merely by using offensive language": section 4 *Summary Offences Act 1988* (NSW).
32. That is a relevantly different context to AR 228(d) which prohibits a person from:

publishing or posting on any social media platform or channel any material, content or comment that is obscene, offensive, defamatory, racist, threatening, harassing, discriminatory or abusive to or about any other person involved in the racing industry;
33. Having regard to the two different regimes, the decision in *Abbott v Lim* is of limited assistance in assessing whether the Stewards were in error in finding that the TikTok video contained content or comment that was obscene, offensive, or abusive.

34. Whilst his Honour's comments about evolving community standards and reduced offence that may be taken to the use of expletives are undoubtedly correct it is equally true that the use of such words are more likely to result in content being taken to be obscene, offensive, or abusive.
35. That leads to another important distinction between the circumstances considered by the Court in *Abbott v Lim* and those that the Stewards were required to determine in this case. Whilst Mr Lim's conduct could be considered "clever or light hearted" no such characterisation could be made of Ms Quartermaine's video.
36. Not only does Ms Quartermaine use the word cunt, Ms Quartermaine does so in an elevated tone in the middle of a monologue in which she is, unquestionably, critical of RWWA and its handling of issues of animal welfare. All the while Ms Quartermaine is (virtually) standing behind text that says "I just want to take the time to appreciate RWWA doing all they can to sweep animal welfare under the rug".
37. Taken in that context, we are satisfied that it was open to the Stewards to find that the content of the video was obscene, offensive, or abusive. Accordingly, Ms Quartermaine has not demonstrated any error in that finding.
38. That is, of course, not to say that AR 228(d) creates a prohibition on commentary or criticism about RWWA or others within the racing industry. Rather, it illustrates the need for such commentary or criticism to be prevented in a measured manner so that it will not cause offense or be taken to be obscene or abusive. The shouting of expletives as part of such commentary or criticism is at the opposite end of the spectrum of the approach required.
39. The second ground can be disposed of quickly.
40. Taking the words used in the video in context, including by reference to the text that was superimposed on to the video, it was open to the Stewards to find that the comments in the TikTok video were directed at RWWA. Indeed, it would be difficult to see how the Stewards would have come to a different view.
41. In determining this ground of appeal it is not necessary to consider what test or standard ought be applied to assessing the "correctness" of the Stewards' finding. It was a finding that was plainly open and the one which, in our view, was compelled by the evidence.
42. The third ground relied upon by Ms Quartermaine was based on the fact that the text of the heading or label of the Rule, and the Division that it is found in, is directed at "conduct detrimental to the interests of racing".
43. As was pointed out to Ms Quartermaine during the hearing, that language is not found in the text of the Rule under which she was charged. Rather, as noted above, AR 228(d) makes it, relevantly, an offence to publish or post obscene, offensive, or abusive material about any other person involved in the racing industry on any social media platform. It does not require a separate assessment of whether the post has had a detrimental impact on the interests of racing.
44. As AR 1(3) makes clear "headings are for reference purposes only and are not to be regraded as operative parts of these Australian Rules".
45. With the nature of the charge and the "relevance" of the heading properly understood, the third ground is without merit.
46. The appeal against conviction is dismissed.

47. The approach this Tribunal takes when reviewing penalties imposed by the Stewards has been consistently stated in previous decisions of the Tribunal: see *Ferguson v RWWA (Harness)*, Appeal No. 853 (October 2021) [73]-[74]; *Oliveri v RWWA (Thoroughbred)*, Appeal No. 861 (February 2023) [40]; *Lewthwaite v RWWA (Thoroughbred)*, Appeal No. 863 (September 2023) [88]-[91].
48. The key feature of those statements is that it is not for this Tribunal to interfere with the penalty that has been imposed by the Stewards simply because it might have preferred to impose a different penalty had it been exercising the discretion. The discretion to impose penalty is entrusted to the Stewards by reason of their considerable background experience and knowledge of the racing industry.
49. Rather, the time for the Tribunal to intervene is where a penalty has been imposed in error.
50. We note that in reaching their decision on penalty the Stewards had regard to other penalties that had been imposed in cases involving social media posts that had infringed the RWWA Rules of Thoroughbred Racing. The Stewards recitation of the sanctions that have been handed down in other cases involving inappropriate comments on social media revealed sanctions ranging from \$400 to \$6,000 with half of the fine typically being suspended for a period of time.
51. Just because a penalty falls within a range does not mean that it has not have been imposed in error. However, regard to previous decisions of the Stewards in analogous cases is a useful tool in considering whether or not a penalty has been appropriately imposed.
52. In this regard, we note that the fine that was issued to Ms Quartermaine sits in the middle of the range of penalties that have been handed down for similar offences over the last seven or so years.
53. Given the nature of the language used by Ms Quartermaine, her contesting of the charge despite the video evidence in support of it, and the fact that Ms Quartermaine has previously been found guilty of posting obscene and offensive material about racing on social media, we agree with the submission on behalf of the Stewards that the penalty imposed sits comfortably within the acceptable range for the offence.
54. The appeal against penalty is dismissed.

Conclusion

55. For the reasons given above, the appeal must be dismissed in its entirety.



PHILLIP GLEESON
PRESIDING MEMBER



KELLY ZHANG
MEMBER



BENJAMIN WILLESEE
MEMBER

