

RACING APPEALS TRIBUNAL

QUEENSLAND

APPEAL NO. RT023-06

DATE: 11 January 2007

APPELLANT: Mr Dale Andrew Evans

RESPONDENT: Queensland Racing

APPEAL FROM: Appeal from decision of the Queensland Racing Limited Licensing Committee to wholly suspend the Appellant's Metropolitan Jockey Licence from 18 December 2006 to 30 June 2007 and requiring the Appellant to provide certain evidence when reapplying for his Licence for the 2007/2008 season.

BASIS OF SUSPENSION: The Appellant was not a "fit and proper person" to hold a licence with Queensland Racing.

DECISION: Appeal upheld.

APPEARANCES: Mr DJ Winning of Winning Lawyers appeared on behalf of the Appellant.

Mr JE Murdoch SC appeared on behalf of the Respondent.

REASONS FOR TRIBUNAL'S DECISION

Mr Leo Williams AO - Chairman

Mr Dennis Standfield - Member

The Tribunal grants approval for the Appellant with his Solicitor Mr DJ Winning to appear by telephone conference from Rockhampton.

On 19 December 2006 the Appellant lodged with the Tribunal a Notice of Appeal against the decision of the Queensland Racing Limited Licensing Committee ("the Licensing Committee") to, *inter alia*, suspend from 18 December 2006 the Appellant's Jockey Licence to the current licensing period being 30 June 2007. With the Notice

of Appeal the Appellant sought a stay of the suspension imposed upon him and he was granted a stay by the Tribunal.

Stewards Inquiry

The Appellant was involved in a Stewards Inquiry held at Rockhampton Jockey Club on 2 November 2006. The transcript of that Stewards Inquiry comprised 52 pages and 14 Exhibits. For ease of reference this will be referred to as “the Inquiry Transcript” (IT).

The purpose of the Stewards Inquiry as stated by Mr Reid Sanders (who was the Chairman of the Stewards Panel) at page 2 line 12 (IT) was:

“... The Stewards are here today to open an inquiry into a number of matters which relate to conduct by yourself, those being a matter that was heard by the District Court in Rockhampton recently regarding you alleging stealing and forging a signature on a number of cheques that belonged to a fellow licensee namely apprentice Chris McIvor.”

The Appellant did request representation at the Stewards Inquiry by his Solicitor but that request was refused by the Stewards, although the Stewards did state that they would adjourn the Inquiry should the Appellant wish to seek advice from Mr Winning.

The Stewards Inquiry took certain evidence and was then adjourned with the Stewards stating the reasons as follows (IT page 51 line 45):

“THE CHAIRMAN: Thank you, jockey Evans. Jockey Evans, the stewards, as I said previously, believe that the matter we are dealing with could be one that is a serious matter. The stewards, as I said, have taken nearly 2 hours of evidence. We have placed before us 14 exhibits from various people. We have also taken evidence from an apprentice jockey and Mr Jones, who for this whole period of time have been waiting outside, along with your counsel, Mr Winning. I notice Mr Fisher is also there and also Mr Jones’ partner.

The stewards, as I said, believe that given the nature of this matter, we need to give it due consideration, hence the stewards intend to adjourn this matter to deliberate on it. You will receive from myself within 14 days a letter stating the stewards' intentions, whatever they may be.

JOCKEY EVANS: Yes, sir.

THE CHAIRMAN: At that time, they may also give you an opportunity if any charges were laid to seek some legal advice from your counsel, so when the inquiry is reconvened, everyone is fully au fait as to what direction the inquiry will take. That, in my opinion, would save adjourning on other occasions to enable you to seek further advice from your legal counsel.

Obviously, that is not normal procedure for stewards to take this course of action, but I reiterate this is a serious matter and it is one the stewards believe we can't be hasty in making any decision. We could sit here for another 3 hours and deliberate on the matter and that would be putting us well into the night time, and some people have other commitments, and you probably don't want to be sitting here that late yourself. As I said, I will forward you a letter to your address in Sarina within 14 days, and that will give you the stewards' intentions of where the inquiry will head. Are you clear with that?

JOCKEY EVANS: Yes, sir.

THE CHAIRMAN: The only thing I can add, jockey Evans, in that time between then and there that you continue to attend your counselling as required by the Magistrates Court and stay out of establishments that have a TAB in them.

JOCKEY EVANS: Yes, sir.

Reference to Licensing Committee

Notwithstanding the advices from the Stewards Panel that the Stewards Inquiry would reconvene and reference to possible charges being laid that did not occur with a letter to the Appellant by the Chief Steward of 15 November 2006 explaining the situation in the following terms:

"15 November 2006

*Mr Dale Evans
58 Huntley Road
SARINA QLD 4737*

Dear Mr Evans

RE: INQUIRY HEARD 2 NOVEMBER 2006

Following the inquiry that was heard on Thursday 2 November 2006 the Stewards have given consideration to the following facts, these being:

1. On 17 October 2006, you a Jockey licensed by Queensland Racing Limited did plead guilty in the Rockhampton Magistrates Court to fraud and stealing offences.
2. These charges arose from complaints alleging you stole two (2) cheques from Apprentice Jockey Mr Chris McIver the charges also allege that you signed both cheques and cashed them at the Leichhardt Hotel TAB. Both cheques totalled \$2,850.
3. It was also alleged that on another occasion you altered a cheque given to you by Apprentice McIver from the value of \$200 to \$1200, again you cashed this cheque.
4. There is also evidence that you had a substantial number of bets at numerous TAB and Pub TAB outlets throughout the Rockhampton/Mackay area without paying for these bets.

This evidence however was not subject to any criminal charges.

The Stewards have considered all the evidence and believe that given your dishonest activities, dishonest conduct and the fact that you have a gambling problem which is out of control we refer the matter to the Licensing Committee of Queensland Racing Limited to consider whether you are a fit and proper person to hold a jockeys licence.

The Stewards will be forwarding a written brief to the Licensing Committee to consider whether they should issue you with a show cause notice regarding your current Jockey's licence.

Should you require any further information regarding this matter, please do not hesitate to contact myself.

Yours sincerely

REID SANDERS
Chief Stipendiary Steward

For ease of reference this letter will be referred to as "the Show Cause letter". It is noted that the Show Cause Letter contains the first reference to "fit and proper person" and this appears to be the first indication given to the Appellant that the

Stewards and Queensland Racing Limited were considering him not to be a “fit and proper person”.

The “written brief” forwarded to the Committee is headed “Briefing Paper for Queensland Racing Licensing Committee” and although undated is taken to have been forwarded shortly after 15 November 2006 and is as follows:

BRIEFING PAPER FOR QUEENSLAND RACING LICENSING COMMITTEE

Show Cause Notice to Jockey Dale Evans

Purpose

Stewards submit that given Jockey Dale Evans dishonourable conduct that he should be referred to the licensing committee of QRL for a show cause as to whether he is a fit and proper person to hold a metropolitan jockey’s licence.

Background

In May 2006 Queensland Racing Limited (QRL) Rockhampton Stewards received a complaint from licensed Apprentice Chris Mclver and his master, licensed Trainer Mr Alan Jones regarding the theft of a number of cheques allegedly stolen from Mr Chris Mclver’s vehicle.

They were of the belief at this time that these cheques were stolen by Jockey Dale Evans.

Given the nature of this complaint Senior Stipendiary Steward Mr Paul Gillard referred them and the matter to the Queensland Police service. A number of days later Apprentice Chris Mclver received a text message on his mobile phone from Jockey Dale Evans admitting to the theft and offering to pay back the money.

At the Stewards inquiry of 2 November 2006 Apprentice Jockey Chris Mclver had not received any restitution.

Given that the matter had been referred to the Queensland Police, QRL Stewards considered that the appropriate action was to allow any criminal proceedings against Jockey Evans to run their natural course prior to them investigating the matter.

Jockey Dale Evans appeared in the Rockhampton Magistrates Court on 24 May 2006 and pleaded not guilty.

He then appeared again on 17 October 2006 and pleaded guilty to fraud and stealing offences. These offences arose from the stealing of two cheques from the motor vehicle of Apprentice Chris Mclver.

These cheques were then filled out, signed and cashed by Jockey Dale Evans at the Leichhardt Hotel TAB the total being sum \$2,850.00. This was the factual basis on which Dale Evans pleaded guilty in the magistrate's court.

Stewards commenced an inquiry into Jockey Dale Evan's conduct at Rockhampton on 2 November 2006. At this inquiry Stewards took evidence from Jockey Dale Evans, Apprentice Chris Mclver, Mr Alan Jones, Ms Mark and Ms Smila.

At this inquiry Dale Evans admitted that he had stolen two cheques and later cashed them at the Leichhardt Hotel.

The majority of this money was used for gambling. Dale Evans admitted also that he had received a cheque of \$200 from Chris Mclver for outstanding monies and amended that cheque to \$1,200 and presented it and cashed it at the Kalka Hotel, this money also being used for gambling purposes.

Dale Evans also admitted that he had a substantial amount of bets at various TAB and Pub TAB outlets in the Rockhampton and Mackay areas. He further admitted that he placed bets at some of these locations without paying for the bets.

The profile of Jockey Dale Evans is so well recognised in these areas that on a number of occasions the venues in which he had committed these dishonest acts have later contacted either himself or a family member advising them that he should return to pay the outstanding monies.

Following on from his conduct at a number of these venues, he has been excluded from entering these and he has also been excluded from all TAB outlets in Queensland by UNI-TAB. He informed Stewards that he had a gambling problem.

Jockey Dale Evans did not admit at the inquiry to betting on thoroughbred races however, from the evidence presented at the inquiry 2 November 2006 it would be reasonable to conclude that he did in fact have a number of wagers on thoroughbred events.

Conclusion

It would be the Stewards conclusion on all the evidence before them that the conduct by licensed Jockey Dale Evans which was the gravamen of the charges manifest dishonesty and a lack of care and respect for the victim namely Chris Mclver.

It would also be reasonable to suggest that the incidents reported by the operators of the six pub tabs suggest that Jockey Evans is prone to dishonest conduct and that he has a gambling problem that is out of control. These the Stewards submit, are factors which strongly suggest that Dale Evans is not a fit and proper person to hold a metropolitan jockey's licence.

The offence committed by Jockey Evans involved a junior member of our racing industry whom to the best of the Stewards knowledge has not received any restitution and has had some ill effects both

personally and financially which have placed some undue pressures on such a young person.

In his master's opinion this has affected his riding career to some degree. His conduct at the pub tab venues has also had an effect on those people and given the press coverage the matter has received it would be reasonable to suggest that the reputation of the industry has been damaged.

These people knew that Dale Evans was a licensed jockey and his conduct in these establishments could be reasonable to assume has affected the credibility of other licensed people.

Action

QRL has extensive licensing powers under AR7 this delegation has been handed from the board to the licensing committee.

The licensing committee has powers under both Australian Rules of Racing and Local Rules of Racing which deal with show cause notices to licensees.

Stewards submit that a licence within the Queensland Racing industry is a privilege and not a given right of any person and if that person chooses to conduct themselves inappropriately whilst the holder of such licence, they should be referred to the licensing committee as to whether they are still a fit and proper person.

Stewards believe that all the evidence placed before them at the 2 November 2006 inquiry confirm that Jockey Dale Evans in no longer a fit and proper person to hold a licence.

Stewards recommend that his license in whole be suspended for the remainder of the 2006/2007 licensing season and that prior to his application for the 2007/2008 be considered by this committee, he provide evidence that he has successfully completed gambling counselling.

It should also be that he agrees to have special conditions as this licensing committee believes are appropriate for that season.

Stewards also would not support his re-licensing for the next licensing season if any notification regarding Dale Evans and his gambling activities at various venues be substantiated.

Attached are exhibits from the Stewards inquiry 2 November 2006 along with all relevant documents.

For ease of reference this document will be referred to as "the Briefing Paper".

It has to be observed that the Briefing Paper contains certain factual allegations about which no findings were actually made by the Stewards, e.g. gambling on thoroughbred races.

The Licensing Committee Hearing

On 12 December 2006 the Show Cause Hearing took place at the office of Queensland Racing with Mr Peter Smith being the Chairman of the Licensing Committee and the Appellant and his Solicitor Mr Doug Winning appearing by telephone conference link from Rockhampton. The transcript of the Show Cause Hearing comprised 20 pages. For ease of reference this will be referred to as the Show Cause Transcript ("SCT").

The Licensing Committee heard and determined the matter.

The decision of the Licensing Committee was conveyed to the Appellant in a letter dated 18 December 2006 under the hand of Mr Andrew Hedges Director of Integrity Operations of Queensland Racing Limited. Mr Hedge's letter is set out in full being:

"18 December 2006

*Mr Dale Evans
58 Huntley Road
SARINA QLD 4737*

Dear Mr Evans

RE: OUTCOME OF SHOW CAUSE HEARING

Introduction

This decision relates to the Show Cause hearing of yourself held on Tuesday, 12 December 2006.

This correspondence will convey the decision of the Queensland Racing Limited (QRL) Licensing Committee (the Committee), as well as the associated reasons for the Committee's decision.

Decision

The Committee has formed the view that at the present moment, you are not a 'fit and proper person' to hold a license with QRL.

*In view of the above, your metropolitan jockey license is **wholly suspended in - full** from the date of this letter to the end of the current licensing period on 30 June 2007. During this time, you unable to engage in any licensed activity related to thoroughbred racing.*

Please note that you will be required to re-apply for your license for the 2007/2008 season, via the Committee, as a new licensing application.

In addition to this suspension, the Committee will not consider you application for a metropolitan jockey license, until you provide evidence of having satisfactorily completed:

- (a) a gambling addiction counselling program, and*
- (b) a financial counselling program.*

Reasons for the Decision

The decision as to whether you were deemed to be a 'fit and proper person' to hold a license with QRL was based on an in depth analysis of the two elements, these being: 'fit' and 'proper'.

The element of 'fit' being primarily concerned with all factors relating to your capacity as a person to fulfil the role of a metropolitan jockey. The second element of 'proper' being primarily concerned with your general behaviour and conduct inclusive of your history, reputation, integrity, honesty and character.

The Committee based its decisions on the administrative leading case law for determining whether a person is 'fit and proper'. This case law was established in the matter of Australian Broadcasting Tribunal v Bond (1990) 170 CLR 321. Deane J viewed that:

*"The expression '**fit and proper person**' standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of fit and proper cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities."*

"Depending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur or whether the general community will have confidence that it will not occur."

The aforementioned decision highlights the importance of character and provides a framework linking such character to its contextual

environment. In particular, these links can provide an indication of likely future conduct.

The Element of Fit:

The element of your 'fitness' to fulfil the role of a metropolitan jockey was assessed by the Committee on two (2) levels, these being:

- (a) your physical fitness and capabilities to fulfil the requirements of a metropolitan jockey, and
- (b) your mental capacity to fulfil the moral commitments and character elements that inherently underpin the activities a metropolitan jockey.

In relation to your physical fitness and capabilities to fulfil the requirements of a metropolitan jockey, the Committee found that you satisfied this requirement, as there was no evidence in support of the contrary.

In relation to your mental capacity to fulfil the moral commitments and character elements that inherently underpin the activities a metropolitan jockey, the Committee found that you did not satisfy this requirement. In particular, the Committee was not convinced that you hold the required levels of moral conscientiousness for a metropolitan jockey, which means, your

ability to reflect concern for distinguishing what is right from wrong and make balanced judgements, resolving personal dilemmas.

The Committee has acknowledged your attempts to obtain gambling addiction counselling, however, it is of the view that at the present moment, if you were confronted with the temptation to gamble, your moral commitment and character may not possess the anchored principles, which would ensure you to respond ethically and appropriately.

It is for the aforementioned reasons that the Committee resolved that you satisfactorily complete a gambling addiction counselling program and a financial counselling program before you are able to re-apply for your license. These requirements are placed upon you, not to incur hardship, but to ensure that you receive the appropriate level of support and guidance during your period of rehabilitation.

The Element of Proper:

The element of your 'proprietary' was assessed by the Committee on the basis of your general behaviour and conduct, in particular, your honesty, your disciplinary history, your reputation, your character and your evidence of dishonesty.

It is on the basis of these components of 'proper', that the Committee formed the opinion that at the present moment you have not satisfied the element of 'proprietary' for a metropolitan jockey.

In reaching this decision, the Committee did take into account your good disciplinary record and histories of dealings with QRL officials, however,

these items were not viewed to outweigh the elements of your improper conduct. As a metropolitan jockey, you are publicly accountable for your behaviour. The Committee found that your irresponsible decision making that was evidenced through your improper conduct was likely to impact on both your reputation and more broadly on the reputation of metropolitan jockeys and the thoroughbred racing industry.

Your improper conduct was assessed through the clear evidence of dishonesty and criminal behaviour to which you pleaded guilty in the Rockhampton Magistrates' Court.

The Committee is of the view that the below points substantiates its opinion that your improper conduct is likely to reoccur in the short term:

- (a) you have yet to commence and/or complete any type of gambling addiction counselling*
- (b) you have not made restitution of the full amount*
- (c) you did not express remorse for your dishonest actions to the Committee*
- (d) you did not show an appreciation that your dishonest actions may have impacted on both your reputation and more broadly on the reputation of metropolitan jockeys and the thoroughbred racing industry*
- (e) the Committee acknowledged your verbal explanation that you ceased an opportunity to use the cheques as a means to address your debts at the time, however, the Committee felt that this motivation did not outweigh your duty to adhere to standards of right conduct.*
- (f) you failed to demonstrate sincerity by way of failure to make any written explanation or submission to the Committee on your behalf.*

The Committee is of the belief that your suspension will allow you to concentrate on your rehabilitation. The Committee hopes this will ensure, in the long term, that you possess the capability to embrace the acceptable standards of right conduct and the mental capacity to fulfil the moral commitments and character elements that inherently underpin the activities a metropolitan jockey.

Conclusion

The Committee was mindful of section 9(1) (b) of the Penalties and Sentences Act 1992 (the Act) when deliberating its decision on this matter. The Committee's decision to wholly suspend in-full your metropolitan jockey license and impose conditions of gambling addiction counselling and financial counselling were made to assist your rehabilitation, in conjunction with the Court's order.

It is hoped that collectively these rehabilitation mechanisms will ensure that you enjoy a long term sustainable career as a metropolitan jockey with QRL.

The Committee also acknowledged your submissions in relation to section 12(2) of the Act. Whilst it is recognised that this section specifically relates to the recording or not the recording of a conviction of an offender, the Committee was mindful of the underpinning philosophy

of this section, and decided that your rehabilitation needs outweighs any short term economic impacts.

*Please note that should you wish to appeal the decision of the Committee, you must lodge an appeal with the Racing Appeals Tribunal within **14 days** of this decision being made. A Notice of Appeal can be downloaded from the Racing Appeals Tribunal web site at www.racingappealstribunal.qld.gov.au or*

telephone (07) 3247 3304 and the Registry will send you the form by post or facsimile.

Should you wish to discuss the Committee's decision further, please do not hesitate to myself on (07) 3869 9742.

Yours sincerely

ANDREW HEDGES

Director of Integrity Operations

On behalf of the Queensland Racing Limited Licensing Committee"

For ease of reference this letter will be referred to in these reasons as "the Decision Letter".

While the original Stewards Inquiry was an inquiry as to whether the Appellant had breached any Rules of Racing, there were no findings made nor any decisions reached about breaches of the Rules. It is clear from the Show Cause Letter, Briefing Paper, Show Cause Transcript and the Decision Letter that the basis of the decision by the Licensing Committee to suspend the Appellant's Jockey Licence is that the Licensing Committee found the Appellant "... not a 'fit and proper person' to hold a licence with QRL".

The Decision Letter referred to the High Court decision of Australian Broadcasting Tribunal v Bond (1990) 170 CLR which deals with the notion of "fit and proper". There is nothing in either the Australian Rules of Racing, the Local Rules or the *Racing Act 2002* ("the Act") which refers to "fit and proper person". In Bond's case

“fit and proper person” was the phrase specifically used under Section 88(2) of the *Broadcasting Act 1942* (Cth). That Act has been repealed and it is noted that its successor, the *Broadcasting Services Act 1992* (Cth) does not use the term “fit and proper person”, but Sections 41 and 83 refer to the requirement that a Licensee must be “suitable”.

Queensland legislation contains a number of Acts where the phrase “fit and proper person” is a requirement for holding a licence. Some examples are:

- *Fuel Subsidy Act 1997* - Section 42
- *Gaming Machine Act 1991* - Section 97
- *Legal Profession Act 2004* - Section 30
- *Liquor Act 1992* - Section 107
- *Transport Operations (Marine Safety) Act 1994* - Section 202E
- *Queensland Building Services Authority Act 1991* - Section 31
- *Tobacco Products (Licensing Act) 1998* - Section 20
- *Trade Measurement Act 1990* - Section 45
- *Weapons Act 1990* - Section 10

While there is references to “fit and proper person” in those Acts, just as importantly there are also references to the criteria to take into account when a licensing body considers whether a person is or is not a “fit and proper person”.

As has already been observed there is nothing in either of the Rules of Racing or the Act that even refers to the phrase “fit and proper person”. Indeed Mr Murdoch accepts that this is the case and the use of that specific phrase by licensing committees in the Racing industry is customary.

Mr Murdoch submitted the power upon which the Respondent bases its decision to suspend the Appellant’s Licence is contained in Local Rule 93 which states:

L.R.93 The Principal Racing Authority may at any time without assigning any reason therefore:

- (a) refuse to grant any licence, permit or registration or renewal thereof;
- (b) grant any licence, permit or registration under any conditions the Principal Racing Authority may consider desirable;
- (c) suspend, vary, alter or add to the conditions of any licence, permit or registration before the period of the licence permit or registration expires;
- (d) suspend, revoke or vary the conditions of any licence, permit or registration before the period of the licence, permit or registration expires;
- (e) the powers of the Principal Racing Authority under this Rule may be exercised without calling upon the person concerned to show cause why a licence, permit or registration should not be refused, suspended, varied or revoked.”

Read literally this is an all empowering rule that gives control bodies unfettered discretion to act.

Indeed there are a number of previous occasions under the various codes of racing where Licensing Committees have used the phrase “fit and proper person” as a basis for decision which has been considered by Courts and Appeal Tribunals. Some of those decisions are:

- Trivett v Nivison & Ors (1976) 1 NSW LR 312
- Appeal by G Loader - Racing Appeals Authority Queensland 6/12/95 - Racing Appeals Reports Page 1403
- R v Tasmanian Thoroughbred Racing Council Exparte JG Turner (No. 2) - Supreme Court of Tasmania BC9100097

However, with the introduction of the present Act there is a requirement that Control Bodies must have policies and specifically policies about their licensing scheme. The requirements for policies are contained in Divisions 1, 2 and 3 of Part 2 of Chapter 3 of the Act (Sections 80 to 90, Sections 87(2)(i) and (k)) require that there be policies for disciplinary action with respect to licences. Those sections state:

87 Control body's policy for a licensing scheme

...

(2) The control body's policy for its licensing scheme must provide all of the following matters -

- (i) the grounds for taking disciplinary action relating to a licence in relation to matters dealt with in the control body's rules of racing or as mentioned in subsection (5);
- (k) how disciplinary action relating to a licence, other than immediate suspension, must be taken including the following –
 - (i) the procedure for giving a licence holder notice of the grounds for taking the disciplinary action;
 - (ii) the proposed action;
 - (iii) the way the licence holder may make representations about the proposed action;

...

At the time of this hearing (and it is also understood at the time of the Stewards Inquiry and the Show Cause Hearing) the Respondent's licensing policy is stated on its website to be "Currently Under Review".

The licensing policy which seems to be the relevant policy is titled "Licensing Scheme Policy Trainers, Riders & Their Employees & Agents" and is stated to take effect on 5 November 2004. For convenience this licensing policy is referred to as the "the Relevant Policy".

The Relevant Policy is a cumbersome and unstructured document and certainly on the face of it does not appear to comply with the mandatory requirements of the Act. When considering those mandatory requirements it can be seen why it is under review. However, it does contain some matters which are relevant to the decision of the Licensing Committee.

The third paragraph of the Relevant Policy after the heading "Audit Program for Licensees" states:

Should Queensland Racing Ltd audit a Licensee and determine at the conclusion of the audit that the Licensee is not a suitable person to be licensed, Queensland Racing Ltd will take disciplinary action against the Licensee.

The Tribunal has difficulty reconciling this requirement of the Relevant Policy with how the Licensing Committee made its decision. While there is difference in the terms used (the Stewards and the Licensing Committee refer to "not a fit and proper person" while the Relevant Policy refers to "not a suitable person") there are no criteria articulated which are to be applied when considering suitability.

It is not only in the Relevant Policy where "suitability" is referred to but also in the Act itself under Sections 34(1)(a) and (b) which relate to the consideration of licensing or when persons are to continue to be licensed. By way of comparison the Act also refers (Sections 203 and 204) to suitability when holding a certificate for a bookmaker. However within those sections is set out the criteria to take into account when considering suitability.

The word "suitability" or the phrase "suitable person" is also referred to in various legislation in Queensland concerning licensing some being:

- *Second Hand Dealers and Pawn Brokers Act 2003* - Section 12
- *Interactive Gambling (Player Protection) Act 1998* - Sections 32 and 33
- *Property Agents and Motor Dealers Regulations 2001* - Section 49
- *Surveyors Act 2003* - Section 36

In each of the above Acts there are also criteria to assist in applying any “suitability” test.

The Tribunal notes that in licensing matters generally it is not only phrases such as “fit and proper person” or “suitability” that is referred to in legislation but also phrases such as “appropriate person” or “fitness to practice”. The Licensing Committee and the Stewards proceeded on the basis of a “fit and proper” person test. While nothing much turns on what terms are used, there is invariably set out the criteria upon which a Licensing Body must take into account when considering whether a person should be granted or should continue to be licensed.

The Tribunal notes that the Relevant Policy does go into detail when it defines “Excluded person”. In its second paragraph under Definitions there is stated:

“Excluded person” means a person who:

- is currently disqualified under the rules of racing;
- is currently on the Forfeit List;
- has been a convicted of a criminal offence in any state or territory of Australia or in any other country that involves:
 - a breach of any racing or betting legislation;
 - cruelty to animals;
 - aggravated assault;
 - sexual assault;
 - fraud or forgery;
 - possession, use or supply of illegal substances

The Relevant Policy also specifically states that Queensland Racing may immediately suspend any Licensee if the Licensee is an “Excluded person”.

The problem with that definition is this case in point. The Appellant was not convicted of any criminal offence as the presiding Magistrate on the Appellant's sentencing did not record a conviction.

Had the Magistrate recorded a conviction then it may well be that under the Relevant Policy the Committee could have had the power to immediately suspend the Appellant's licence.

The question which this Tribunal has to consider is whether the criteria which the Licensing Committee should have considered for "suitability" are absent from the Policy.

It is not the function of the Tribunal to define the criteria for considering suitability or otherwise of Licensed persons but as the Act requires there be policies and criteria for application concerning those matters the Tribunal is obligated to require the Respondent to comply with the Act.

When the Respondent was first contacted by Apprentice Chris McIver and his Master Trainer Mr Allan Jones, the Stewards referred them to the Police and criminal charges were laid. It is not appropriate that the Tribunal comment on the decision of the Magistrate not to record a conviction. The fact is that no conviction was recorded and as such the Appellant is not an "Excluded person" under the Relevant Policy. Also the question of suitability and criteria for its application is not dealt with in the Policy as required by the Act.

There seems to be little doubt that the Appellant committed various offences involving fraudulent conduct. However for the Licensing Committee to use those as a basis for cancelling the Appellant's Licence it needs either a conviction to be

recorded or a properly articulated policy as required under the Act. Unfortunately it has neither.

In the absence of the Relevant Policy and relevant criteria for its application which apply to the circumstances of the Appellant the Committee Decision was without power and the Appellant's appeal is upheld.

The appeal deposit fee is to be refunded.

Mr Leo Williams AO
Chairman

Mr Dennis Standfield
Member