

## Appeal decision

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**Date:** 11 March 2014

**Code of racing:** Thoroughbred

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**Appeal panel:** Judge W Carter (chair), Mr B Miller and Mr P James.

**Appearances:** Mr S Naylor, solicitor, appeared on behalf of trainer Darren Symons.  
Mr D Aurisch, deputy chairman of stewards, appeared on behalf of the stewards.

**Decision being appealed:** \$8000 fine – AR178

**Appeal result:** Appeal dismissed.

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### **Extract of proceedings – in the matter of a finding of prednisolone and prednisone in a swab sample taken from Rofranoz, winner of the Mackay Property Maintenance Maiden Handicap over 1300 metres at Mackay on 3 September 2013. Trainer: Darren Symons**

THE CHAIRMAN: This appeal by trainer Symons arises from a stewards' inquiry conducted at Racing Queensland offices at Mackay on 18 February 2014. The relevant matter with which we are concerned arises because Rofranoz, a horse trained by the appellant which won Race 2 at Mackay on 3 September 2013, returned a swab positive to prednisolone and prednisone. As a result of that inquiry the stewards charged the trainer with a breach of Australian Rule 178 in that he had brought to the racecourse for the purpose of engaging in a race this horse, and a prohibited substance was detected in a sample which was taken from it following that race.

The rule provides that in that instance the trainer is liable to penalty. In this case the stewards imposed a penalty of an \$8000 fine. The appeal is both against the conviction and against the penalty.

We have had the benefit of submissions from Mr Naylor. I should add for the record that Mr Naylor is a solicitor in Mackay and he was present in his office with the appellant and we had available to us speaker facilities which enabled us to receive those submissions.

The core of Mr Naylor's submission is that it would be unsafe to maintain the conviction on the basis that it may be inaccurate and that, in those circumstances, it would give rise to an unacceptable risk. The core of that submission and the basis for it was that Mr Pickles, the

Racing Queensland official concerned with taking swab samples, failed to adopt the proper standard procedures, in that the sample of urine when taken from the horse was taken into a swab basin which had not been rinsed and cleaned and made neutral by use of the control substance. This was seriously contested by Mr Pickles.

The evidentiary basis for Mr Naylor's submission comes only from the stablehand Mr Maloney, who presented the horse at the swabbing stall. Mr Maloney offered no objection when the swab was taken. In his evidence before the stewards Mr Maloney recognises that he was shown relevant parts of the material used in the swabbing process, as is required under the rules and in accordance with the standard procedures. He said that the horse sought to urinate quickly and that Mr Pickles simply picked up the basin, which he assumed had not been rinsed with the control, and that he took the sample from the horse. There was accordingly a risk in those circumstances that the sample may have been contaminated.

The case for the stewards is that Mr Pickles on that day was the person officiating in the swab stall. It is of course well known that there are standard procedures which have to be complied with. Those have been scientifically determined over a long period and the procedures are indeed standard, irrespective of where the swab is taken, whether in Mackay or at some other locality where horses are racing. There is also a recognised procedure which requires that there are certain formalities which have to be complied with, not only by the swab attendant, but also by the person who is involved with the horse and who has brought the horse to the swabbing stall.

We refer to Exhibit 6, which was signed both by Mr Pickles and Mr Maloney. The stewards themselves have made reference to this in their finding and no doubt relied on the evidence provided by that exhibit and Mr Pickles' experience in this matter to satisfy themselves that in fact these procedures were adopted and properly followed and that there is no sound basis for excusing Mr Symons from culpability in respect of this particular swab. That also is our view and we are of the clear view that the evidence before the stewards was such that it was competent for the stewards to find in accordance with the appropriate standard of proof that the swab had been properly taken and that when analysed resulted in a finding of prednisolone, a prohibited substance in accordance with the relevant rule.

We therefore dismiss the appeal against conviction.

The stewards penalised Mr Symons with a fine of \$8000. We have had placed before us, and indeed Mr Naylor referred to it in his submissions, records which may suggest that a fine of \$8000 was excessive given the fact that other penalties in respect of a positive swab for prednisolone were in respect of some other trainers, less than that.

Mr Aurisch, for the stewards, indicated to us that the lesser fines - there were fines of \$6000, \$5000, \$4000 and \$3000 - were in respect of trainers who were long-standing and who had no previous convictions. The stewards' concern was that the appellant has had a trainer's licence for only a short period of approximately three years and that in October 2012 he was dealt with by the Mackay stewards in respect of three positive swabs taken from a Mackay

race meeting on 26 June 2012, at a Townsville race meeting on 17 July 2012 and at a further Townsville meeting on 21 July 2012, and in respect of each of those positive swabs he was fined \$4000, for a total of \$12,000.

There is no question that the need for drug-free racing is well and truly established and stewards bear an onerous responsibility, as do places such as the Racing Science Centre, to ensure that drug-free racing is maintained. There is a deterrent element involved in penalties of this kind. We are of the view and have concluded that the penalty imposed of \$8000 in this particular case was not excessive and accordingly we dismiss the appeal.

Our formal order is that the appeal against conviction is dismissed and the appeal against penalty is likewise dismissed.

Further right of appeal information: The appellant and the stewards may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **14 days of the date of this decision**. Information in relation to appeals to QCAT may be obtained by telephone on (07) 3247 3302 or via the Internet at [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au)