

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



Endresz v Queensland Racing Integrity Commission & Ors [2022] QSC 262

Supreme Court of Queensland, Burns J, 23 December 2022

Whether horse owners should be given natural justice in relation to a steward's hearing of a rule contravention by a horse trainer.

Key words: Natural Justice, Queensland, Racing, Notice, Opportunity to be Heard

1. Thoroughbred racing in Queensland is governed by a mix of statutes, rules made pursuant to the [Racing Act 2002](#) (Qld), a Standard made pursuant to the [Racing Integrity Act 2016](#) (Qld), national rules established by a consensus reached among the controlling bodies for racing throughout the country, and contracts made with and between participants.
2. The Queensland Racing Integrity Commission (the Commission), is established by s 7 of the Racing Integrity Act and makes Standards for each code of racing, particularly about the licensing scheme for controlling activities relating to animals and participants, and about the way in which races are to be conducted. It is the function of the Commission to appoint stewards and to penalise participants.
3. The Racing Queensland Board (the Board), is established by the Racing Act as the control body for thoroughbred racing in Queensland and recognised by Racing Australia Limited, a company limited by guarantee, as the principal racing authority for Queensland.
4. The Australian Rules of Racing (ARR) are made and administered by Racing Australia Limited and create contractual rights and obligations and apply to all races held under the management or control of the Board.
5. Alligator Blood is a horse wholly owned by a registered syndicate of owners (Syndicate) and it won a race. The Syndicate became entitled to prize money of \$978,945.56. Additional prize money was also awarded to the trainer (\$115,170.07), as well as the jockey (\$57,585.03), although payment of all prize money was withheld until a SWAB test had been cleared.
6. The racing stewards informed the trainer that prohibited drugs were present in the SWAB test.
7. The solicitor for the Syndicate made several requests of the stewards for copies of SWAB results and testing policies that were refused, but provided after a right to information request.

8. The trainer was charged and convicted of various offences in relation to the matter, with no notice given to the Syndicate. The prize money to which the Syndicate would otherwise have been entitled was not released.
9. The Syndicate argued that the stewards ought to have afforded natural justice to the owners by providing the owners with notice of the hearing and an opportunity to be heard, and sought for the Court to declare that the disqualification was void and of no effect for that reason.
10. Both the Commission and the Board argued that the owners had a full right of appeal from the decision, and that this was sufficient.
11. The Court found that (at [32]):

Accordingly, the owners have no right of appeal under the governing rules and, given their clear interest in the findings made by the stewards, that would without more present a strong case for the implication of terms to the effect that the stewards were obliged to observe the principles of natural justice by providing notice of their hearing to the owners and an opportunity to be heard before any finding was made as to the presence of a prohibited substance in the horse's sample. Indeed, because the principles of natural justice are neither sought to be excluded expressly, or by necessary implication, under the governing rules it has already been held in this court that they would apply to such a hearing, as well as to stewards' inquiries under different regulatory regimes elsewhere. (footnotes excluded)

12. The Court also rejected the contention that the owners had failed to establish how they would have made use of an opportunity to be heard by the stewards as they could have exercised that right to ascertain whether the policies and procedures for the collection and analysis of the sample taken from the horse had been complied with.
13. It was also argued that the owners were only indirectly concerned, and represented by the trainer. The Court was of the view that the owners had a direct interest in the findings made by the stewards because the automatic consequence of an adverse finding concerning the presence of a prohibited substance was disqualification of their horse and, with that, the loss of almost \$1 million in prize money.
14. The Court found that because of the procedural breach, the disqualification which resulted from the findings made by the stewards was void and no effect

COMMENT



A common mistake made in clubs and associations is failing to follow their rules in relation to disciplinary proceedings, particularly in relation to natural justice and the right to a fair hearing.

Australia received the concept of natural justice from English law. Its technical concepts are the rule against bias (*nemo iudex in causa sua*) and the right to a fair hearing (*audi alteram partem*). While it is a general concept applying to judicial courts and administrative tribunals, it also can apply in various degrees to decisions made by clubs and associations about members in relation to discipline.

The basis for the rule against bias is the need to maintain public confidence in the legal system. Bias can take the form of actual bias, imputed bias, or apparent bias. While actual bias is often difficult to prove, imputed bias will often result in a decision being void without the need for any investigation into the likelihood or suspicion of bias.

The right to a fair hearing requires that individuals should not be penalised by decisions affecting their rights or legitimate expectations unless they have been given prior notice of the case, a fair opportunity to answer it, and the opportunity to present their own case. The mere fact that a decision affects rights or interests is often sufficient to subject the decision to the procedures required by natural justice.

VIEW THE CASE



This case may be viewed at: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QSC/2022/262.html>

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EVENTS