RACING NEW SOUTH WALES APPEAL PANEL

IN THE MATTERS OF ALEX KEAN & CHYNNA MARSTON

REASONS FOR DECISION ON PENALTY

Appeal Panel:	**Mr P F Santucci – Convenor**
	Ms J Foley
	Mr J Rouse
Appearances:	**Stewards: O Jones**
	Appellant: No submissions received
Date of Hearing:	**On the papers.**
Date of Reasons:	**8 July 2026**

A INTRODUCTION AND OVERVIEW

1. **The Panel:** On 18 May 2026 the Panel published reasons in respect of the liability of two separate appeals (heard together) in respect of Mr Alex Kean, and Ms Chynna Marston.

2. The two matters were heard concurrently because of an overlap of some factual matters common to both.

3. Given the number of charges it is useful to set out the charges and the results of the determination on the merits of the appeal in the table below.

Charge	Description	Plea before Stewards	Penalty imposed by Stewards	Appeal Panel Finding
MR ALEX KEAN – 7 Charges				
Charge 1: LR114(2)(a)	Failed to provide sufficient nutrition to 12 thoroughbred horses (27 March – 5 June 2023)	No plea entered	2.5 years disqualification	Appeal dismissed.
Charge 2: LR114(2)(d)	Failed to provide veterinary treatment to 6 thoroughbred horses with prolonged elevated temperatures and diarrhoea (14 February – 27 March 2023)	No plea entered	2.5 years disqualification	Appeal allowed in part. Guilty finding upheld for 3 horses only (Melomaniac, Gave Me You, Scene of the Crime). Not established for the other 3 horses.
Charge 3: LR114(4)	Destroyed thoroughbred horse (Real Real Gone) by firearm without veterinary certification or confirmation, and disposed of carcass without advising Racing NSW	No plea entered	18 months disqualification	Appeal dismissed.
Charge 4: AR228(a)	Conduct prejudicial to the image, interests, integrity or welfare of racing, arising from failure to ensure welfare of horses in his custody	No plea entered	6 months disqualification	Appeal dismissed.
Charge 5: AR232(b)	Failed to comply with Stewards' directions of 5 August 2023 re prescribed feeding regime and veterinary examination	No plea entered	18 months disqualification	Appeal dismissed.
Charge 6: AR232(b)	Failed to comply with Stewards' requirement to provide Racing NSW access to 257 Stadtmillers Lane,	No plea entered	18 months disqualification	Appeal dismissed.

	Bowning on 9 August 2023 for welfare assessment			
Charge 7: AR232(h)	Failed to attend Stewards' inquiry on 10 August 2023 via Microsoft Teams when directed to do so	No plea entered	6 months disqualification	Appeal dismissed.
MS CHYNNA MARSTON – 8 Charges				
Charge 1: LR114(2)(a)	Failed to provide sufficient nutrition to 12 thoroughbred horses (27 March – 5 June 2023)	Not Guilty	2.5 years disqualification	Appeal dismissed.
Charge 2: LR114(2)(d)	Failed to provide veterinary treatment to 6 thoroughbred horses with prolonged elevated temperatures and diarrhoea (14 February – 27 March 2023)	Not Guilty	2.5 years disqualification	Appeal allowed in part. Guilty finding upheld for 3 horses only (Melomaniac, Gave Me You, Scene of the Crime). Not established for the other 3 horses.
Charge 3: AR228(a)	Conduct prejudicial to the image, interests, integrity or welfare of racing, arising from failure to ensure welfare of horses and associated media reporting	Not Guilty	6 months disqualification	Appeal dismissed.
Charge 4: AR232(b)	Failed to comply with Stewards' directions of 5 August 2023 re prescribed feeding regime and veterinary examination	No plea entered	18 months disqualification	Appeal dismissed.
Charge 5: AR232(b)	Failed to comply with Stewards' requirement to provide Racing NSW access to 257 Stadtmillers Lane, Bowning on 9 August 2023 for welfare assessment	No plea entered	18 months disqualification	Appeal allowed. Charge dismissed.
Charge 6: AR232(h)	Failed to attend Stewards' inquiry on 10 August 2023 via Microsoft Teams when directed to do so	No plea entered	6 months disqualification	Appeal dismissed.
Charge 7: LR114(2)(a)	Failed to provide proper and sufficient nutrition to Budderoo Dragon (from 24 March 2017) and Frankenbeans (from 7 March	No plea entered	2 years disqualification	Appeal dismissed.

	2018), both found emaciated (BCS 1.5/5) on 10 May 2018			
Charge 8: LR114(2)(d)	Failed to provide veterinary treatment to *Budderoo Dragon* and *Frankenbeans*, both found with poor body condition and moderate to severe rain scald (March 2017 – April 2018)	No plea entered	2 years disqualification	Appeal dismissed.

4. In summary before the Stewards penalties identified for Mr Kean totalled 10.5 years but after considering concurrency and totality the total penalty imposed by Stewards was reduced to 6 years' disqualification from 6 September 2023 – 6 September 2029.

5. Mr Kean had some modest success before the Appeal Panel, in which the appeal on Charge 2 was partially upheld with the finding of guilt reduced from 6 to 3 horses. The appeal was otherwise dismissed.

6. To summarise the position of Ms Marston before the Stewards, the penalties identified a cumulative total of 13 years but after considering concurrency and totality the total penalty imposed by the Stewards was reduced to 7 years disqualification from 6 September 2023 – 6 September 2030.

7. While the hearing of an appeal is an appeal de novo and the findings made, and the penalties imposed, by the Stewards are relevant they do not form a starting point for consideration.

8. The Panel has received submission from the Stewards dated 11 June 2026.

9. An opportunity was given to the Appellants to provide written submissions but none were received. While we have not been provided with any submissions from the Appellants we are able to take into account our understanding of the factual circumstances of the case to calibrate an appropriate penalty. That is particularly relevant in respect of our understanding of the sickness in the herd discussed below.

10. The Stewards submitted that the appropriate total penalties were 5 years for Mr Kean and 6 years for Ms Marston. The Stewards submitted that the penalties imposed by the Stewards remains broadly appropriate but the respective discounts of one year for each Appellant was reflective of their modest success on appeal.

11. The Stewards also acknowledged the findings of the Panel to the effect that Ms Marston's culpability was reduced by reason of the Horse Agistment Agreement, and her lesser responsibility for the welfare of the horses compared to Mr Kean; but emphasised that Ms Marston remained liable for the separate welfare breaches in 2017/18 in respect of *Buderoo Dragon* and *Frankenbeans:* RS [18].

12. The Panel's view that Ms Marston's diminished responsibility for the horses needs to be taken into account so that her penalty in respect of more recent treatment of horses attracts a lesser penalty than Mr Kean. However, Ms Marston remains exclusively liable for the welfare charges in respect of *Buderoo Dragon* and *Frankenbeans*.

13. We agree with the Stewards that the offending is objectively serious, and involved multiple horses. The welfare incidents did not appear to be isolated or technical breaches, but related to the "core obligations" imposed by the Rules to ensure the welfare of thoroughbreds through the provision of nutrition and welfare treatment: RS[11](a) and (b)

14. The Stewards submit that the presence of illness within the herd of horses "*does not materially reduce the seriousness of the conduct. Rather, it increased the need for appropriate monitoring, veterinary intervention and welfare management*.": RS [11](c). While it remains true that the presence of sickness in the herd was the occasion for heightened attention, we are mindful that the evidence disclosed the difficulty of containing and treating salmonella. We think in that respect this is a different case from those in which malnutrition has been established by reason of a failure to provide feed at all, or a sufficient fresh pasture.

15. Having said that we note that in respect of *Frankenbeans* and *Buderoo Dragon* there was no evidence of any prevailing sickness at the time, and for that reason the Charges against Ms Marston relating to those horses carry greater seriousness.

16. We accept the submission of the Stewards that the conduct has the capacity to damage the image and integrity of racing, especially in relation to the treatment of retired thoroughbreds: RS[11](d).

17. While the failure to comply with the directions of the Stewards was serious, it is a matter that weighs more heavily against Mr Kean than Ms Marston: cf RS[11](e).

18. The welfare of thoroughbreds must remain of paramount importance and any charges that related to compromised welfare ought to attract a penalty that reflect the need for general

deterrence. It is also necessary to consider both the overlap in factual circumstances between some of the charges and the totality of the penalty to be imposed.

19. Having taken into account the above factors we have formed the view that the appropriate penalty is a 5 year disqualification for each of Ms Marston and Mr Kean, commencing from 6 September 2023 and running until 6 September 2028.

Orders

20. We make the following orders:

In respect of Ms Marston

(a) the appeal is partially upheld in respect of Charge 2 (where the findings relate to failure to provide veterinary treatment to only 3 horses), and Charge 5 in respect of failure to provide access has not been made out against Ms Marston,
(b) set aside the penalty imposed by the Stewards and in its place substitute a penalty of 5 years disqualification from 6 September 2023 until 6 September 2028;
(c) the appeal is otherwise dismissed;
(d) the appeal deposit be returned given the partial success of Ms Marston on appeal.

In respect of Mr Kean

(a) the appeal is partially upheld in respect of Charge 2 (where the findings relate to failure to provide veterinary treatment to only 3 horses)
(b) set aside the penalty imposed by the Stewards and in its place substitute a penalty of 5 years disqualification from 6 September 2023 until 6 September 2028;
(c) the appeal is otherwise dismissed;
(d) the appeal deposit be returned given the partial success of Mr Kean on appeal.

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