

**IN THE RACING APPEALS TRIBUNAL**

**GREG KILNER**  
**Appellant**

**v**

**RACING NEW SOUTH WALES**  
**Respondent**

**REASONS FOR DETERMINATION**

<b>Date of hearing</b>	<b>26 June 2025</b>
<b>Date of determination</b>	<b>4 August 2025</b>
<b>Appearances:</b>	<b>Mr J Bryant for the Appellant</b>
	<b>Mr M Cleaver for the Respondent</b>

**ORDERS**

1. The order made on 27 April 2025 pursuant to cl 20 of the *Racing Appeals Tribunal Regulation 2024* is vacated.
2. The appeal is dismissed.
3. The penalty imposed by the Appeal Panel is confirmed.
4. The Appellant is disqualified for a period of 3 months.
5. Pursuant to AR 283(7), the commencement of the disqualification in order [3] shall be deferred until midnight on Sunday, 10 July 2025.
6. The appeal deposit will be forfeited.

## **INTRODUCTION**

### **The charges**

1. Greg Kilner (the Appellant) was charged by Stewards with three offences contrary to the *Australian Rules of Racing* (the Rules) the particulars of which were as follows:<sup>1</sup>

#### ***Charge 1 – AR229(1)(b) – Improper action in connection with racing***

*The Appellant committed an improper action in connection with racing by allowing Kennysing to commence and continue to exercise on or around 11 April 2024 despite having been advised that Kennysing had a poor racing prognosis requiring a spell of between 8 – 12 months as a result of the injury. Additionally, he failed to have Kennysing undergo a veterinary examination prior to resuming racing on 14 July 2024 to determine whether Kennysing was suitable to return to racing.*

#### ***Charge 2 – AR 105(1)(b) – Matters that may affect the running of a horse***

*Prior to the gelding returning to races on Sunday 14 July 2024, the Appellant failed to report to the Stewards by nomination time on Tuesday 9 July that Kennysing had suffered severe superficial digital flexor tendon injury to the right foreleg.*

#### ***Charge 3 – AR 104 – Trainers must keep treatment records***

*Between 11 April 2024 and 28 September 2024, the Appellant failed to record medication and/or treatment administered to horses in his care in accordance with AR 104(2).*

### **The procedural history**

2. The Appellant pleaded guilty to each charge, and the following penalties were imposed:<sup>2</sup>
  - (i) Charge 1 – disqualification of 4 months.
  - (ii) Charge 2 – suspension of 2 weeks (to be served concurrently with Charge 1).
  - (iii) Charge 3 – a fine of \$1,000.00 wholly suspended for a period of 2 years.
3. The effective penalty imposed was a disqualification of 4 months, which was expressed to commence on 11 December 2024 and expire on 11 April 2025.<sup>3</sup>

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<sup>1</sup> Tribunal Book (TB) 29

<sup>2</sup> TB 30.

<sup>3</sup> TB 30.

## **Proceedings before the Appeal Panel**

4. The Appellant appealed against the Stewards' determination to the Appeal Panel (the Panel) and was granted a stay pending the hearing. In a decision handed down on 16 April 2025, the Panel allowed the appeal in part, and reduced the period of disqualification to one of 3 months.<sup>4</sup>

## **The present appeal**

5. The Appellant now appeals to the Tribunal against the decision of the Panel. A stay was granted by consent on 27 April 2025.
6. The appeal was heard on 26 June 2025. It was made clear in the Appellant's submissions,<sup>5</sup> and at the outset of the hearing,<sup>6</sup> that the appeal extended only the penalties imposed in respect of charges 1 and 2. In essence, the case advanced by the Appellant was that the offending arose as the consequence of a misunderstanding, and that any penalty in the form of a suspension or disqualification should be suspended.
7. The position of the Respondent on the appeal was that:
  - (i) the imposition of a period of disqualification was necessary;
  - (ii) the appropriate penalties were those imposed by the Stewards at first instance, and that such penalties should be reinstated; and
  - (iii) the appeal should therefore be dismissed.<sup>7</sup>

## **THE EVIDENCE**

### **The agreed facts**

8. The parties helpfully prepared a statement of agreed facts which is in the following terms:

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<sup>4</sup> TB 27.

<sup>5</sup> TB 2 at [2].

<sup>6</sup> Transcript 2.45.

<sup>7</sup> TB 14[20].

1. Mr. Greg Kilner, hereafter referred to as the Appellant, was at all relevant times a licensed trainer with Racing NSW and was bound by, and required to comply with, the Rules of Racing.
2. The Appellant has pleaded guilty to all charges brought by the Racing NSW Stewards against him and admits the substance of each charge. He adheres to those pleas of guilty.
3. The Appellant does not challenge the findings of the Appeal Panel with respect to Charge 3.

#### **Charges 1 and 2**

4. The Appellant, at all relevant times, was the trainer of thoroughbred racehorse *Kennysing*. Pursuant to LR78, he was at all times responsible for the administration and conduct of his stable and for the care, control and supervision of the horses in his stable.
5. Dr Alan Giles is a permitted Veterinarian who has regularly treated horses trained by the Appellant over the past thirty years. On 24 October 2023, Dr Giles conducted an examination and ultrasound on *Kennysing*. The examination was as a result of *Kennysing* presenting with soreness following work.
6. There is no dispute that *Kennysing* suffered a severe superficial digital tendon injury to the right foreleg. Dr Giles would go on to describe the injury as a 'major tendon injury'. It remains disputed between the parties, however, what the nature of the injury was that was relayed to the Appellant on 24 October 2023, including how long the horse was required to be spelled.
7. The Appellant was present when Dr Giles examined *Kennysing*. Also present was Veterinary Nurse Ms. Gabrielle Ross. Multiple ultrasound images of the foreleg of the horse were taken and shown to the Appellant in the presence of both Dr Giles and Ms Ross. Dr Giles did not provide the Appellant with a letter, report or similar written communication regarding his diagnosis or advice.
8. Following the examination, the Appellant sent *Kennysing* to spell. The horse spelled for a period between 24 October 2023 and 11 April 2024 – a total of 5 months and 18 days.
9. On 11 April 2024, the Appellant returned *Kennysing* to active work. The Appellant had not obtained veterinary advice, nor had he caused any further veterinary examination to be conducted on *Kennysing* prior to the horse returning to work.
10. The Appellant did have *Kennysing* seen to by an Equine Chiropractor, Mr. Matthew Butler who did not detect any adverse tendon issues with the horse. However, Mr. Butler holds no qualifications and is not suitable to make a diagnosis of the horse upon which a trainer could reasonably rely.
11. Mr. Butler gave evidence during the inquiry that he recalls the Appellant telling him that *Kennysing* had suffered from a strain, rather than the diagnosed

tendon injury. Similarly, Ms Jodie Worley, who rides trackwork for the Appellant including on *Kennysing*, also gave evidence that the Appellant told her *Kennysing* “hadn’t torn a tendon. It just like bumped it or something. It wasn’t a major injury”.

12. On 14 July 2024, *Kennysing* took part in race 7 in the Class 3 Handicap at Grafton over 1410m. There was no reported soreness or lameness in the horse following the race.
13. On 26 July 2024, *Kennysing* took part in race 4 in the Benchmark 58 at Lismore over 1410m. There was no reported soreness or lameness in the horse following the race.
14. On 10 August 2024, *Kennysing* took part in race 5 in the Class 3 Handicap at Casino over 1400m. After the winning post, *Kennysing* was pulled up by the jockey with the horse presenting with a markedly dropped right fore fetlock. The jockey of *Kennysing* dismounted the horse without injury.
15. Examination by the on-course Veterinarian Dr Joe Weir revealed the near total rupture of the SDF tendon. Euthanasia was considered appropriate due to the severity of the injury.
16. During a subsequent post-mortem, the injury was determined to be a near complete disruption of the right fore superficial digital flexor tendon. Peracute inflammation was also present within the DDF tendon at the same location, interpreted as a mechanical overload of the structure.
17. It was an improper action in connection with racing for the Appellant to commence and continue to exercise *Kennysing*, despite having been advised the horse had a poor racing prognosis and for failing to have *Kennysing* undergo a veterinary examination prior to resuming racing on 14 July 2024 to determine whether it was suitable to return to racing.
18. Similarly, the injury which was examined on 24 October 2024 was of a kind that may have affected the horse’s performance in a race, particularly if returned to racing less at a time less than the recommended 8-12 month spelling time. Despite this, the Appellant failed to notify the Stewards of such prior to nomination time for the aforementioned races in July and August 2024.

#### **Other facts not in dispute**

19. Dr Giles had conducted a number of tendon examinations in recent years on horses being trained by the Appellant.

### **The Stewards Inquiry**

9. Over and above the agreed facts, it is necessary to make reference to some of the evidence given at the Inquiry conducted by the Stewards.

10. Dr Giles gave evidence<sup>8</sup> that he regularly treated horses within the Appellant's stable, and had done so for approximately 30 years. He examined *Kennysing* in October 2023<sup>9</sup> and, subsequent to that examination, made the following clinical report<sup>10</sup> (although the report does not appear to have actually been provided to the Appellant):

*History: Worked too hard on B grass in gallop the other morning. Exam: U/S: light sedation, SFT lesion, start at 10cm from accessory carpal and extends to 27 cm. Worst between 20 – 27 cm. TREAT: bandaging (ice). Will need to give 9 – 12 months off. Poor r. PLAN spell for 1 y. Let down fro 4 weeks prior to larger paddock.*

11. Dr Giles accepted that he “*maybe just assumed it was the B grass*” on which the horse had worked<sup>11</sup> although nothing would appear to turn on that. He described the injury to *Kennysing* as “*serious*” with “*quite a lot of damage*”<sup>12</sup>, and expressed the view that although there might be an attempt to return a horse with that kind of injury to racing,<sup>13</sup> 90% of horses would not be able to do so.<sup>14</sup> He explained that much would depend upon the individual horse in that respect.<sup>15</sup>

12. Dr Giles said that he recalled showing the Appellant a scan of the most significant lesion suffered by *Kennysing*.<sup>16</sup> In that regard, his evidence included the following:<sup>17</sup>

CHAIRMAN: What you've done with us now, you ran through that with Mr Kilner?  
DR GILES: Yes. I think we probably showed him these couple there that show, like, these are quite, this is a significant part there. It's quite a bad lesion. Because he's presenting it as a horse with a bit of a swollen leg. He doesn't know how much damage there is.

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<sup>8</sup> Commencing at TB 34.

<sup>9</sup> TB 34.101.

<sup>10</sup> TB 34.130 – 35.137.

<sup>11</sup> TB 35.150.

<sup>12</sup> TB 36.180 – 36.183.

<sup>13</sup> TB 36.211.

<sup>14</sup> TB 36.206.

<sup>15</sup> Additional transcript 7.290 – 8.311.

<sup>16</sup> TB 37.235; additional Transcript 7.268.

<sup>17</sup> Additional transcript 7.269 – 7.286.

CHAIRMAN: *Of course.*

DR GILES: *It could be banged and a bit [inaudible] entirely. When you show them that, it's like, okay, we've got tendon damage.*

CHAIRMAN: *Okay. Do you recall any conversation about a treatment plan at that time?*

DR GILES: ***Basically, whatever I wrote there, we talked about***, like, this is not his first rodeo, and I think I put a list of all the other tendons we've looked at over the years, well over the last few years anyway, he's been training longer than I've been a vet sort of thing (my emphasis).

13. Dr Giles explained that he had examined another horse at the time in respect of a tendon injury, namely *Swanston*, and had mentioned to the Appellant the need to spell that horse from racing for 3 months.<sup>18</sup> In that regard Dr Giles noted<sup>19</sup> that the Appellant was “*familiar with the procedure of follow-up examinations for tendon injuries*”, before stating:<sup>20</sup>

*It is possible [the Appellant] may have confused a timeline for Kennysing as it was examined on the same day as a follow-up examination undertaken on Swanston.*

14. Dr Giles' evidence continued:<sup>21</sup>

CHAIRMAN: *When you say he's familiar, is that due to the fact that he's followed procedure with you?*

DR GILES: *Well over the years, I think it's not like he's a new horse owner who goes, on, my horse's got a tendon, what do I do? He's been in the racing industry for a long time and he's managed other tendons for a long period of time, and that's just going back a few years.*

CHAIRMAN: *So he's an experienced horseman and he's unaware of what the procedures and policies are?*

DR GILES: *Yes, that's right. But a long-term thing has a poor prognosis.*

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<sup>18</sup> Additional transcript 8.319 – 8.344.

<sup>19</sup> Additional transcript 9.348 – 9.349.

<sup>20</sup> Additional transcript 9.350 – 9.354.

<sup>21</sup> Additional transcript 9.357 – 9.368.

15. Dr Giles' evidence continued:<sup>22</sup>

CHAIRMAN: *What do you recall telling Mr Kilner on that day?*

DR GILES: *Probably 9 – 12 months*

CHAIRMAN: *Probably, or you told him that?*

DR GILES: *I can't remember.*

CHAIRMAN: *You certainly didn't suggest giving the horse three months, what he alleges?*

DR GILES: *No. That's not enough, no. That's correct.*

CHAIRMAN: *But your evidence is that type of injury would typically take up to 12 months to repair or recover?*

DR GILES: *Yes.*

CHAIRMAN: *And that's what Mr Kilner's done previously, is that correct?*

DR GILES: *Well, with a lesion probably that bad.*

16. Dr Giles then gave the following further evidence:<sup>23</sup>

CHAIRMAN: *Yes. I just want to be clear that you never at any time suggesting that giving 3 months off would –*

DR GILES: *Yes, and I'm clear about that.*

CHAIRMAN: *It is quite possible that Mr Kilner has got confused with the timeline for Swanston?*

DR GILES: *Because I used the words 3 months but it was specifically for –*

CHAIRMAN: *For Swanston*

DR GILES: *And we did it straight after so.*

17. The Appellant was interviewed by Stewards on 2 occasions. I do not have the transcript of either interview but the Appellant gave evidence before the Stewards' Inquiry. When asked if he conceded that *Kennysing* had a significant injury, he replied:<sup>24</sup>

*Yeah, but it was. normal. You wouldn't even know he had an injury. Just to look at his tendons, he was normal*

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<sup>22</sup> Additional transcript 9.390 – 10.409.

<sup>23</sup> Additional transcript 11.472 – 12.484.

<sup>24</sup> Additional transcript 21.871 – 21.872.



18. The Appellant then gave the following evidence:<sup>25</sup>

CHAIRMAN: *But you never had the horse scanned or examined to know if the tendon was ready to go did you?*

APPELLANT: *No, if Matty Butler, the Chiropractor, would have said this horse is a little bit tender, I would have got him scanned. If Jodi would have said oh, he's a little bit choppy, I would have got him scanned.*

CHAIRMAN: *Well, go into Matt Butler and Jodi later, but are they veterinarians?*

APPELLANT: *No, Work riders, Chiropractors.*

19. When taken by the Chairman to the evidence of Dr Giles, the Appellant was asked whether he may have confused the timeline in respect of *Kennysing* with the timeline in respect of *Swanston*. He responded:<sup>26</sup>

*I could have done. But as I say, Kennysing, after three months out home, he was galloping around the paddock. I thought he was gunna hurt himself.*

20. The Appellant conceded<sup>27</sup> that he was aware that the injury to *Kennysing* was serious. As to the advice given to him by Dr Giles, the Appellant's evidence included the following:

CHAIRMAN: *Do you recall what he said to you about the horse?*

APPELLANT: *Oh, I can't remember. Just said he had, he's got a tendon injury and needs a spell.*

CHAIRMAN: *You provided evidence to the Stewards that you were told to give the horse 3 months. That's not correct, is it? You were never told to give the horse 3 months, were you?*

APPELLANT: *Well, that's what I thought he told me.*

CHAIRMAN: *You thought that, but that's not the case, is it?*

APPELLANT: *No. Not now.*

CHAIRMAN: *Why did you tell the Stewards on that day that it was 3 months?*

APPELLANT: *Well, that's what I thought it was.*

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<sup>25</sup> Additional transcript 21.896 – 21.905.

<sup>26</sup> Additional transcript 22.917 – 22.920.

<sup>27</sup> Additional transcript 22.945.

CHAIRMAN: But you may have been confused with the other horse, is that right?

APPELLANT: That's right.

CHAIRMAN: You provided evidence also that you thought it was just a strain?

APPELLANT: Yes.

CHAIRMAN: Is that still your evidence? Do you still think it's a strain?

APPELLANT: Not now.

### **The Appellant's subjective case**

21. The Appellant relied upon a Statement of 18 March 2025 in which he expressed a “*genuine belief*” that Dr Giles had informed him that *Kennysing* was suffering from a strain and would require a 3 – 6 month spell.<sup>28</sup> He stressed that he would never bring a horse to race that was not sound.<sup>29</sup>

22. The Appellant made reference to the fact that his daughter was seriously injured in a race fall in 2022, and requires ongoing care.<sup>30</sup> Having outlined his financial position, he said that the consequences of a disqualification would be catastrophic to his training business and that, at the age of 70, he would find it difficult to find alternative employment.<sup>31</sup>

23. At the commencement of the hearing, a medical certificate under the hand of Dr Tahir, Consultant Radiation Oncologist, dated 25 June (i.e. the day prior to the hearing) was tendered.<sup>32</sup> Out of respect to the Appellant, I will not set out the details of that document. It is sufficient to note that the Appellant is faced with some serious personal challenges as the consequence of a recent diagnosis.

### **SUBMISSIONS OF THE PARTIES**

#### **Submissions of the Appellant**

24. The Appellant's written submissions may be summarised as follows:

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<sup>28</sup> At [6].

<sup>29</sup> At [12].

<sup>30</sup> At [13] – [16].

<sup>31</sup> At [22]- [23].

<sup>32</sup> Transcript 1.32.

1. There was a genuine misunderstanding between the Appellant and Dr Giles concerning the prognosis for *Kennysing*, and the time at which he could resume racing.<sup>33</sup>
2. That misunderstanding stemmed, at least in part, from the fact that examinations of *Kennysing* and *Swanston* were carried out on the same day.<sup>34</sup>
3. The potential for confusion was corroborated by Dr Giles in his evidence.<sup>35</sup>
4. As a consequence of all of these matters, the Appellant held a genuine belief that *Kennysing* was suffering from a strain and acted on that belief.<sup>36</sup>
5. Subjectively, the Appellant:
  - (a) is 70 years of age and has been involved in the racing industry since 1969;<sup>37</sup>
  - (b) is required, to the extent that he is able to do so, to provide support for his daughter;<sup>38</sup>
  - (c) has faced, and continues to face, serious personal challenges regarding his own health;<sup>39</sup>
  - (d) has significant financial obligations, such that a disqualification would have a devastating effect;<sup>40</sup>
  - (e) is an industry participant with only minor matters in his disciplinary history;<sup>41</sup>
  - (f) had, on this occasion, committed offences which fell at the lowest end of the scale of objective seriousness.<sup>42</sup>

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<sup>33</sup> At [8].

<sup>34</sup> At [10].

<sup>35</sup> At [11].

<sup>36</sup> At [14] – [15].

<sup>37</sup> At [18] – [19].

<sup>38</sup> At [20] – [21].

<sup>39</sup> At [23].

<sup>40</sup> At [23] – [25].

<sup>41</sup> At [26].

<sup>42</sup> At [30].

25. All of these matters were expanded upon in oral submissions at the hearing. Whilst no issue was taken with the fact that the normal period of spelling in circumstances such as these was 9 to 12 months, it was stressed on behalf of the Appellant that this was not the Appellant's understanding, and was not what he had been told.<sup>43</sup> It was also emphasised that there was no concealment on the part of the Appellant, no dishonesty, and no deliberate breach of any veterinary advice he had been given.<sup>44</sup> All of these matters, it was submitted, supported a conclusion that the level of culpability was low,<sup>45</sup> and that any penalty, be it a suspension or a disqualification, should be suspended.<sup>46</sup> This, it was submitted, was particularly so in circumstances where any disqualification would effectively bring an end to the Appellant's career.<sup>47</sup>

### **Submissions of the Respondent**

26. The Respondent's written submissions may be summarised as follows:

1. Having regard to the fact that the purpose of imposing a penalty is to protect the image and integrity of the racing industry, the penalty imposed by Stewards was appropriate.<sup>48</sup>
2. The death of *Kennysing* following Race 5 at Casino on 10 August 2024 followed an examination by Dr Giles on 24 October 2023 at which a significant lesion was found.<sup>49</sup>
3. The evidence of Dr Giles was that 90% of horses with that type of injury would not race again, a category into which *Kennysing* fell.<sup>50</sup>

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<sup>43</sup> Transcript 5.142 – 5.144.

<sup>44</sup> Transcript 5.170 – 5.173.

<sup>45</sup> Transcript 6.197.

<sup>46</sup> Transcript 8.267.

<sup>47</sup> Transcript 8.272.

<sup>48</sup> At [5].

<sup>49</sup> At [7](b).

<sup>50</sup> At [7](c).

4. Dr Giles had discussed all of these matters with the Appellant.<sup>51</sup>
5. The Appellant's assertion that he had a genuine belief that *Kennysing* had only suffered a strain was inconsistent with his evidence to the Stewards that he knew that it was a serious injury and a large lesion.<sup>52</sup>
6. A finding that the offending fell at the lowest end of the scale would be inconsistent with the objective fact that *Kennysing* suffered a catastrophic breakdown, in circumstances where the horse should not even have been in work, let alone racing.<sup>53</sup>
7. The appropriate starting point in terms of a penalty given those facts was a disqualification of 6 months.
8. Giving full allowance to the Appellant's subjective case, the penalty imposed by the Stewards remained appropriate.

27. These submissions were expanded upon at the hearing. It was submitted on behalf of the Respondent that whatever might be made of any misunderstanding that had arisen, it remained the case that the Appellant was responsible for the administration and control of his stables, and thus responsible for the horses within it.<sup>54</sup> Dr Giles' evidence of his discussions with the Appellant was emphasised, and it was submitted that it would not be open to conclude that there was any room for any misunderstanding on the part of the Appellant.<sup>55</sup>

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<sup>51</sup> At [7](e).

<sup>52</sup> At [8].

<sup>53</sup> At [12].

<sup>54</sup> Transcript 10.340.

<sup>55</sup> Transcript 11.392 – 11.396.

28. In all of these circumstances, it was submitted on behalf of the Respondent that the offending amounted to a serious breach of the Rules.<sup>56</sup> That said, the Respondent took no issue with the Appellant's subjective case.<sup>57</sup>

### **CONSIDERATION**

29. It will be evident from the above that the only issue that I am required to determine is penalty. In that regard, it is really Charge 1 which has been the focus of the appeal. In entering a plea of guilty to that charge, the Appellant obviously accepts that he engaged in an improper action of the general kind which is alleged. His case is that this came about as a consequence of a misunderstanding as to the advice which he received at the time and that, accepting this to be the case, any culpability falls at the lowest end of the scale. It follows, on the Appellant's case, that the penalty should be assessed on that basis, taking into account his subjective circumstances.

30. In the absence of seeing and hearing the Appellant and Dr Giles give evidence I am at something of a disadvantage. However, on the whole of the evidence, I am unable to accept that there was room for any misunderstanding of the kind that the Appellant asserts. I accept that Dr Giles was prepared to concede the possibility that the Appellant may have confused the time line in respect of *Kennysing* with that in respect of *Swanston*. However in my view, such a possibility tends completely against the weight of the evidence.

31. To begin with, and as Dr Giles pointed out, the Appellant has been training horses for a significant period of time and has had considerable experience with injuries of this general kind. Moreover, it is an agreed fact that although Dr Giles did not provide the Appellant with any written diagnosis or report, the Appellant was present when *Kennysing* was examined. It is therefore reasonable to infer that the Appellant knew of the nature and extent of the injury at the time of the

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<sup>56</sup> Transcript 12.434.

<sup>57</sup> Transcript 12.464.

examination. It is difficult, in those circumstances, to accept that some confusion may have arisen as a consequence of the examination of *Swanston* which was undertaken around the same time. It is equally difficult to accept the Appellant's evidence that he thought that the injury was in the nature of a strain, particularly given the evidence that Dr Giles showed him the relevant scan which demonstrated the extent of the lesion.

32. Further, Dr Giles' opinion was that 90% of horses with this kind of injury would not return to racing at any time. Given that, I am unable to accept that the Appellant was told that it would be necessary to spell the horse for only 3 months. That is substantially at odds with Dr Giles' professional assessment. In my view, his unequivocal evidence that no such advice was given should be accepted. Further, it was not unreasonable, in all of those circumstances, to expect that the Appellant would have had scans conducted before *Kennysing* was returned to racing, rather than rely upon the advice of persons who were not appropriately qualified to express an opinion about the horse's fitness, and the nature of his injury.

33. I unreservedly accept that the Appellant did not *deliberately* set out to harm *Kennysing*. I also accept that the Appellant, at least in his own mind, was acting honestly. However, I am unable to accept the submission that, viewed objectively, and making full allowance for the fact that *Swanston* was examined at the same time, the circumstances surrounding the examination of *Kennysing* by Dr Giles were apt to cause confusion. The Appellant was an experienced trainer, he was shown the scans which demonstrated the seriousness of the injury, he was told by Dr Giles that a period of spelling of substantially greater than 3 months was warranted, and he returned *Kennysing* to racing without follow-up scans, relying upon the advice of persons who were not appropriately qualified to determine the horse's fitness to race. In light of those conclusions I am unable to find that the offending fell at the lowest level of culpability as was submitted on his behalf.

34. It goes without saying that the welfare of horses, and the safety of those who ride them, are paramount considerations in the governance of the racing industry. Any breach by a participant of the obligations surrounding those issues is likely to meet with a period of disqualification. I have taken into account the matters put on behalf of the Appellant in terms of his subjective case. However, I must be mindful of the necessity to ensure that a subjective case, however strong, cannot be allowed to result in a penalty which is not consistent with the objective seriousness of the offence in question.

35. I am unable to conclude that the penalty imposed by Stewards should be reinstated. To do so would be to largely ignore the Appellant's subjective case, particularly the most recent adverse development in relation to his health. At the same time, for the reasons I have given, the penalty must be more than a suspension. Imposition of anything less than a disqualification would largely ignore the need for general deterrence.

36. In all of the circumstances, I have come to the view that the penalty imposed by the Panel was appropriate.

## **ORDERS**

37. I make the following orders:

1. The order made on 27 April 2025 pursuant to cl 20 of the *Racing Appeals Tribunal Regulation 2024* is vacated,.
2. The appeal is dismissed.
3. The penalty imposed by the Appeal Panel is confirmed.
4. The Appellant is disqualified for a period of 3 months.
5. Pursuant to AR 283(7), the commencement of the disqualification in order [3] shall be deferred until midnight on Sunday, 10 July 2025.
6. The appeal deposit will be forfeited.

**THE HONOURABLE G J BELLEW SC**

**4 August 2025**