

**IN THE RACING APPEALS TRIBUNAL**

**SAMANTHA MURPHY**

**Appellant**

**v**

**RACING NEW SOUTH WALES**

**Respondent**

**REASONS FOR DETERMINATION**

**DATE OF HEARING**

**4 March 2026**

**DATE OF DETERMINATION**

**2 April 2026**

**Appearances:**

**Mr J Bryant for the Appellant**

**Mr M Cleaver for the Respondent**

**ORDERS**

- 1. The Appellant is to file submissions on penalty by 17 April 2026.**
- 2. Noting that the Respondent has already addressed the issue of penalty, any supplementary submissions are to be filed by 24 April 2026.**
- 3. The issue of penalty will be determined on the papers.**

## **INTRODUCTION**

1. Samantha Murphy (the Appellant) has appealed against a determination of the Appeal Panel of Racing New South Wales (the Panel) of 1 February 2025, imposing a disqualification of 12 months commencing 13 July 2025 for various breaches of the Australian Rules of Racing (the Rules).
2. The matter was heard on 4 March 2026, following which judgment was reserved. The Appellant gave oral evidence at the hearing. The balance of the evidence is documentary in nature and is contained in a Tribunal Book (TB) prepared by the parties.
3. A previous application made by the Appellant for an order pursuant to cl 20 of the *Racing Appeals Tribunal Regulation 2024* (NSW) was refused.

## **THE CHARGES**

4. The following summary of the case against the Appellant is drawn from a report prepared by Stewards on 30 August 2025.<sup>1</sup>
5. In June 2025, the Respondent commenced an investigation into the care and welfare of thoroughbred horses kept at a property at Yass, New South Wales (the property). The horse *Promesa* was found deceased in a 120-acre paddock at the rear of the property.
6. Investigators attended Queanbeyan racecourse on 26 June 2025 and interviewed the Appellant. On 8 July 2025, the Appellant took part in an interview with officers of the Respondent, following which, on 10 July, a series of charges were brought against her. The Appellant was suspended on 13 July 2025 and has remained so ever since.

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<sup>1</sup> At TB 54 and following.

7. For the purposes of the present appeal, the relevant charges are 1, 2 and 9 (to each of which the Appellant pleads not guilty) as well as charge 8 (to which the Appellant pleads guilty).<sup>2</sup>

8. The first charge (charge 1) was contrary to LR 114(2)(a) which is in the following terms:

*A registered owner, trainer or any person that is in charge of, or has in his or her possession, control or custody any horses (Eligible Horses, Unnamed Horses and Named Horses) must ensure that any such horses are provided at all times with proper and sufficient nutrition and water.*

9. Charge 1 was particularised as follows:

*As at 20 June 2025, [the Appellant] was the person in charge of, or in possession, control or custody of, thoroughbred horse Promesa. During the relevant time periods the horse was at the Property, [the Appellant] did not attend to Promesa, nor did she conduct any inspections of the horse. During the relevant time periods, [the Appellant] failed to ensure that Promesa was provided with proper and sufficient nutrition and water. The lack of proper and sufficient nutrition was either entirely, or in part, a contributing factor to the death of Promesa.*

10. The second charge (charge 2) was contrary to r 231(1)(b)(iv) of the Rules which is in the following terms:

*A person must not, if the person is in charge of a horse, fail at any time, to provide and ensure that the horse is ingesting proper and sufficient nutrition.*

11. Charge 2 was particularised as follows

*As at 20 June 2025, [the Appellant] was the person in charge of, or in possession, control or custody of thoroughbred horse Promesa. During the relevant time periods the horse was at the Property, [the Appellant] did not attend to Promesa, nor did she conduct any inspections of the horse. During the relevant time periods, [the Appellant] failed to ensure that Promesa was provided with proper and sufficient nutrition and water. The lack of proper and sufficient nutrition was either entirely, or in part, a contributing factor to the death of Promesa.*

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<sup>2</sup> Transcript 17.

12. The third charge (charge 9) was contrary to r 228(b) of the Rules which is in the following terms:

*A person must not engage in misconduct, improper conduct or unseemly behaviour.*

13. Charge 9 was particularised as follows:

*On 17 April 2024, following a conversation via messenger with Ms Taran Kelly in which it was disclosed that Ms Taran Kelly previously had sent three horses to the zoo for lion food after they were shot (an act that if it related to thoroughbred horses, would otherwise constitute a contravention of LR 114(4)), Ms Murphy continued to refer multiple industry participants to Ms Kelly as a location to retire their horses. On these occasions, Ms Murphy facilitated the retirement of 27 thoroughbred horses and assisted with their transportation to Ms Kelly.*

14. As previously noted, the Appellant pleaded guilty to a further charge (charge 8) which alleged an offence contrary to r 232(b) of failing to comply with a direction given to her by Racing NSW Investigator Nikki Burke on 21 June 2025.

15. The following penalties were imposed by Stewards:

Charge 1 – 12 months disqualification  
Charge 2 – 12 months disqualification.  
Charge 8 – 4 months disqualification.  
Charge 9 – 6 months disqualification.

16. Having regard to principles of totality, a total period of 16 months disqualification was imposed, commencing on 13 July 2025 and expiring on 13 November 2026.

17. The Appellant appealed to the Panel who reduced the disqualification to one of 12 months.

## **THE EVIDENCE**

### **The inspection of the property on 20 June 2025**

18. Officers of the Respondent attended the property on the morning of 20 June 2025. The body of *Promesa* was found in an open area in a paddock and appeared to

have been deceased for about 2 – 3 weeks. The horse was noted to be in a poor to very poor body condition.<sup>3</sup>

### **The interview of the Appellant on 21 June 2025**

19. The Appellant was interviewed by Nikki Burke, an Investigator with the Respondent, on 21 June 2025. The Appellant told Ms Burke that *Promesa* was “at a friend’s house ... out at Yass”.<sup>4</sup> She confirmed that she owned the horse,<sup>5</sup> and explained how she had purchased and retired it because it “needed to sit in a paddock”.<sup>6</sup> She said that the horse was “very well looked after out there on (her) [i.e. the Appellant’s] behalf”.<sup>7</sup> She also said that Taran Kelly (Kelly), who lived on the property, was responsible for feeding the horse.<sup>8</sup>

20. Contrary to her earlier statement, the Appellant at one point appeared to suggest to Ms Burke that Kelly in fact owned the horse.<sup>9</sup> She then went on to explain that *Promesa* was “different” from the other horses on the property because he was “not going anywhere .... the intention was for him to stay out there until [she] had moved onto a property”.<sup>10</sup> She said that she had seen the horse two weeks before being informed of his death and that he “looked fine ... like a spelling thoroughbred that gets fed twice a day”.<sup>11</sup>

21. Ms Burke directed the Appellant not to speak to Kelly regarding the investigation.

### **The interview of the Appellant on 27 June 2025**

22. Ms Burke spoke to the Appellant again on 27 June 2025. At that time the Appellant’s phone was seized. The Appellant told Ms Burke on that occasion that

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<sup>3</sup> TB 72.

<sup>4</sup> TB 94 – 95.

<sup>5</sup> TB 95.

<sup>6</sup> TB 96.

<sup>7</sup> TB 96.

<sup>8</sup> TB 97.

<sup>9</sup> TB 99.

<sup>10</sup> TB 99

<sup>11</sup> TB 96.

she was aware of the prior involvement of the RSPCA with Kelly,<sup>12</sup> which she said had been “going on for ages and ages”.<sup>13</sup>

### **The interview of the Appellant on 8 July 2025**

23. The Appellant was interviewed by Mr Hadley on behalf of the Respondent on 8 July 2025. The Appellant said that at the time of his death *Promesa* was “still her horse”.<sup>14</sup> She said that she had sent *Promesa* to the property to retire him,<sup>15</sup> and that the plan was for the horse to “hang out there” until she obtained a property herself.<sup>16</sup> She said that she did not go and check on the horse but that as far as she was aware, he was being fed daily.<sup>17</sup> She said that she did not contribute to purchasing any of his feed.<sup>18</sup>

24. The Appellant said that she had seen the horse “within six months” of being advised that it was deceased.<sup>19</sup> When reminded of her previous statement to Ms Burke that she had seen the horse within a couple of weeks of him being found deceased, the Appellant accepted that what she had said previously was wrong, but denied having deliberately misled the Stewards.<sup>20</sup> She said that when she did see him, he had rugs on and she therefore could not see his body.<sup>21</sup>

25. The Appellant was asked about the conversation with Kelly in which reference was made by Kelly to sending horses to the zoo (which is set out below).<sup>22</sup> The Appellant said that she recalled the conversation, and was asked:<sup>23</sup>

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<sup>12</sup> TB 270; 280

<sup>13</sup> TB 281.

<sup>14</sup> TB 330.

<sup>15</sup> TB 331.

<sup>16</sup> TB 332.

<sup>17</sup> TB 333 - 334.

<sup>18</sup> TB 334.

<sup>19</sup> TB 335.

<sup>20</sup> TB 335.

<sup>21</sup> TB 335.

<sup>22</sup> Statements made in such conversation form the basis of charge 8 to which the Appellant pleaded guilty.

<sup>23</sup> TB 389.

HADLEY: *Looking back now, should we still be sending horses to a person who's sent them to a zoo for lion consumption? Is it the case you're putting the blinkers on and don't think an admission like that is concerning or alarming?*

APPELLANT: *Yeah, I would say that's exactly what happened. Yep. Thinking back now.*

...

HADLEY: *But you were made aware in April 2024 that she previously had horses shot or had three shot and then sent to a zoo for lion consumption. Following that you've still sent horses to the same person. Concerning, don't you think?*

APPELLANT: *Possibly, yeah.*

26. There does not appear to be any dispute between the parties that the Appellant in fact facilitated the retirement of 27 horses to the property after the conversation in question.

27. The Appellant agreed (by reference to photographs shown to her) that *Promesa* was not receiving sufficient nutrition.<sup>24</sup> She also accepted, without equivocation, that she had “*failed*” the horse in that regard.<sup>25</sup>

### **The Appellant's evidence at the hearing before the Panel**

28. Before the Panel, the Appellant's evidence included the following:<sup>26</sup>

*M CLEAVER: Okay. Did you ever go and inspect Promesa?*

*APPELLANT: I've seen from the fence line from the house, but never out.*

*M CLEAVER: So certainly you were capable to go and observe Promesa?*

*APPELLANT: I can't really answer that because it never occurred.*

*M CLEAVER: Well, your evidence was on both during your interviews, during the inquiry with the Stewards, was that you went out and you observed Promesa?*

*APPELLANT: Yes.*

*M CLEAVER: Your evidence was that you went out to the property, Ms. Kelly's property that is, every couple of months?*

*APPELLANT: Correct.*

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<sup>24</sup> TB 343.

<sup>25</sup> TB 348 – 349.

<sup>26</sup> Commencing at TB 40.

*M CLEAVER: So there was certainly opportunity for you to attend upon her premises? Yes?*

*APPELLANT: That I'd be now there, yes, when I'd taken horses.*

*M CLEAVER: At any stage, did Ms. Kelly say to you, "No, you cannot come to my property."*

*APPELLANT: No, because I was taking horses out there.*

*M CLEAVER: And you were friends with her?*

*APPELLANT: Correct.*

*M CLEAVER: Had a good relationship?*

*APPELLANT: Correct.*

*M CLEAVER: If you had said to her, "Hey, can I come and look at Promesa?" She would've allowed that.*

*APPELLANT: Probably not, but towards the end, I would assume not, no.*

*M CLEAVER: Did you ever ask to see Promesa and it was refused?*

*APPELLANT: No.*

*M CLEAVER: Okay. But towards the end, when you say towards the end there, did you form that view yourself that she might have been restricting you from accessing Promesa?*

*APPELLANT: No.*

*M CLEAVER: So at that time, up until the point of the Steward's intervention, you had no reason to believe that you could not go and see Promesa if you wished to do so, is that correct?*

*APPELLANT: Correct. I'd seen him from afar at the fence line, but not up close.*

*M CLEAVER: But you never made an effort to go up close and inspected to see how it was travelling?*

*APPELLANT: No, because I was on the understanding with Taran that she would call me if there was anything ever wrong with the horse.*

*M CLEAVER: We'll come to that shortly. Just so you're understanding in terms of physically, you never did that?*

*APPELLANT: Correct*

*M CLEAVER: Despite the fact that it was still your horse at the time.*

*APPELLANT: Correct.*

*M CLEAVER: And despite the fact that you knew that you could call upon it, it was the intention to bring it back to your property.*

*APPELLANT: Correct.*

*M CLEAVER: Now, you could have, for example, if Promesa you had any concerns or if you wanted something, you could have told Ms. Kelly how to handle that horse?*

*APPELLANT: Yeah.*

*M CLEAVER: You could have told her, "hey, I want it feed this, this particular substance".*

*APPELLANT: No.*

*M CLEAVER: Can you explain why you couldn't have done that?*

*APPELLANT: Because he was out in a paddock with other horses and he was getting fed exactly where her other horses out there were.*

*M CLEAVER: I appreciate that was the situation as you understood it. But the question was you could have told Ms. Kelly that you want to Promesa treated a certain way.*

*APPELLANT: No.*

*CONVENOR: I think that what Mr Cleaver is saying it was within your power to make the request. She might have said no, but there was nothing stopping you from asking that question.*

*APPELLANT: Yeah, well, I suppose I could have asked that question, but she wasn't going to be feeding him something different to what she was...*

*M CLEAVER: It's not what she may or may not have done, it's about you and what you could have done. There's nothing as Mr. Vellis put it, there's nothing preventing you from doing that was there?*

*APPELLANT: But there was no reason for me to.*

*M CLEAVER: No, that's not the question. There was nothing preventing you from doing that.*

*APPELLANT: No. There was nothing preventing me.*

*M CLEAVER: Promesa, was still your horse, you in your mind within your rights to tell Ms. Kelly how to treat your horse if you hadn't wanted to?*

*APPELLANT: Yeah, but it wouldn't have...yeah.*

### **The Appellant's evidence at the hearing of the appeal**

29. The Appellant made a statement dated 19 February 2026 on which she relied for the purposes of the present appeal, and on which she was cross-examined at the hearing.

30. The Appellant said that she first met Kelly in 2020 and developed a friendship with her.<sup>27</sup> Kelly was the owner of the property.<sup>28</sup> There was a paddock of approximately 120 acres further away from the residence and main driveway.<sup>29</sup> She said that although she delivered horses to the property, it was always to paddocks at the

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<sup>27</sup> At [7] – [8].

<sup>28</sup> At [10].

<sup>29</sup> At [18].

front, and that she never entered the 120 acre paddock.<sup>30</sup> She said that she did not have a key to the property, that she could not attend without Ms Kelly's permission, that she did not reside at the property, and did not have unrestricted access.<sup>31</sup> She enumerated a number of matters over which she said she had no control. They included the purchase, storage or distribution of feed; the supervision of feeding or watering; the control of feed; day to day supervisory authority; and the general welfare and management of *Promesa*.<sup>32</sup>

31. The Appellant acknowledged the direction she had been given by Ms Burke not to discuss the investigation with Kelly and agreed that she had subsequently had a 20 minute conversation with her. She said that she "*didn't believe*" that they discussed the investigation.<sup>33</sup>

32. In respect of *Promesa*, the Appellant said that at the time of placement at the property the horse was in good body condition.<sup>34</sup> She said that she understood the horse would be fed properly, and that if veterinary treatment were required she would be informed.<sup>35</sup> She said that she corresponded regularly with Ms Kelly and was consistently informed that *Promesa* was well and healthy.<sup>36</sup> She also said that she first became aware that something was wrong when she was contacted by officers of the Respondent who informed her that the horse had died.<sup>37</sup>

33. The Appellant accepted that she had a conversation in 2024 with Kelly in which Kelly informed her that she had "*sent three horses to the zoo for the lions*".<sup>38</sup> She said that Kelly provided no real specificity surrounding that comment, but that it was not made in the context of horses which were then on the property.<sup>39</sup>

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<sup>30</sup> At [19] – [21].

<sup>31</sup> At [22] – [25].

<sup>32</sup> At [26] – [34].

<sup>33</sup> TB 275.

<sup>34</sup> At [42].

<sup>35</sup> At [43] – [44].

<sup>36</sup> At [45] – [46].

<sup>37</sup> At [49].

<sup>38</sup> At [65].

<sup>39</sup> At [66] – [71].

34. As to her capacity to care for horses on the property, the Appellant said this:<sup>40</sup>

*During the relevant period, I did not have the practical capacity or authority to direct daily feeding arrangements at the property, alter paddock management, procure or distribute feed, supervise Promesa's ingestion of feed or intervene in real time in the management of the 120 acre paddock.*

*I did not exercise possession, custody or operational control over Promesa once he was placed on the property.*

35. In cross-examination, the Appellant was asked about those matters over which she said she had no control. It was put to her that it was not a case of not having the capacity to intervene, but rather a matter of her choosing not to do so. The Appellant ultimately agreed, at least as I understood it, that she could have intervened in matters of the management of *Promesa*, but did not because in her assessment there was no reason to do so.<sup>41</sup>

36. The Appellant was taken to a text exchange with Kelly on 20 April 2024 in which Kelly said “11 horses fighting for feed when three of them are rather food aggressive is scary”.<sup>42</sup> She said that this message did not alert her to any problem at the property, and did not suggest to her that she should give Kelly some particular directions in relation to *Promesa*.<sup>43</sup>

#### **MESSAGES BETWEEN KELLY AND THE APPELLANT**

37. Relevant to charge 8 are messages which passed between Kelly and the Appellant which are reproduced in the Respondent's submissions<sup>44</sup> as follows:

**Outgoing** *I just watched the new clip at Wagga. Racing NSW is involved too so as we thought there is some race horses there too.*

**Incoming** *It's apparently an unlicensed knackery.*

**Outgoing** *Yup it sure is.*

**Outgoing** *Cool rooms and freezers full of meat. Also feeding greyhounds.*

**Incoming** *Eeeeeewwwwww.*

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<sup>40</sup> At [91] – [92].

<sup>41</sup> Transcript 6.155 – 7.205.

<sup>42</sup> TB 106.

<sup>43</sup> Transcript 9.253.

<sup>44</sup> At [36]. Outgoing indicates a message from the Appellant to Kelly; incoming is the opposite.

**Outgoing** Yup that's why I haven't told you.

**Outgoing** Haha.

**Incoming** I probably have a very unpopular opinion to be honest.

**Outgoing** And that is? lol.

**Incoming** — I absolutely do not agree with people doing anything without the correct licenses however I do believe that knackeries have their place. If the animals were being destroyed humanely then I think there are a lot worse fates than a bullet. If they were not being put down humanely then obviously my opinion is completely different.

**Outgoing** I completely agree wholeheartedly.

**Incoming** I would NEVER send one to a knackery alive but some people have no choice.

**Outgoing** I don't mind the knackeries that do it properly. I sent two to them in WA for various reasons but they were tied in a clean wash bay and shot away from the 'slaughter shed'. It's not something I make public but there are reasons why some end up there.

**Outgoing** I wouldn't send one to the knackeries over here where they are put in crushes etc. The horses I took were done while I was still there.

**Incoming** Exactly right. I've never done it but I'd never judge someone that has! I also believe once they're dead they're dead. So many farmers have kill pits, all the 'deads' from SELX were just dumped at the tip at Jugiong — there never seems to be any uproar about that. Again, if they were not killed humanely I'm not ok with it at all and it's not something I would do but lots do.

**Incoming** Like I said unpopular opinion but that's mine.

**Outgoing** Honestly it's nicer than what they are doing to the wild brumbies with the chopper shooting.

**Outgoing** I agree with you, there is always a better way of doing things but there is always going to be a better than the last if you get me?

**Outgoing** Just on the racehorse side. If they were smart they would have cut the microchips out.

**Incoming** Big shock for everyone so I get all the media etc. If they're operating illegally then they should be charged for that but just because they're operating illegally doesn't mean the animals suffered or that there wasn't a good reason for them being there. I'm not saying that is the case because we don't know but it is possible.

**Incoming** If it was just bones how the hell is the microchip still there?

**Incoming** Oh well there you go.

**Outgoing** Ahh they would still be in the ground where the carcass is, if they were not cut on I suppose?

**Incoming** Oh fair point.

**Incoming** Might need to charge your phone mate.

**Outgoing** Ohh 100% but what makes it illegal if they are just feeding their animals? Makes no difference to a farmer chopping up cattle or sheep right?

**Outgoing** It's on charge hahaha.

**Incoming** Exactly... is it illegal? Are there laws saying you can't kill a horse for dog food? For all we know that could be 500 over 10 years. That's 1 horse a week to feed their own dogs... don't get me wrong that's fucked BUT if someone comes and says this horse is dangerous can you shoot it and you can do what you like with the meat — is that illegal?

**Incoming** I sent three to the zoo for the lions... they were shot here but they went to the lions (emphasis added).

## **SUBMISSIONS OF THE PARTIES**

### **Submissions of the Appellant – Charge 1**

38. The submissions of Mr Bryant in respect of charge 1 centred upon the meaning of the term “*in charge of*” as it appears in LR 114(2)(a), that being the basis upon which the Respondent has brought its case.<sup>45</sup> By reference to principles of statutory construction, Mr Bryant advanced the following submissions:

1. The expression “*in charge of*” cannot be read in isolation. Because it is included in a provision directed towards the welfare of horses, a person is only “*in charge*” of a horse if they retain “*present supervisory authority and practical ability sufficient to secure compliance with that obligation*”.<sup>46</sup>
2. The evidence established that:
  - (a) the horse was kept at a property owned and occupied by Kelly;
  - (b) Kelly exercised the day to day supervision of the horses on that property, and controlled paddock access, feeding arrangements, grouping, feed procurement and daily oversight of the horses’ condition;<sup>47</sup>
  - (c) the Appellant did not live at the property and although she retained ownership of *Promesa* she was not involved in the management or feeding regime of the horse.<sup>48</sup>
3. The rules should not be construed as creating some form of vicarious liability or agency.<sup>49</sup>
4. The matters for which Kelly was responsible were the practical indicia of being “*in charge of*” a horse within the meaning of the rule.<sup>50</sup>
5. Adoption of the construction advanced by the Respondent would result in a conclusion that a person who did not reside at the property, and who lacked access or operational control, was somehow to be regarded as being “*in charge*” when the person exercising direct and real-time supervisory authority was not so regarded.<sup>51</sup>

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<sup>45</sup> Submissions at [14].

<sup>46</sup> Submissions at [19].

<sup>47</sup> Submissions at [21].

<sup>48</sup> Submissions at [25].

<sup>49</sup> Submissions at [26].

<sup>50</sup> Submissions at [31] – [32].

<sup>51</sup> Submissions at [33].

6. It was also incumbent upon the Respondent to establish that the Appellant failed to ensure that *Promesa* was provided with proper and sufficient nutrition and water. Used in that way, the word “*ensure*” connotes making certain, or securing or bringing about a result, and presupposes a capacity to direct or influence the relevant conduct or requirement. A person cannot “*ensure*” that a horse is properly cared for when the day to day responsibility for that care rests with someone else.<sup>52</sup> The mere fact of having some *capacity* to request information is not tantamount to control.<sup>53</sup>
7. Whilst LR 114(2)(a) incorporates an obvious welfare objective, the Respondent had failed to establish that the Appellant:
  1. was “*in charge*” of *Promesa*; and/or
  2. had the practical supervisory authority necessary to “*ensure*” the provision of proper and sufficient nutrition and water.

### **Submissions of the Respondent – Charge 1**

39. The submissions advanced on behalf of the Respondent in respect of charge 1 may be summarised as follows:

1. The rules are not to be interpreted in a manner akin to that of a statute, but are to be given the ordinary meaning.<sup>54</sup> That requires a consideration of the text, context and purpose of the provision, in the broader scheme of the rules.<sup>55</sup>
2. The underlying purpose of LR 114 is to ensure the welfare of horses.<sup>56</sup>
3. The ordinary meaning of the term “*in charge of*” is “*in control, or with overall responsibility*”. Control means “*the power to influence or direct people’s behaviour or the course of events*”.<sup>57</sup>
4. The use of the terms “*possession*”, “*control*” and “*custody*” in the rule indicate that the notion of being “*in charge*” is a wide one, which extends beyond the physical handling, possession, or keeping of a horse.<sup>58</sup>

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<sup>52</sup> Submissions at [39].

<sup>53</sup> Submissions at [40].

<sup>54</sup> Submissions at [6].

<sup>55</sup> Submissions at [7].

<sup>56</sup> Submissions at [10].

<sup>57</sup> Submissions at [12].

<sup>58</sup> Submissions at [12].

5. The rule generally, and the use of the term “*in charge of*” in particular, should not be narrowly construed.<sup>59</sup>
6. The term “*in charge of*” cannot be considered in isolation, divorced from the overall context of the rule. The term connotes continuing authority, and imposes an ongoing duty upon all persons who retain effective responsibility for the welfare of a horse.<sup>60</sup>
7. The Appellant at all times retained authority to make decisions about the horse and its treatment, and was thus “*in charge*” of *Promesa* within the meaning of the rule.<sup>61</sup>

40. It should be noted that the representatives of both parties expanded upon their submissions in respect of all issues in the course of the hearing of the appeal. The entirety of the submissions have been considered.

#### **CONSIDERATION – CHARGE 1**

41. Charge 1 is brought pursuant to LR 114(2)(a), the terms of which have been set out. Having regard to the terms of the rule, and the way in which the case has been put, in order to establish charge 1 the Respondent must establish that the Appellant:

1. was in charge of *Promesa*; and
2. failed to ensure that *Promesa* was provided, at all times, with proper and sufficient nutrition and water.

42. I accept, as a general proposition, that rules of the kind presently being considered are not to be scrutinised as one would scrutinise a statute.<sup>62</sup> However, that is not to say that principles of statutory construction are entirely irrelevant, a proposition with which I did not understand the parties to disagree.<sup>63</sup> Bearing that

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<sup>59</sup> Submissions at [13].

<sup>60</sup> Submissions at [13].

<sup>61</sup> Submissions at [14].

<sup>62</sup> See for example *Day v Harness Racing New. South Wales* (2014) 88 NSWLR 594 at [79] – [81].

<sup>63</sup> Transcript 18.565.

in mind, the following general principles of statutory construction remain relevant to the present case.

43. Firstly, the primary objective of construction is to construe the relevant provision in a way which is consistent with the language and purpose of all of the provisions of the rule. The meaning of the provision must therefore be determined by reference to the language of the rule as a whole.<sup>64</sup>

44. Secondly, the task of construction begins and ends with a consideration of the text, which must be considered in light of its context, its regulatory purpose, and any relevant history. Understanding context has utility if, and in so far as, it assists in fixing the meaning of the text.<sup>65</sup>

45. Thirdly, context should be considered in the first instance, and not merely when ambiguity is said to arise.<sup>66</sup>

46. Finally, a construction that promotes the purpose of the rule is to be preferred over one which does not.<sup>67</sup>

47. Applying those principles, the following conclusions can be reached.

48. To begin with, the rule is plainly directed towards the issue of animal welfare which is of obvious importance to the racing industry as a whole. That purpose underpins the context in which the meaning of the rule is to be considered. Moreover, the importance of maintaining animal welfare is such that the rule should not be construed narrowly.

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<sup>64</sup> *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355; [1990] HCA 28 at [69] – [70] per McHugh, Gummow, Kirby and Hayne JJ.

<sup>65</sup> *Thiess v Collector of Customs* (2014) 250 CLR 664; [2014] HCA 12 at [22] – [23]; *SAS Trustee Corporation v Miles* (2018) 265 CLR 137; [2018] HCA 55 at [20]; [41]; [64].

<sup>66</sup> *STZAL v Minister for Immigration and Border Protection* (2017) 262 CLR 362; [2017] HCA 34; at [14]; [36].

<sup>67</sup> *Project Blue Sky* at [78].

49. I am unable to accept the submission advanced on behalf of the Appellant that a person can only be regarded as being “*in charge*” of a horse if they have present supervisory authority. Such a proposition is at odds with the terms of the rule, the terms of which incorporate a number of alternatives. In particular, the classes of persons in whom it creates a liability extends beyond (amongst others) those who have possession, custody or control of horses, to those who can be established as being “*in charge*” of a horse within the meaning of that term. It follows that the rule recognises that a person can be *in charge of* a horse even the horse was not in that person’s immediate possession, custody or control at the material time. That is reflective of an intention that the rule have the widest possible reach, a conclusion which is consistent with the vice that the rule seeks to address.

50. The term “*in charge of*” is not defined. Consistent with the principles set out above, it is to be given its natural and ordinary meaning. The term simply means being responsible for something.<sup>68</sup> In the present case, bearing in mind the importance of context in the construction of the rule, the “*something*” must be the welfare of *Promesa*.

51. With all of those matters in mind, I am satisfied that the Appellant was “*in charge of*” *Promesa* at the material time. That is so for the following reasons.

52. Firstly, for the reasons I have stated, the use of the term “*in charge of*” in the rule, in addition to the other categories of liability, is a clear indication of the fact that a person can be “*in charge*” even if that person does not have immediate possession of the horse. A conclusion that the Appellant was in charge therefore promotes the object of the rule. The contrary conclusion advanced on behalf of the Appellant does not.

53. Secondly, the Appellant admitted, on more than one occasion, that she was the owner of *Promesa*. She also accepted that the arrangement with Kelly one which

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<sup>68</sup> *Cambridge Dictionary*.

involved having the horse on the property to look after it on her (i.e. the Appellant's) behalf. Those objective facts are at odds with a conclusion that the Appellant transferred total responsibility for the welfare of the horse to Kelly. Indeed, the Appellant told Ms Burke that the presence of the horse on the property was only a temporary arrangement until such time as she (i.e. the Appellant) located a suitable property on which to live. She also told Ms Burke that it was because of that fact that in terms of care, *Promesa* was "different" from the other horses on the property.

54. Thirdly, I do not accept that the Appellant was, in any practical sense, restricted in the extent to which she was able to exercise control over the management of *Promesa*. Before the Panel, and also during the hearing of the appeal, the Appellant steadfastly maintained that she did not have the capacity to intervene in that regard. I do not accept that to be the case, particularly given what appears to have been a close relationship between her and Kelly. In circumstances where she remained the owner of *Promesa*, and where the arrangement with Kelly was temporary, it remained open to the Appellant to make whatever enquiries she thought appropriate, and to intervene, at any time. Indeed, on the evidence, the level of control she had included the ability to retrieve *Promesa* from the property at will if she wished to do so. The various restrictions of which the Appellant spoke in her evidence do not lead to the conclusion that she lacked the *capacity* to intervene. Clearly, the Appellant had the capacity, but chose (for reasons which remain unclear) not to exercise it. Statements made to the Panel, and in cross-examination at the hearing of the appeal, tend towards a reluctant acceptance that this was the case.

55. As to the second element of the charge, the evidence clearly establishes that *Promesa* was found deceased, and in a poor body condition. As a matter of common sense, and even in the absence of expert evidence, that poor condition did not manifest itself, as it were, overnight. The photographic evidence shows the horse in an emaciated condition, consistent with a severe lack of nutrition.

56. The Appellant conceded to Mr Hadley that the horse had been retired into her care, and that she “*failed*” the horse. In other words, she failed to ensure – i.e., she failed to make certain – that *Promesa* was provided, at all times, with proper and sufficient nutrition and water. As the person in charge of *Promesa* the Appellant had a continuing obligation in that regard.

57. Charge 1 is therefore made out.

### **Submissions of the Respondent – Charge 2**

58. The submissions of the Respondent in respect of charge 2 may be summarised as follows:

1. For the reasons advanced in support of charge 1, the Appellant was not in charge of the horse.<sup>69</sup>
2. The duty to ensure that the horse was ingesting proper and sufficient nutrition presupposes that the Appellant had the capacity to control feeding arrangements and supervise intake.<sup>70</sup>
3. The relevant supervision and control of the horse was exercised by Kelly, and the Appellant’s ability to communicate with her did not amount to the supervisory authority necessary for the charge to be made out.<sup>71</sup>
4. The charge requires that I be satisfied that the Appellant had the practical capacity to provide feed and to supervise ingestion, but failed to do so.<sup>72</sup>
5. The word “*ingesting*” is significant and requires more than arranging for feed to be available. In that sense, there is an element of causation which must be made out.<sup>73</sup>

### **Submissions of the Respondent – Charge 2**

59. The submissions of the Respondent may be summarised as follows:

1. For the reasons previously advanced, the Appellant was in charge of the horse.

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<sup>69</sup> Submissions at [51].

<sup>70</sup> Submissions at [52].

<sup>71</sup> Submissions at [54] – [57].

<sup>72</sup> Submissions at [61].

<sup>73</sup> Submissions at [64].

2. The entirety of the evidence pointed unequivocally to a prolonged failure to ensure that *Promesa* was provided with, and ingested, proper and sufficient nutrition and water.<sup>74</sup>

## **CONSIDERATION – CHARGE 2**

60. For the reasons previously outlined, I am satisfied that the Appellant was in charge of *Promesa*. In that capacity, she had an ongoing obligation to ensure the horse’s welfare. The Appellant did not meet that obligation. So much is clear, in particular, from the photographic evidence.

61. Further, for the reasons I have stated, I am satisfied that the Appellant *did* have the capacity that she is said to have been lacking.

62. Charge 2 is therefore made out.

## **Submissions of the Appellant – Charge 9**

63. The submissions of the Appellant in respect of Charge 9 may be summarised as follows:

1. Rule 228(b) is not a “*catch all for errors of judgment assessed with hindsight*”.<sup>75</sup>
2. The conversation which forms part of the basis of the charge was private, and was not published, circulated or communicated to any third party.<sup>76</sup>
3. There is no independent evidence that the event (i.e., the sending of deceased horses to the zoo) actually occurred; that any thoroughbred was involved; that the conduct (if established) occurred within New South Wales; or when it took place. All of those matters are legally significant.<sup>77</sup>
4. The prevailing circumstances provided a rational basis for the Appellant to regard the statement by Kelly as “*exaggerated, historic, or not indicative of systemic mistreatment or neglect*”.

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<sup>74</sup> Submissions at [26].

<sup>75</sup> Submissions at [68].

<sup>76</sup> Submissions at [73].

<sup>77</sup> Submissions at [74].

5. The evidence does not establish that any misconduct occurred.<sup>78</sup>

### **Submissions of the Respondent – Charge 9**

64. The submissions of the Respondent may be summarised as follows:

1. Whether conduct is improper is an objective question and does not require proof of intention or motive. The central question is whether a reasonable observer would regard the conduct as inappropriate.<sup>79</sup>
2. Despite the fact that Kelly had made “*alarming*” statements in relation to retired racehorses, the Appellant continued to refer multiple industry participants to Kelly as a retirement location without taking steps to satisfy herself of the suitability of that arrangement.<sup>80</sup>
3. The Appellant was aware of involvement of the RSPCA in Kelly’s activities.<sup>81</sup>
4. Whether or not Kelly’s statements about sending horses to the zoo for lions were true was inconsequential.<sup>82</sup>
5. In light of the Appellant’s evidence in the hearing before the Panel, there was no room for the suggestion that there was potential for the Appellant to regard the comments made by Kelly as rhetorical, exaggerated, or false.<sup>83</sup>

### **CONSIDERATION – CHARGE 9**

65. Charge 9 has, as its focus, conduct of the Appellant which is said to have been improper. The term “*improper*” means “*unsuitable, or not correct for a particular use or occasion*”.<sup>84</sup> In determining whether conduct is improper, the conduct is to be viewed objectively, without regard to questions of intention. The question is whether a reasonable observer would regard the conduct as inappropriate, bearing in mind that the present determination is to be made in the context of a regulated, integrity-based sport.<sup>85</sup>

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<sup>78</sup> Submissions at [99] – [105].

<sup>79</sup> Submissions at [34].

<sup>80</sup> Submissions at [37].

<sup>81</sup> Submissions at [38].

<sup>82</sup> Submissions at [40].

<sup>83</sup> Submissions at [41].

<sup>84</sup> Cambridge Dictionary.

<sup>85</sup> See *Watt v Racing New South Wales* (1 May 2015); *Talbot and Sayer v Greyhound Racing New South Wales* (20 May 2019); *Johnson v Racing New South Wales* (28 November 2012).

66. Bearing these matters in mind, I make the following observations.

67. Firstly, the application of the objective test of impropriety has, as its focus, the *conduct* in question, not the intention (if any) which lies behind it. Whether the event of which Kelly spoke actually occurred, whether (if it did) any thoroughbred was involved, or whether the event occurred in New South Wales, are simply not relevant. The focus is upon an evaluation of whether, on the information which was provided to her, the Appellant engaged in conduct which was objectively improper by referring a further 27 horses into Kelly's care.

68. Secondly, the fact that the conversation(s) between Kelly and the Appellant were private is not to the point. The rule under which the charge has been brought does not require proof of publication. It would be entirely perverse if a person in the Appellant's position was entitled to, in effect, "*hide*" behind the fact that a conversation was private in order to escape sanction for conduct which was otherwise objectively improper.

69. Thirdly, the Appellant herself has not suggested, at any time, that the circumstances surrounding the conversation provided her with any basis to regard the statements made by Kelly as anything other than truthful. Indeed, her statements are generally to the contrary.

70. Fourthly, this is not a case where a person in the Appellant's position is simply wise with hindsight. The statements made by Kelly were clear and unequivocal. They raised serious issues of animal welfare in respect of animals under her control. The Appellant was aware, amongst other things, of previous involvement by the RSPCA in Kelly's affairs. She agreed that, having been provided with information by Kelly, she had "*put the blinkers on*". That is not an admission with the benefit of hindsight. It is, if anything, an admission of wilful blindness which manifested itself at the material time.

71. For all of these reasons, charge 9 is made out.

## **ORDERS**

72. I am satisfied that each of the charges to which the Appellant pleaded not guilty has been established. I make the following orders:

1. The Appellant is to file submissions on penalty by 17 April 2026.
2. Noting that the Respondent has already addressed the issue of penalty, any supplementary submissions are to be filed by 24 April 2026.
3. The issue of penalty will be determined on the papers.

**THE HONOURABLE G J BELLEW AM SC**

**2 April 2026**