APPEAL PANEL OF RACING NEW SOUTH WALES

IN THE MATTER OF THE APPEAL OF
LICENSED TRAINER JOHN O'SHEA

Appeal Panel:	**Mr L Gyles SC – Principal Member;**
	Ms J Foley; Mr J Murphy
Representatives:	**Racing NSW – Mr Cleaver**
	Appellant – Mr Stirling
Date of Hearing:	**24 March 2026**
Date of Decision:	**31 March 2026**

REASONS FOR DECISION

L GYLES SC: Principal Member

This is an Appeal by Licensed Trainer John O'Shea against the sanction imposed on him by the Stewards on 17 March 2026 in respect of three offences arising from insulting and abusive behaviour, including towards Veterinarians, one under AR228(b), and two under AR228(c). Mr O'Shea pleaded guilty to each of the charges and the Stewards imposed a 4 month disqualification.

A Notice of Appeal was filed on 17 March 2026 against the sanction imposed by the Stewards on the following grounds:

(a) LR108(5) was enacted outside power and is invalid;

(b) LR108(5) is inconsistent with AR283(6) and AR1(1) renders it ineffective;

(c) The penalty is manifestly unjust.

An Application for a Stay was also filed at the same time as the filing of the Notice of Appeal.

The proceedings were expedited and the stay application and the hearing of the Appeal were listed on an urgent basis on 24 March 2026, that is, within 7 days of the filing of the Notice of Appeal.

A timetable was set for the service and filing of written submissions on the day before the hearing, which was complied with. The matter was heard at the offices

of Racing NSW. Mr Cleaver appeared for the Stewards and Mr Stirling of Counsel for Mr O'Shea.

The evidence before the Panel comprised an Appeal Book including a transcript of the Stewards Enquiry on 9 March 2026 at which various witnesses were called, and a written determination by the Stewards in respect of the charges against Mr O'Shea dated 20 March 2026.

No additional material was put before the Panel on the hearing of the Appeal, nor was oral evidence called.

At the conclusion of the hearing the Panel determined to grant a Stay of the sanction imposed by the Stewards, pending the determination of the Appeal. This order was made over the opposition of the Stewards, but the Panel was satisfied that the grounds of Appeal were arguable and that there was at least a *possibility* of the Appeal succeeding and a new sanction being imposed which did not involve Mr O'Shea being disqualified. Whilst the Stewards argued that the serious nature of the conduct rendered it necessary for the sanction of disqualification to have immediate effect to protect the image of racing in NSW, the Panel indicated that it may be able to provide a judgment before Easter, or if not then shortly after. Given the relatively short period that the Stay would be in place the Panel was not satisfied that over that short period there was a public interest or public image issue which necessitated what may be an interim disqualification of Mr O'Shea. Mr Cleaver sought leave to renew his opposition to the Stay at a future time, and such leave was granted.

The conduct which gave rise to the charges being laid by the Stewards against Mr O'Shea took place at Rosehill Gardens Racecourse on 21 February 2026, shortly after the scratching of one of Mr O'Shea's horses, *Bev's Nine*, on veterinary advice after the horse was examined by the on-course Veterinarian. The charges related to comments made by Mr O'Shea in connection with the scratching of the horse, in the rear swab area and then in conversations with two Racing NSW official veterinarians, Dr Claire Moore and Dr Carly Garling.

At the conclusion of the Stewards enquiry, charges were laid pursuant to Division 3 of the Australian Rules of Racing – **Conduct detrimental to the interests of racing**. The three relevant charges are set out below:

[Charge 1: AR228(b)]

Mr John O'Shea, you are hereby charged with a breach of AR228(b) for having engaged in improper conduct.

AR228(b) Conduct detrimental to the interests of racing

(1) A person must not engage in:

(b) misconduct, improper conduct, or unseemly behaviour

The details of the charge being that you, licensed trainer Mr John O'Shea, did engage in improper conduct, by reason of one, or any combination of two or more, of the following particulars:

1. At all relevant times, you were a licensed trainer with Racing NSW and were bound by, and required to comply with, the Rules of Racing.

2. On Saturday, 21 February 2026, you were in attendance at Rosehill Gardens Racecourse where the horse *Bev's Nine* was engaged to compete in Race 3.

3. Prior to the running of Race 3, *Bev's Nine* was examined by the on-course veterinarian and subsequently scratched on veterinary advice due to lameness.

4. At approximately 2:28pm, you proceeded towards the rear swab area at Rosehill Gardens and, in a raised and aggressive tone, stated words to the effect of*, "Where are the fucking vets?"*

5. You further stated words to the effect of, *"why are they so fucking useless"* referring to the veterinarians.

6. The above-mentioned conduct occurred in an open area, visible and within audible range of other parties which included industry participants and Officials.

7. Your conduct as detailed above amounts to improper conduct.

[Charge 2: AR228(c)]

Mr John O'Shea, you are hereby charged with a breach of AR228(c) for having engaged in improper and/or insulting behaviour.

AR228(c) Conduct detrimental to the interests of racing

(1) A person must not engage in:

(c) improper or insulting behaviour at any time towards a PRA, the Stewards, a Club, or any official, employee, contractor or agent of any of them in relation to the relevant person's functions, powers or duties;

The details of the charge being that you, licensed trainer Mr John O'Shea, engaged in improper and/or insulting behaviour towards an official in relation to that person's functions, powers and/or duties, by reason of the following particulars:

1. At all relevant times, you were a licensed trainer with Racing NSW and were bound by, and required to comply with, the Rules of Racing.

2. On Saturday, 21 February 2026, you were in attendance at Rosehill Gardens Racecourse where the horse *Bev's Nine* was engaged to compete in Race 3.

3. Prior to the running of Race 3, *Bev's Nine* was examined by the on-course veterinarian and subsequently scratched on veterinary advice due to lameness.

4. At approximately 2:30 pm, you approached Racing NSW Official Veterinarian Dr Claire Moore. During that interaction you spoke in a raised and aggressive tone, repeatedly interrupted and spoke over her while she attempted to explain the veterinary decision, preventing her from responding to the questions you had asked. You pointed your finger and raised your arms in an animated and aggressive manner and stood in very close proximity to Dr Moore such that spittle from your mouth landed on her while you spoke. You stated in a sarcastic tone, *"How many trot-up examinations do you perform in a week?"* and then responded to your own question saying, *"probably none".*

5. The above-mentioned conduct occurred in an open area, visible and within audible range of other parties which included industry participants and officials.

6. Your conduct as detailed above amounts to improper behaviour.

7. Further to particular 6 above, or in the alternative, the behaviour referred to at paragraph 4 was insulting.

8. The behaviour referred to in paragraph 4 was towards Dr Moore in relation to her functions, powers and/or duties as a Racing NSW Official Veterinarian.

[Charge 3: AR228(c)]

Mr John O'Shea, you are hereby charged with a breach of AR228(c) for having engaged in improper and insulting behaviour.

AR228(c) Conduct detrimental to the interests of racing

(1) A person must not engage in:

(c) improper or insulting behaviour at any time towards a PRA, the Stewards, a Club, or any official, employee, contractor or agent of any of them in relation to the relevant person's functions, powers or duties;

The details of the charge being that you, licensed trainer Mr John O'Shea, engaged in improper and/or insulting behaviour towards an official in relation to that person's functions, powers and/or duties, by reason of the following particulars:

1. At all relevant times, you were a licensed trainer with Racing NSW and were bound by, and required to comply with, the Rules of Racing.

2. On Saturday, 21 February 2026, you were in attendance at Rosehill Gardens Racecourse where the horse *Bev's Nine* was engaged to compete in Race 3.

3. Prior to the running of Race 3, *Bev's Nine* was examined by the on-course veterinarian and subsequently scratched on veterinary advice due to lameness.

4. About 2:30pm, Racing NSW Official Veterinarian Dr Carly Garling approached you as you were engaged in an interaction with Dr Claire Moore. At the time, you were speaking to Dr Moore in a raised and aggressive tone. Dr Garling said words to the effect of, *"Please stop speaking to Dr Moore in that way."*

5. You then turned your attention to Dr Garling and, in a raised and aggressive tone:

    a. repeatedly spoke over and interrupted her, preventing her from responding;

    b. used animated arm movements and pointed your finger while speaking;

    c. stood in close proximity to her in a manner perceived as intimidating; and

    d. continued speaking in that raised and aggressive manner as Dr Garling walked toward the Stewards' Room.

6. The above-mentioned conduct occurred in an open area, visible and within audible range of other parties which included industry participants and Officials.

7. Your conduct as detailed above amounts to improper behaviour.

8. The behaviour referred to in paragraph 5 was towards Dr Garling in relation to her functions, powers and/or duties as a Racing NSW Official Veterinarian.

Mr O'Shea pleaded guilty to each of the charges. Mr Stirling on his behalf accepted that by that guilty plea, Mr O'Shea admitted the conduct identified in the particulars and the Panel proceeds on the basis that such matters are not in contest.

After Mr O'Shea had pleaded guilty to the three charges, he was invited to make submissions to the Stewards with respect to penalty. Mr Stirling provided a detailed written submission dated 16 March 2026 which made the arguments now the subject of Grounds 1 and 2 of this Appeal concerning LR 108(5), and whether the sanction was required to be a disqualification, or could be something less than that.

He ultimately contended that a total penalty in the range of $4,000 - $6,000 would be appropriate by way of a single penalty to cover each of the three charges. Those submissions before the Stewards were annexed to the written submissions provided to the Panel prior to the hearing.

In their Determination, the Stewards indicated that they had regard to the matters raised in those submissions, however it is implicit that they did not accept Mr Stirling's submission that LR108(5) was invalid or otherwise inconsistent with AR283, and that they used LR108(5) to determine the sanction.

The Stewards were however satisfied that Mr O'Shea had established special circumstances by reason of his early guilty plea and his assistance to the Stewards in the investigation, and on that basis adopted and applied the reasoning in *McDonald v Racing NSW* (Racing Appeal Tribunal, 17 April 2017), affirmed in *McDonald v Racing NSW* [2017] NSWSC 1511. On that basis, the Stewards took the view that the mandatory minimum disqualifications imposed by LR108(5) applied but that it ought be reduced by two months to bring to account the special circumstances which were established, and ultimately imposed a disqualification of a total period of 4 months in relation to the three charges. In discounting the six month period in that way, the Stewards adopted the reasoning in *McDonald* to the effect that matters other than those giving rise to the special circumstances could not be taken into account.

There are essentially three issues which arise on this Appeal.

First, whether LR108(5) is inconsistent with, varies or amends AR283, and is hence either invalid or otherwise ought not be applied to the extent of the inconsistency with AR283.

The second point is, assuming LR108(5) to be valid and applicable, whether the Stewards, and this Panel, are only given the power to reduce the period of

disqualification as compared to having the more general powers to impose alternative forms of relief provided under AR283.

The third issue concerns whether the penalty imposed upon Mr O'Shea was manifestly unjust.

If the Panel accepts the Appellant's arguments in respect of issues 1 or 2, meaning that error will have been established in the way the Stewards determined the sanction imposed upon Mr O'Shea, the Panel have been invited to substitute their own sanction rather than sending the matter back to the Stewards. Each of the parties accept that approach as being appropriate and consent to it. Further, to the extent that errors are established in respect of issues 1 and/or 2, issue 3 would not arise.

The Panel for the sake of completeness notes that LR108(5) was added to the Rules of Racing on 1 June 2025.

Validity / Applicability of LR108(5)

Mr Stirling submits that LR108(5) was enacted without power and contrary to AR9, rendering it invalid. In the alternative he submits that there is a conflict or inconsistency between AR283(6) and LR108(5), with the effect that AR1(1) takes effect, and AR283(6) prevails over LR108(5).

Given that the Stewards determined the sanction upon the basis of LR108(5), and the mandatory disqualification contained in it, if Mr Stirling's submissions are accepted then he will have established that the Stewards fell into error in their considerations.

The Rules of Racing which are relevant to this issue are usefully set out in Attachment A to Mr Stirling's submissions and which are reproduced below:

ATTACHMENT A

> **AR 1 Interpretation principles**
> (1) If there is any conflict or inconsistency between a rule contained in these Australian Rules and a Local Rule, to the extent of the conflict or inconsistency the provisions in these Australian Rules will prevail.
> ……
>
> **AR 4 Races and race meetings subject to these Australian Rules**
> (1) These Australian Rules:
> ….
> (b) together with any Local Rules made by a PRA from time to time (provided they are not repugnant to or inconsistent with these Australian

Rules) shall be read and construed as the rules of the PRA and apply to all races held under the management or control of the PRA.

AR 9 Only Racing Australia to make new rules

(1) Racing Australia and only Racing Australia may make new rules forming part of these Australian Rules, vary or amend any provisions of these Australian Rules.

(2) Without limiting subrule (1), Racing Australia may, at any time, rescind, vary or amend any list of prohibited substances (or exemptions or thresholds) set out in these Australian rules.

(3) A PRA may not make new rules (other than local Rules) or rescind or alter these Australian Rules, and a PRA which does not comply with this requirement shall *ipso facto* cease to be a PRA.

……

Division 6 - Racing Australia

AR 11 Role of Racing Australia

(1) Racing Australia is a limited liability company incorporated under the Corporations Act established to:

(a) make and amend these Australian Rules;

(b) together with the PRAs, administer these Australian Rules;

……

AR283

(6) Where a person breaches any of the rules listed below, a disqualification for a period of not less than the period specified for that rule must be imposed unless there is a finding that a special circumstance exists, in which case that penalty may be reduced:
[Comment added - the nature of the offence is stated in italics]

(a) AR 115(1)(e): 2 years;
(b) AR 116(1): 2 years;
(c) AR 129(5): 3 years;
(d) AR 229(1)(b): 5 years
(e) AR 231(2)(a): 5 years
(f) AR 243(1): 2 years
(g) AR 244(1): 3 years
(h) AR 248(1): 2 years
(i) AR 249(1): 6 months
(j) AR 255(1): (subject to the conditions in AR 255(2)): 12 months

[It is noted that the offence under AR 228(c) is not listed under AR 283(6)]

LR108

(2) For the purposes of AR 283 and LR 108(5), special circumstance means where:

(a) the person has pleaded guilty at an early stage and assisted the Stewards ... in the investigation ...relating to the subject conduct.

……

(5) Where a person breaches AR 228(c) and the improper or insulting behaviour is towards a Steward, Investigator, Racing NSW Official Veterinarian, Judge or Swab Official, a disqualification for a period of not less than 6 months must be imposed unless there is a finding that a special circumstance exists, in which case that penalty may be reduced.

In support of his argument, Mr Stirling seeks to differentiate between the powers and roles of Racing Australia on the one hand and Racing NSW on the other and in particular the power to make, amend or vary the AR. To support this argument he relies upon AR11(1)(a), a printout of the Racing Australia website describing its role, the structure of Racing Australia with directors from each of the PRAs and the need for any rule changes to be passed by at least four directors and 75% of the total vote under its constitution, as well as AR9(3) and AR4(1)(b).

Mr Stirling submits that these are all consistent with and establish a clear purpose that Racing Australia, and only Racing Australia, can make and amend the Australian Rules of Racing. He submitted that it would be a remarkable outcome if Racing NSW was able to in effect add a paragraph to AR283(6) which only deals with and mandates a disqualification period in respect of what he describes as the most serious offences under the Rules. That submission is sought to be made good by a review of the nature of such offences which include betting offences, corrupting the outcome of a race, use of a jigger, use of prohibited substance, steroids and stomach tubing. Mr Stirling's submission is that the offences the subject of Mr O'Shea's guilty plea are of a very different character. He submits that the proposition advanced by the Stewards that Racing NSW is able in its discretion to add sub-paragraphs to AR283(6) is alarming and flies in the face of the express powers, roles and prohibitions – applying to both Racing Australia and Racing NSW – set out under the AR and referred to above. He submits Racing NSW simply has no such power.

Mr Cleaver relies upon the undisputed power of Racing NSW to make "local rules" and submits that this is all that Racing NSW has done by the introduction of LR108(5). He submits that it does not make, vary or alter the Australian Rules which remain in force and effect in respect of other states but rather he describes AR283(6) as a "national baseline", which the PRAs can add to as they see fit by use of the local rule power. He submits that the rules contemplate a dual structure which contemplates jurisdiction specific outcomes. He submits that such an approach is an accepted and orthodox feature of the national framework, and points to LR94(c) which is in similar terms to LR108(5) and was introduced by Racing Victoria on 16 September 2025.

Mr Cleaver also, by way of analogy, draws attention to LR114 which he submits imposes a suite of positive obligations on participants in NSW which may form the basis of disciplinary action which have been in force for many years and which have been applied and upheld consistently over that time.

To the extent that it is alleged that there is an inconsistency between AR283(6) and LR108(5) he relies upon *Workhealth Authority v Outback Ballooning* [2019] HCA 2 which says that a clear intention that the AR is exhaustive would be necessary before one was

able to find that the local rule was inconsistent with it, rather than providing merely a supplement which applies within a relevant PRA. He submits that a local rule is not invalid simply because it supplements or is cumulative upon an Australia Rule. He submits that AR1(1) has no work to do in the circumstances.

The Panel first notes that it has not been made aware of any authority in which this first issue has been considered or determined by any Racing Appeal Panel, Tribunal or by a Superior Court. It is therefore to be determined according to principles of construction which require the rules to be given their plain and ordinary meaning with reference to their purpose and object, and in a way which allows them to be applied consistently and harmoniously and in a practical and commonsense manner. To the extent of ambiguity, the Panel accepts that interpretations are to be avoided which produce absurd or capricious results (*Australia Broadcasting Commission v Australian Performing Rights Association* (1973) 129 CLR 99 at 109-110.)

It is plain from AR9 that only Racing Australia can make new rules forming part of the Australian Rules, or vary or amend any existing provisions of those rules. Whilst a PRA is given power to make local rules, there is no definition in the Australian Rules which defines or assists in differentiating between Australian Rules and Local Rules. Mr Stirling submits that the Local Rules essentially concern the administration of the Australia Rules but that the Rules themselves essentially remain within the ambit of Racing Australia.

In relation to industry participants within the jurisdiction of Racing NSW, LR108 in substance adds two elements to the obligations which arise throughout Australia under AR283. The first is to seek, for the purpose of AR203 to define special circumstances to include where the person pleaded guilty at an early stage and assisted the Stewards in investigation relating to the subject conduct. Barring a similar local rule brought in by another PRA, such a definition with special circumstance would not apply under AR283(6).

Second, by the introduction of LR108(5), a breach of AR228(c) is in effect added to the sub-paragraph set out in AR283 mandating a disqualification period of not less than 6 months unless special circumstances exist.

In the present case that applies to Mr O'Shea's breach of 228(c), but not to 228(b) in which the Stewards have the general discretion provided under 283(1).

There is no doubt that the position of Mr O'Shea could be significantly impacted by the introduction of LR108(5) but for that, he could be fined or suspended in relation to a breach of 228(3), as the Stewards saw fit. The question is whether this is in substance a variation or amendment to AR283(6) or, as submitted by Mr Cleaver, simply a supplement or addition to such a rule; or alternatively whether an inconsistency is created.

It is certainly arguable that the introduction of LR108(2), which purports for the purpose of AR283 generally to define special circumstances where it was not otherwise defined, is a variation of AR283 as it applies in NSW. But for that change, the Stewards could for example decide that a plea of guilty and provision of assistance was **not** a special circumstance for the purpose of that rule. Whether the addition of LR108(5) is properly construed as a variation or amendment of AR283 or an addition or supplement to it is less clear and a more difficult question is posed, as to which minds may differ.

In any event, one would not lightly strike down the validity of a local rule particularly where the definition of a local rule under the AR is so broad, or do so were it not necessary for the determination of a case.

In the present appeal, a more straight forward question may be whether for the purpose of AR1 there is by the application of 108(5) a conflict or inconsistency between it and AR283. If so, AR283 will prevail.

In the view of the Panel, this is the case. The position of Mr O'Shea is materially different by the operation of LR108(5) and therefore there, is as a matter of substance and effect, a conflict or inconsistency in the application of the two rules. The inconsistency goes both to the definition of special circumstance and more importantly in the present case to the mandatory disqualification. By the Application of AR1 the Stewards would not in the circumstances be bound by the special circumstances definition in respect of AR283 generally and Mr O'Shea would not be subject to the mandatory disqualification period, that is, the determination or penalty would go back to AR283(1) and (2).

The Panel notes that *Lunn* was a case in which the Panel expressly applied LR108(5), and issued a 2 month disqualification, but there is no reference in the Reasons to any point concerning the validity of the Rule being raised or considered by the Panel, nor any inconsistency with AR283. Similarly, the appeal of *Roberts*, in which the Appellant was disqualified for a period of 21 Months, makes no reference to LR108, nor to the arguments in respect of it which were put before us. The other cases which we have been referred to deal with conduct before LR108 came in.

We are therefore proceeding on the basis that this is the first time that the inconsistency point has been considered by the Panel or the Tribunal, and that we are not bound to follow any prior decision on the point.

Having come to the view that it has, the Panel does not need to determine whether the introduction of LR105(8) was ultra vires or otherwise beyond the power of Racing NSW, and therefore invalid.

It also makes it unnecessary to deal with the issue as to the proper interpretation of 108(5), namely as to whether the penalty reduction which is permissible where special circumstances exist can permit a reduction to a fine or suspension as compared to being

restricted to a reduction in the period of disqualification. In circumstances where the Panel takes the view that Mr O'Shea's sanction should have been calculated without reference to LR108(5) by reason of the inconsistency with AR283(6), that question can be left for another day. Ground 3 similarly does not arise.

Appropriate Sanction

In circumstances where the Panel has found that the Stewards should have given precedence to AR231 over LR108 on the basis of the inconsistency between the two, and hence have established error by the Stewards in their determination of penalty, the matter could have gone back to the Stewards for determination pursuant to AR283. Nevertheless as stated above, the parties have agreed that this Panel should step into the shoes of the Stewards and make its own determination of penalty without that extra step being taken. The Panel accedes to that course.

We note that when considering the cases to which we have been referred, two concern conduct after LR108 came in, but the others do not. The latter are more relevant to our considerations, in circumstances where we are proceeding on the basis that LR108 does not apply.

In relation to the appropriate penalty, Mr Stirling on behalf of Mr O'Shea adopts the submissions he made before the Stewards going to the circumstances of the offence, Mr O'Shea's prior record and reputation, and what he says are the absence of aggravating circumstances relating to his conduct. Mr Stirling submitted that:

(a) Mr O'Shea was not directly abusive or insulting towards the veterinarians and was rather overheard muttering to himself or speaking to staff;

(b) A number of other relevant cases such as *Lunn, Dixon, Ensby, Rustle* and *Roberts* can be distinguished as involving far more serious conduct than that engaged in by Mr O'Shea;

(c) Two respected industry persons, Ron Quinton and Peter Snowden, support the submission that the conduct was not objectively serious;

(d) Mr O'Shea has accepted responsibility for his conduct and provided apologies to the veterinarians involved;

(e) Mr O'Shea did not invade the space of the veterinarians;

(f) At least part of the conversation could be properly characterised as "robust discussion" and further that Mr O'Shea's views as to the fitness of the horse were not without merit and this is the reason he was frustrated and was the context in which the conduct occurred;

(g) Mr O'Shea's excellent record and reputation and over a long period, together with his guilty plea and co-operation during the enquiry, should be taken into account.

Mr Stirling ultimately submits that the appropriate penalty is a fine in the range of $4,000 - $6,000 for all three charges.

Mr Cleaver on behalf of the Stewards submits that such penalties are imposed primarily for the purpose of general and specific deterrence (*Australia Building and Construction Commission v Pattinson* (2022) 274 CLR 450 at [15], and that the primary purpose of them is not to punish the applicant but to protect the image and integrity of the sport and industry of Racing. The Panel accepts that submission which is consistent with decisions of this Panel.

Mr Cleaver submits that the objective seriousness of the contravening conduct is an important matter to consider in the assessment of penalty and relies upon the tribunal decision in *Berry v Harness Racing NSW* (Racing Appeals Tribunal) 4 June 2024 at [49] as follows:

> *"49. Putting it simply, and whilst each case which comes before the Tribunal will, as a matter of fairness, always be assessed and determined according to its own facts and circumstances, it is necessary to send a clear message to industry participants that any conduct towards Stewards which is (amongst other things) abusive, offensive, threatening, obstructive, intimidatory, defamatory, racists or harassing, any conduct which constitutes an assault, and any conduct which constitutes a failure to comply with a reasonable direction by Stewards, is likely to meet with a substantial penalty."*

Mr Cleaver submits that, consistently with *Berry*, a substantial penalty must at a minimum be a suspension or disqualification, and that a fine would be insufficient having regard to the seriousness of such breaches.

Mr Cleaver accepts that the specific language used by Mr O'Shea may have been less severe than in *Dixon* and *Lunn* however he points out that the conduct occurred in a materially more public setting and that where able to be witnessed by other industry participants has a greater capacity to undermine public

confidence in the administration of the sport in a way that purely private exchange does not.

Mr Cleaver accepts that the Panel should take into account matters such as the issuing of written apologies to the veterinarians involved, together with his guilty plea and his generally good record. He reminds us of the Tribunal's comments in *Kilner v Racing NSW* (Racing Appeals Tribunal) 4 August 2025 [34] as follows:

> *The Panel 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."*

Mr Cleaver did not make a submission as to the appropriate period of any disqualification but he, quite properly, accepted that if the Stewards had not determined sanction under LR108(6) the relevant period would likely have been lower. His main point was that a fine would be fundamentally inadequate in respect of an offence of this type, and would be inconsistent with other relevant decisions in that respect, both of the Panel and the Tribunal.

Mr Stirling accepted that by his plea of guilty to the three charges, Mr O'Shea is taken to have accepted and admitted the conduct set out in the particulars thereto. In summary, for present purposes, such conduct included the following:

(a) In the rear swab area at Rosehill Gardens, in a raised and aggressive tone, stating words to the effect of *"where are the fucking vets"* and in reference to them, *"why are they so fucking useless"*, within the hearing of other parties and officials;

(b) Speaking in a raised and aggressive tone, repeatedly interrupting and speaking over Dr Claire Moore, pointing his finger and raising his arm in an animated and aggressive manner and in close proximity such that spital from his mouth landed on her while he spoke, and in a sarcastic tone said, *"how many trot-up examinations do you perform a week?"* Then responded by saying *"probably none"* – in an open area within audible range of other parties including officials; and

(c) Speaking to Dr Carly Garling in a raised and aggressive tone when asked to please stop talking to Dr Moore in the way that he was and then repeatedly speaking over Dr Garling and preventing her from responding, using animated arm movements and pointing his finger whilst speaking in close proximity to her and continued to do so in an open area, visible and

within audible range of other parties which included the industry participants and officials.

In terms of the objective seriousness of this conduct, whilst it may be the case that the only swearing that took place was prior to his direct interactions with Dr Moore and Dr Garling, that is not really the point. The gravamen of the misconduct and improper and insulting behaviour towards Dr Moore was to not only deal with her in an aggressive and threatening manner which went well beyond an acceptable level of courtesy in not permitting her, or Dr Garling, to explain the decision to scratch the horse, but by calling her '*useless*' and sarcastically asking '*how many trot-up examinations they perform a week'*. By saying this, Mr O'Shea was seeking to challenge and undermining her professionalism and her ability to undertake her role as on course veterinarians. This conduct, which is in the nature of defamatory conduct is by one way of thinking worse than the simple use of aggressive or abusive swear words because it goes to the heart of her capacity to perform her role in the industry. One can well understand Dr Moore finding such conduct highly offensive, let alone rude and discourteous. Moreso when it came from a very experience trainer and in the presence of others.

Another potentially important point is that in other cases considered by this Panel or by the Tribunal in relation to similar breaches, explanations have been put forward as to why such conduct may have taken place including by reason of mental health issues or other stresses. Mr O'Shea puts forward no such explanation or justification going beyond what is said to be a frustration with the veterinarians decision to scratch the horse. That on no view can justify what occurred thereafter. The Panel does not accept that this was a *robust discussion* as submitted by Mr Stirling. The role of an on-course veterinarian in scratching a horse from a race where it is considered necessary is a very important industry practice and not only goes to the integrity of the race in question but to the welfare of the horse. A senior trainer in the position of Mr O'Shea should have the self-discipline to accept such decisions without publicly seeking to undermine the decision, and the professionalism of the veterinarians involved.

The vast majority of cases which have been put before us in respect to breaches of AR228(c) involve disqualifications. They range from 3 months to 21 months and are all subject to their own particular facts. The only case to which we have been referred where there was a suspension was the case of *Dixon* but that was

an unusual case where the Appellant had significant mental health issues. We repeat what we said above about the cases which pre-date the introduction of LR108, and their relevance to the present considrations.

The Panel is bound to follow the principles set out in *Berry* and to impose a substantial penalty. The Panel accepts Mr Cleaver's submission that a fine simply does not measure up to that. As to whether a disqualification or suspension is appropriate in this case the Panel has taken into account that Mr O'Shea has both pleaded guilty and gone to the trouble of apologising to the veterinarians in question. His record and the support of other industry participants also stand is his favour, as does the fact that he did make any physical threat. These matters are all relevant, but the clear message from the Racing Appeals Tribunal is that breaches of AR228(c) will generally require a disqualification to pay sufficient regard to the very important consideration of general deterrence and to recognise the importance to the industry of the role that the Stewards (and others like veterinarians) play on race day. It also emphasises the importance of allowing them to do so with courtesy and without having their integrity or professionalism questioned in a public manner such as to be likely to cause offence, embarrassment and humiliation.

In the circumstances, the Panel takes the view that a disqualification of Mr O'Shea is necessary. Having regard to the matters in his favour set out above, it has arrived at a period of disqualification of 2 months, which it believes meets the need for general deterrence and is consistent with other relevant decisions of the Panel and the Tribunal.

The Orders the Panel makes are therefore as follows:

1. The Appeal is allowed.
2. The sanction imposed by the Stewards is quashed.
3. In substitution therefore, Mr O'Shea is disqualified for a period of 2 months, such disqualification to be deferred for seven days, subject to Mr O'Shea not being able to start a horse in any race during the period of the seven day deferral period, pursuant to AR283(8).
4. The Appeal deposit is to be retained.

31 March 2026