IN THE RACING APPEALS TRIBUNAL

JOHN O'SHEA
Appellant

v

RACING NEW SOUTH WALES
Respondent

REASONS FOR DETERMINATION

DATE OF HEARING 24 April 2026

DATE OF DETERMINATION 4 May 2026

APPEARANCES: Mr M Stirling for the Appellant

Mr O Jones SC for the Respondent

ORDERS

1. **The appeal by the Appellant is dismissed.**

2. **The appeal by the Respondent is upheld.**

3. **The decision of the Appeal Panel of Racing NSW imposing a disqualification of 2 months is quashed.**

4. **The Appellant is disqualified, in respect of each charge, for a period of 4 months, commencing on 17 March 2026.**

5. **The periods of disqualification imposed by order [4] are to be served concurrently.**

6. **Any appeal deposit is to be forfeited.**

INTRODUCTION

1. John O'Shea (the Appellant) is a licenced trainer with Racing New South Wales (the Respondent). He was charged with three breaches of the Australian Rules of Racing (the Australian Rules) to which he pleaded guilty. A disqualification of four months was originally imposed by Stewards.

2. The Appellant appealed to the Appeal Panel of the Respondent (the Panel) who, in a determination handed down on 31 March 2026, reduced the penalty to a disqualification of 2 months.

3. By a Notice of Appeal dated 31 March 2026, the Appellant appealed against the Panel's determination. An application for a stay of that determination pursuant to cl 20 of the *Racing Appeals Tribunal Regulation 2024* (NSW) was refused for reasons given on 3 April 2026.

4. The Respondent has also lodged an appeal seeking the imposition of the original 4 month disqualification imposed by the Stewards.

5. The two appeals were heard together on 24 April 2026, following which judgment was reserved.

THE CHARGES

6. The charges arise from an incident at the Rosehill Gardens Racecourse on 21 February 2026 shortly after the scratching of one of the Appellant's horses, *Bev's Nine*. The decision to scratch the horse followed a veterinarian examination on-course. Central to the charges is the conduct of the Appellant in connection with that decision, such conduct having occurred partly in the course of interactions between the Appellant and two Racing NSW veterinarians, Dr Claire Moore and Dr Carly Garling.[1]

[1] Panel determination at 2.62 and following.

7. To the extent presently relevant, AR 228 (pursuant to which the Appellant was charged) is in the following terms:

> **228 Conduct detrimental to the interests of racing**
> *(1) A person must not engage in:*
> *(a) ...*
> *(b) Misconduct, improper conduct or unseemly behaviour,*
> *(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.*

8. The charges are particularised in the following terms:

> **Charge 1: AR228(b)**
> 1. *At all relevant times, the Appellant was a licensed trainer with Racing NSW and was bound by, and required to comply with, the Rules of Racing.*
> 2. *On Saturday, 21 February 2026, the Appellant was 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, the Appellant 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. *He 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. *The Appellant's conduct as detailed above amounts to improper conduct.*
>
> **Charge 2: AR228(c)**
> 1. *At all relevant times, the Appellant was a licensed trainer with Racing NSW and was bound by, and required to comply with, the Rules of Racing.*
> 2. *On Saturday, 21 February 2026, the Appellant was 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, the Appellant approached Racing NSW Official Veterinarian Dr Claire Moore. During that interaction he 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 he had asked. He pointed his finger and raised his arms in an animated and aggressive manner and stood in very close proximity to Dr Moore such that spittle from his mouth landed on her while he spoke. He stated in a sarcastic tone, "How many trot-up examinations do you perform in a week?" and then responded to his own question saying, "probably none".*

5. *The abovementioned conduct occurred in an open area, visible and within audible range of other parties which included industry participants and officials.*
6. *The Appellant's 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 AR 228(c)

1. *At all relevant times, the Appellant was a licensed trainer with Racing NSW and was bound by, and required to comply with, the Rules of Racing.*
2. *On Saturday, 21 February 2026, he was 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 the Appellant as he was engaged in an interaction with Dr Claire Moore. At the time, the Appellant was 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. *The Appellant then turned his 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 his 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. *The Appellant's 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.*

THE FACTS

9. The facts of the offending will be apparent from the particulars set out above. The Appellant's pleas of guilty accept those particulars. However, there is some additional evidence with which I have been provided, and to which I should refer.

10. First, in written submissions provided for the purposes of the Appellant's appeal, counsel advanced a number of what he described as additional *"essential facts"*. In my view, they add very little, and counsel made it clear that in advancing them, he was not seeking to traverse any of the particulars.[2] Nevertheless they are as follows:

[2] Transcript 5.160.

(1) Prior to the race on 21 February 2026, Bev's Nine was scratched at the barrier by vet Dr Greg Nash.

(2) O'Shea then approached the wash-up area and uttered two profanities, overheard by some industry participants, but not directed at either vet or any other official.

(3) O'Shea then had an argument and animated discussion with both Dr Moore and then Dr Garling, with the trainer questioning the decision that the horse was lame.

(4) O'Shea raised his voice and spoke in animated fashion, apparently gesticulating with his arms, but he did not swear at or directly insult either vet;

(5) There are several descriptive words under charges 2 and 3, such as "aggressive"/"animated"/ "spoke over" / "interrupted", all of which are difficult to answer as they are descriptive words rather than facts and they are also in part the expression of subjective feelings.

(6) O'Shea questioned the vets concerning trot ups, including the sarcastic remark about how many trot-ups the vets performed, because he considered the horse to be sound, his trackwork rider considered the horse to be sound, and O'Shea and Charlton both considered the horse not to be lame in the trot up which took place post-race.

(7) Whereas Dr. Greg Nash considered the horse to be lame in the off-hind behind the barrier, subsequently Dr Garling considered the horse lame in the near-hind.

(8) O'Shea subsequently wrote letters of apology to both Dr. Garling and Dr Moore (which letters are included in the RNSW material.

(9) RNSW purported to introduce LR 108(5) into the Local Rules on 1 June 2025; it is not known whether there was any consultation with, or notification to, Racing Australia, in relation to that enactment.

11. Secondly, I was provided during the course of the hearing with two letters of apology provided by the Appellant. The first, to Dr Moore, was in the following terms:

Deer Claire

I am writing to express my unreserved apology to you with regard to my actions at Rosehill Racecourse on Saturday 21/2.

Subsequent to the scratching of Bev's Nine I was extremely frustrated with the process and in doing so raised my voice and gestured in a manner which made you feel uncomfortable.

It was certainly not my intention to make you feel uncomfortable. The emotions on the day got the better of me.

Furthermore, subsequent to our initial discussion, you were kind enough to reach out and continue to attempt to gain a resolution to the situation and in doing so showed your class and commitment to your job.

That was greatly appreciated and I hope I conveyed my appreciation to you in our discussions.

Please be assured that at no stage in our interaction did I mean to question either your competence or your integrity.

I appreciate the wonderful job your do on a weekly basis, and I hope we can put this episode behind us and look forward to working productively together in the future.

Again, my sincere apologies to you.

12. The second, to Dr Garling, was in the following terms:

Dear Carly,

I am writing to express my unreserved apology to you with regard to my actions at Rosehill Racecourse on Saturday 21/2.

Subsequent to the scratching of Bev's Nine I was extremely frustrated with the process and in doing so raised my voice and gestured in a manner which made you feel uncomfortable.

It was certainly not my intention to make you feel uncomfortable. The emotions the day got the better of me.

At no stage, in the course of our discussion, did I ever intend to question either your commitment to your job or the manner in which you complete your tasks.

I have always been very respectful of the job you do and the way in which you liaise with our stable and I hope we can put this episode behind us and look forward to working productively together in the future.

Again, my sincere apologies to you.

13. Thirdly, in the course of the hearing, footage of the incident giving rise to the charges was played.[3] In my view, particularly given that it is not accompanied by sound, the footage adds little to what is a straightforward factual scenario which is reflected in the particulars of the charges which, as I have noted, the Appellant accepts.

[3] Commencing at Transcript 2.65.

14. Fourthly, I was provided with a copy of an email sent by Dr Garling to officials of the Respondent on 22 February which is in the following terms:

> *I wish to make a formal complaint about licenced trainer Mr John O'Shea's conduct on the 21st February at Rosehill races.*
>
> *On the 21st February 2026, myself Dr Claire Moore and Dr Greg Nash were o officiating at Rosehill races. John O'Shea's horse (Bev's Nine) was found to be lame pre-race (race 3) and was scratched behind the barriers by Dr Greg Nash.*
>
> *Between 2,30 pm – 2.45pm I was assisting in cooling hot horses post-race in the swab area when I noticed that licenced trainer Mr John O'Shea was speaking to Dr Moore in a highly aggressive manner.*
>
> *From where I was standing (which I estimate to be 20m away) I could see that Mr O'Shea was speaking with a raised voice, in Dr Moore's personal space with his arms moving around aggressively and pointing his finger repeatedly. Dr Moore was standing in a subdued manner, quietly with her head down, in what appeared to me as an apathetic state, or a person using body language to ask him to stop, however he was not showing signs of calming down, or stopping his behaviour.*
>
> *Racing NSW Swab Official Dr Jessica Steenbeeke was walking past Mr O'Shea and Dr Moore with a horse post-race for the swab boxes. She witnessed Mr O'Shea speaking to Dr Moore in a threatening manner. Dr Steenbeeke approached me and stated that Dr Moore required my assistance, due to how she was being treated by Mr O'Shea.*
>
> *I moved over to Mr O'Shea and Dr Moore and asked Mr O'Shea politely to please not speak to Dr Moore in that way. Mr O'Shea then turned his attention to me and began speaking to me in an angry and aggressive tone. He was pointing his finger repeatedly, and using his arms aggressively. He stated repeatedly that his horse that had been scratched was not lame, that there was nothing wrong with his horse. I tried to tell him that the horse had been found lame behind the barriers, however he would not give me an opportunity to speak.*
>
> *I then stated that I have been treating hot horses, and the veterinary team have been working hard to look after the horses today in these conditions, having to come over to ask you to stop was not a good use of resources as I should be caring for the welfare of horses, to which he replied in a degrading tone, 'what are your staff doing down there?' - in a way to suggest that the veterinary team were not doing anything important. Despite already having 2 severe heat stress cases by race 3.*
>
> *I asked him not to talk to me like that, that his conduct was inappropriate. However he kept barraging me with statements, and questions, without giving me a chance to answer the questions, as he kept speaking over the top of me. His anger and behaviour was escalating.*
>
> *Due to his aggressive tone and continued ranting without allowing me an opportunity to speak, I asked whether he would like to move to the stewards' room*

to continue the conversation. He agreed, but continued speaking in an intimidating manner without moving. again suggested that we proceed to the stewards' room and I began walking in that direction.

Mr O'Shea followed me for approximately 20 metres, continuing to speak in an intimidating tone, before stopping. I continued to the stewards' room, and he entered the stewards room approximately five minutes after me.

I approached Mr O'Shea and Dr Moore from the outset as I could see from Mr O'Shea's body language, and the manner he was speaking to Dr Moore, that his purpose was to be hostile and intimidate Dr Moore. When he then turned his attention on me, his tone was aggressive, hostile and unrelenting.

His comments were belittling and mocking, as a way to degrade me. His repeated interruptions without giving me an opportunity to speak made sure he dominated the conversation.

Mr O'Shea's manner was intimidating and abusive.

He was unprofessional and inappropriate.

He used his physical size and stature to make me feel small, and the tone of his voice, as well as his behaviour made me feel unsafe, intimidated and uncomfortable.

The belittling comments and tone that he used made me feel disrespected, and the policies and procedures that the Veterinary Department have put in place to protect the welfare of horses (and jockeys) completely undermined. I was anxious and distressed, particularly being treated like this in my place of work, and thought about going home. His ease to treat me in this way, with no remorse, or apology, and not being able to see what was wrong with his actions, I felt (and still feel) that he could have easily done it again (and will do it again to me). Having to continue to carry out my duties for the rest of the day was difficult and stressful.

I had multiple people come up to me in the hour after and ask if I was okay, as they could see from a distance that Mr O'Shea was abusing me and Claire. Stating that his behaviour is well known to be out of control.

...

I am not someone who creates friction or disagreements in the workplace. I approached Mr O'Shea after observing him directing abusive remarks toward Dr Moore, as I felt it was my responsibility, as her manager, to protect her from such behaviour.

Dr Moore and I are both deeply committed to safeguarding the welfare of horses on race days, and in the hours leading up to the incident we had worked diligently to ensure the race meeting was appropriately prepared for the hot and humid conditions, as well as cooling and treating hot horses as they recovered.

To be treated in that manner by a licensed trainer, when our sole purpose is to ensure the safety and welfare of all horses on course — including Mr O'Shea's horses — was degrading and disheartening

15. For the reasons discussed more fully below, Dr Garling's subjective reaction to the Appellant's conduct necessarily forms an important part of assessing the objective seriousness of the offending.

16. Fifthly, I have been provided with a transcript of an interview between Dr Garling and Mr Lavorato, an Investigator employed by the Respondent, which took place on 23 February 2026 following Dr Garling's original complaint. Dr Garling gave Mr Lavorato an account of what had occurred, the essence of which is set out in her final statement to him as follows:[4]

> *[I]t was a highly stressful event and the decisions that are made on race day for horse welfare and ultimately also the welfare of jockeys is done with a lot of consideration for stakeholders, and obviously it's highly stressful to make decisions like that and know that repercussions may be that I'm abused after the event, noting that it was not actually me that made that decision or had anything to do with the matter, but I note that he did not go and abuse Dr. Nash, who is an older Vet, he chose to discriminate or abuse me and Dr. Moore as potentially easier targets for him. I felt like he used his physical size and stature to make me feel small, and the tone of his voice and his behaviour made me feel unsafe, intimidated, and uncomfortable. I also think it's important to note that his conduct on race day has resulted in two newspaper articles, which further undermines the public's confidence in the veterinary decision making on race day, and I think his conduct is inappropriate and unprofessional for a licensed trainer.*

17. Finally, I have been provided with a copy of the transcript of the Stewards' inquiry into the matter which was conducted on 9 March 2026. Dr Garling gave evidence on that occasion which was generally consistent with what she had previously said in her original complaint and to Mr Lavorato. She expressly disagreed with several propositions put to her, including that the Appellant did not act aggressively, that he did not raise his voice, and that he did not speak over the top of her.[5] She also described the interaction between the Appellant and Dr Moore and *"very intense and heated"*.[6] Dr Moore described the Appellant as *"audibly upset and angry"*[7] and

[4] At p. 11 of the transcript.
[5] Transcript 15.
[6] Transcript 16.
[7] Transcript 35.

"waving his arms, speaking loudly or shouting".[8] She said his demeanour was *"threatening".*[9]

THE ISSUES FOR DETERMINATION

18. The parties were initially in agreement that there were five issues for determination, although issues 3 and 4 were narrowed during the course of the hearing. I will address each issue in turn.

THE FIRST ISSUE – WAS LR 108(5) ENACTED WITHOUT POWER?

The relevant regulatory and legislative provisions

19. I have already noted the terms of AR 228, being the provision pursuant to which the Appellant was charged. There are a number of other regulatory and legislative provisions which bear upon the first issue.

20. To begin with, AR 9 of the Australian Rules provides as follows:

> ***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, or rescind, vary or amend any provision of these Rules.*
> *(2) ...*
> *(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.*

21. AR 12 includes the following:

> ***Division 1 – Powers of PRAs***
> ***AR 12 General Powers***
>
> *PRAs have the following powers:*
> *...*
>
> *(d) to make Local Rules.*

[8] Transcript 36.
[9] Transcript 37.

22. Section 3 of the *Thoroughbred Racing Act 1996* (NSW) (the TRA) defines the term *Rules of Racing* as meaning:

> *The rules for the time being governing and relating to horse racing under the control of Racing NSW (being an amalgamation of the Australian Rules of Racing and the local rules of Racing NSW, together with the regulations made under those rules).*

23. Section 4 of the TRA establishes the Respondent as a body corporate. The functions of the Respondent are set out in s 13 and include:

1. all the functions of the principal club for New South Wales and committee of the principal club for New South Wales under the Australian Rules of Racing.[10]

2. the control, supervision and regulation of horse racing in the State of New South Wales.[11]

3. such functions as may be conferred or imposed on the Respondent by or under the Australian Rules of Racing or any other Act.[12]

24. Section 29O of the TRA provides as follows:

> ***29O Rules in relation to horse racing***
> *Racing NSW may make rules, not inconsistent with this Act or the regulations, for or with respect to:*
> *(a) the control and regulation of horse racing, or*
> *(b) the exercise of the functions of Racing NSW.*

25. Against this background, LR108(5) provides as follows:

[10] Section 13(1)(a).
[11] Section 13(1)(b).
[12] Section 13(1)(e).

Penalties
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.

26. Pursuant to LR 105(2)(a), special circumstance for the purposes of LR 108(5) will include where the person in question has pleaded guilty and has assisted the Stewards or the Respondent in the investigation or prosecution of a breach of the Rule(s) relating to the subject conduct.

27. Finally, to the extent relevant for present purposes, AR 283 is in the following terms:

AR 283 Penalties
(1) Subject to subrule (3), a person or body authorised by the Rules to penalise any person may, unless the contrary is provided, impose:

(a) a disqualification;
(b) a suspension;
(c) a reprimand; or
(d) a fine not exceeding $100,000.

(2) Further to subrule (1), a disqualification or suspension may be supplemented by a fine.

...

(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:

(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. [paragraph amended 1.5.25]
(f) AR 243(1): 2 years;
(g) AR 244(1): 3 years;
(h) AR 248(1): 2 years;
(i) AR 249(1): 6 months; and
(j) AR 255(1) (subject to the conditions in AR 255(2)): 12 months
...

Submissions of the Appellant

28. The essence of the position advanced by Mr Stirling on behalf of the Appellant in relation to the first issue may be summarised as follows:

    1. Racing Australia is the sole body to which the power has been given to make or amend the Australian Rules, a conclusion which is evident from the provisions of the Australian Rules themselves.[13]

    2. Racing Australia and the Respondent are empowered to *administer* the Australian Rules. However, insofar as such power is conferred on the Respondent, it does not extend to a power to make, vary or alter the Australian Rules.[14]

    3. By adding an offence contrary to AR 228(c) to the list of offences to which a mandatory disqualification applies, LR 108(5) represents an attempt by the Respondent to make, vary or alter the Australian Rules in circumstances where the sole power to do so is reserved to Racing Australia pursuant to AR 9. The Respondent is expressly prohibited from taking that course by AR 9(3).[15]

    4. It would be a peculiar outcome if the organisation responsible for bringing the rules into being (i.e. Racing Australia) provided a unilateral power to some other entity (i.e. the Respondent) to vary, amend or repeal its rules.[16]

29. In oral submissions, Mr Stirling emphasised that he was not advancing the proposition that the Respondent had no power to make rules at all. Rather, his submission was that in exercising such power as it had, the Respondent remained bound by the restrictions imposed by the Australian Rules, particularly that imposed by AR 9(3).[17]

---

[13] Written submissions at [14].
[14] Written submissions at [14].
[15] Written submissions at [16].
[16] Written submissions at [16].
[17] Transcript 6.185 – 6.195.

Submissions of the Respondent

30. In written submissions, Mr Jones SC who appeared for the Respondent advanced the following propositions:

    1. It is an error to adopt, as a starting point for the resolution of this issue, a consideration of the powers of Racing Australia as found in its Constitution. Racing Australia has no legislative authority, and any consideration of whether LR 108(5) is beyond power must commence with reference to the provisions of the TRA.[18]

    2. The position advanced by the Appellant fails to have regard, in particular, to ss 14(2)(1) and 29O of the TRA. Section 29O confers an express power on the Respondent to make rules and it is pursuant to the exercise of that power that LR 108(5) has been validly enacted.[19]

31. In developing these submissions in oral argument,[20] Mr Jones drew an analogy, in terms of rule-making power, between the circumstances of this case and those discussed (in the context of harness racing) in *Day v Harness Racing New South Wales*.[21] He submitted that, properly understood, the enactment of LR 108(5) did not amount to a breach of AR 9, for the simple reason that the Respondent had not purported to make, vary or alter an Australian Rule, but rather had enacted, pursuant to its statutory power, a local rule which was operative solely within its own jurisdiction. He submitted that the power to do so, apart from being specifically conferred by s 29O of the TRA, was confirmed by AR 12(d).

RESOLUTION OF THE FIRST ISSUE

32. In my view, LR 108(5) has been validly enacted.

[18] Written submissions at [7].
[19] Written submissions at [9] -]10.
[20] Commencing at Transcript 16.600.
[21] (2014) 88 NSWLR 594.

33. To begin with, and as Mr Stirling properly conceded, there can be no doubt that the Respondent has the power, pursuant to s 29O of the TRA, to make rules with respect to the control and regulation or horse racing, or the exercise of its functions. Even if it is accepted that Racing Australia is the only body empowered to make, amend or vary the Australian Rules, the enactment of LR 108(5) does not infringe that position. That it because the Respondent has not, in enacting LR 108(5):

    1. *made* a new Australian Rule; or
    2. *rescinded* any provision of the Australian Rules; or
    3. *varied* any provision of the Australian Rules; or
    4. *amended* any provision of the Australian Rules.

34. What the Respondent has done is make a local rule, as it is empowered to do, which is operative within its own jurisdiction. That local rule does no more than prescribe that AR 228(c) is an offence to which a mandatory disqualification shall apply.

35. In enacting LR 108(5), the Respondent has not breached AR 9. On the contrary, AR 9(1) expressly recognises the power of the Respondent to make local rules such as LR 108(5). That power is fortified by AR 12(d).

THE SECOND ISSUE – IS LR 108(5) INCONSISTENT WITH AR 283?

The relevant regulatory provisions

36. LR 108(5), along with those parts of AR 283 which are relevant for present purposes, have been set out above.[22]

37. LR 108(5) provides that in the case of a breach of AR 228(c) which involves conduct directed towards (amongst others) an Official Veterinarian, a disqualification for a period of not less than 6 months must be imposed unless there is a finding that special circumstances exist, in which case that penalty may be reduced.

[22] At [25] and [27] above respectively.

38. AR 283(6) prescribes a series of *different* offences to which mandatory penalties shall apply in certain circumstances.

39. AR 1(1) provides:

> ***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 provision in these Australian Rules will prevail.*

Submissions of the Appellant

40. The written submissions of the Appellant advanced the following principal propositions:

1. There is an inconsistency between LR 108(5) and AR 283(6) which is created by the fact that:

   (a) AR 283(6) does not list offending under AR 228(c) as carrying a mandatory disqualification; whereas
   (b) LR 108(5) provides that such offending is to carry a mandatory disqualification of 6 months absent a finding of a special circumstance.[23]

2. Accepting the proposition in [1] above, the terms of AR 1(1) (by which the Respondent is bound as a matter of contract)[24] become operative, and AR 283(6) (which contains no reference to AR 228(c)) prevails. It follows that offending contrary to r 228(c) does not carry a mandatory minimum disqualification because it is not one of the offences enumerated in AR 283(6).

3. The consequence of the propositions in [1] and [2] above is that any determination of penalty in the present appeal is to be dealt with *"on the merits"* and without regard to LR 108(5).

[23] Written submissions at [19].
[24] Written submissions at [20].

41. In oral submissions, Mr Stirling appeared to accept that the resolution of this issue was to be approached from a contractual perspective.[25] To that limited extent, there was a consistency in approach between the parties. [26] However, Mr Stirling submitted that it remained impossible to read AR 283(6) and LR 108(5) harmoniously.[27]

Submissions of the Respondent

42. The written submissions of Mr Jones advanced the following principal propositions:

1. The Australian Rules and the Local Rules take effect as a contract[28] which is one of the contexts in which inconsistency can be considered, the other context being legislative.[29]

2. The English approach towards determining inconsistency in a contractual context has been adopted in Australia.[30] When that approach is applied to the circumstances of the present case, the clear conclusion is that effect can fairly be given to both AR 283 and LR 108(5), such that there is no inconsistency.[31]

3. The same conclusion is reached if the issue is considered in a legislative context.[32]

43. In oral submissions, Mr Jones accepted that if an inconsistency was made out, AR 1 would address it.[33] However, he submitted that on a proper analysis:[34]

1. AR 283(5) imposes certain mandatory penalties for certain types of breaches of certain rules which are set out in AR 283(6).

---

[25] Transcript 11.380 – 12.395.
[26] Transcript 12.412 and following.
[27] Transcript 12.415 – 12.423.
[28] Written submissions at [18] and see *Commissioner for Taxation v Racing Queensland Board* [2019] FCAFC 224 at [92] – [100].
[29] Written submissions at [18].
[30] Written submissions at [21].
[31] Written submissions at [22].
[32] Written submissions at [25] – [26].
[33] Transcript 19.680.
[34] Transcript 19.708 – 19.720

2. LR 108(5) does not remove, modify or qualify any of those penalties.

3. LR 108(5) refers to an entirely different rule – namely AR 228(c) – which is not listed in AR 283(6). Viewed in that way, effect can be given to both provisions.

4. Such a conclusion is fortified by the fact that the Australian Rules include no definition of what constitutes a special circumstance.[35]

RESOLUTION OF THE SECOND ISSUE

44. Bearing in mind the contractual context in which both parties approached this question, I was taken in the course of argument to the decision of Bingham LJ in *Pagnan SpA v Tradax Ocean Transportation SA*[36] where the following was said:

> *It is not enough if one term qualifies or modifies the effect of another; to be inconsistent a term must contract another term or be in conflict with it, such that effect cannot fairly be given to both clauses.*

45. In the same case, Dillon LJ observed:[37]

> *In my judgment, the first task is to see if the clauses can sensibly be read together. If they cannot, there is inconsistency, and the special condition is to prevail over the other clause in the printed form. But, if they can be read together, they should be and there is no inconsistency.*

46. That test has been applied in Australia on several occasions.[38] Its essence, is that there will be inconsistency only if effect cannot fairly be given to both provisions, or if they cannot be read together. In my view, effect *can* be given to both LR 108(5) and AR 228(c), and they *can* be read together.

---

[35] Transcript 21.725 – 21.735.
[36] [1987]3 All ER 565 at 575.
[37] At 578.
[38] See *National Gallery of Australia v Douglas* [1999] ACTSC 79 at [37]; *Queensland Alumina Limited v Alinta DQP Pty Limited* [2006] QSC 391 at [90] – [92; both cited by Moore J in *Leonie's Travel Pty Limited v International Air Transport Association* (2009) 255 ALR 89 at [57]; see also *Maribyrnong City Council v Australian Municipal, Administrative, Clerical and Services Union* [2019] FCA 773 at [48] – [52].

47. Put simply, LR 108(5) addresses offending against AR 228(c). AR 283(6) addresses entirely different offending which specifically does not include offending against AR 228(c). The provisions are directed towards entirely different rules, and thus entirely different conduct. One does not affect the other. They are clearly capable of standing together and effect can be given to both. The two facts relied upon by Mr Stirling[39] make the distinction between the two rules quite clear.

48. In a legislative context, the relevant test has been variously expressed as whether the two provisions can *"stand or live together",* whether there is a *"direct conflict"* between the two, or whether the provisions *"are clearly and indisputably contradictory, displaying such repugnancy such that they cannot be reconciled*" or *"cannot stand together".*[40] For the same reasons as those stated above, the provisions can stand together.

THE THIRD ISSUE – DOES LR 108(5) PERMIT A PENALTY OTHER THAN DISQUALIFICATION?

49. The written submissions filed on behalf of the Appellant[41] advanced the proposition that that on a proper construction of LR 108(5), the imposition of a penalty other than a disqualification may be open. However, in the course of the hearing Mr Stirling conceded that such a proposition was contrary to authority.[42] This Tribunal must not depart from such authority. In those circumstances, the only available conclusion is that LR 108(5) does not permit the imposition of a penalty other than disqualification.

THE FOURTH ISSUE – HAS A SPECIAL CIRCUMSTANCE BEEN ESTABLISHED?

50. The Respondent conceded[43] that by reason of the Appellant's plea of guilty and the assistance he provided to Stewards, a special circumstance for the purpose of LR

[39] At [40](1)(a) and (b) above.
[40] See *Shergold (as delegate of Reith, Minister for Employment, Workplace Relations and Small Business) v Tanner* (2002) 209 CLR 126 at [35] per the Court, citing *Butler v Attorney General (Victoria)* (1961) 106 CLR 268 per Fullagar J at 275; Kitto J at 280; Taylor J at 285 and Windeyer J at 290.
[41] Commencing at [21].
[42] Transcript 12.438; *McDonald v Racing New South Wales* [2017] NSWSC 1511; see also *Ings v Racing New South Wales* [2022] NSWSC 1127.
[43] Written submissions at [36].

108(2)(a) has been made out which, having regard to LR 108(5), would permit reduction of the period of disqualification from 6 months to some lesser period.

THE FIFTH ISSUE – WHAT IS THE APPROPRIATE PENALTY?

51. The written submissions of the Appellant[44] advanced the proposition that the fair and just penalty was a fine. That was put on the basis that the Appellant's position in relation to the operation of LR 108(5) was accepted. For the reasons given, that has been rejected. It follows that any penalty must be determined having regard to the provisions of LR 108(5). For the reasons outlined, I am satisfied that a special circumstance has been made out. Accordingly, I have the power to reduce any penalty from the mandatory disqualification of 6 months.

Submissions of the Appellant

52. Mr Stirling's ultimate position was that he did not seek to disturb the penalty imposed by the Panel.[45] In other words, he did not argue against the imposition of a disqualification of 2 months, but did take issue with the disqualification of 4 months for which the Respondent contended.

53. In support of that position, Mr Stirling submitted that a proper categorisation of what the Appellant did was that he engaged in conduct which was akin to *"mouthing off in the vicinity of a referee"*,[46] and which was "*a bit insulting or sarcastic .... but not aggravating"*.[47] However, he accepted that the conduct was *"inappropriate"* but submitted that the Appellant had engaged in it *"out of frustration"*.[48] In putting the Appellant's position, Mr Stirling referred me to a number of previous decisions in cases of this kind, although in doing so accepted that no two cases are ever factually the same.[49]

[44] Commencing at [26].
[45] Transcript 22.879.
[46] Transcript 14.532.
[47] Transcript 14.535.
[48] Transcript 15.553.
[49] Transcript 9.315.

Submissions of the Respondent

54. On the basis that LR 108(5) was found to be valid, it was submitted on behalf of the Respondent that the appropriate penalty was a disqualification of 4 months. It was submitted, in particular, that even accepting the absence of any physical assault, it remained the case that the Appellant's behaviour was aggressive, intimidating and overbearing.[50] Mr Jones further submitted that there had been a failure on the part of the Appellant to recognise the gravity of what was fundamentally unacceptable conduct,[51] in circumstances where behaviour of this kind remains *"particularly problematic"* within the racing industry.[52]

RESOLUTION OF THE FIFTH ISSUE

55. I should say at the outset that in my view, Mr Stirling's various categorisations and descriptions of what the Appellant did are somewhat charitable. For a number of reasons they do not, in my view, fairly reflect what in fact took place.

56. To begin with, the Appellant's pleas of guilty accept the particulars of the charges against him. Those particulars, which are set out in full above, make reference to his having:

(a) spoken in a tone of voice which was raised and aggressive;
(b) repeatedly interrupted Dr Moore when she was attempting to explain her decision, thus preventing her from responding to questions asked;
(c) gesticulated towards (whilst standing in close proximity to) Dr Moore in an animated and aggressive fashion;
(d) engaged in sarcasm, the effect of which effectively questioned Dr Moore's professional expertise; and
(e) engaged in similarly aggressive conduct towards Dr Garling.

[50] Transcript 20.763 - 20.770.
[51] Transcript 20.787.
[52] Transcript 20.793.

57. In particular, references to the Appellant having been aggressive (which, by his pleas, he accepts) render this offending a great deal more serious than simply *"mouthing off"*.

58. Further, in assessing the objective seriousness of offending of this kind, an approach which gives primacy to what may have been *said* is an overly restrictive one. The entirety of the circumstances must be considered. Those circumstances will include, importantly, the subjective effect of the conduct on the part of the person(s) to whom it was directed. In that regard, Dr Garling stated that the Appellant's conduct made her feel *"unsafe"*, *"intimidated"* and *"uncomfortable"*. She described feeling *"discriminated against"* and *"abused and belittled in her workplace"* by the Appellant, whom she said spoke in an "*angry, aggressive, hostile and degrading"* tone. Dr Moore found the Appellant's conduct *"threatening"*. There is no reason to reject those descriptions of the Appellant's behaviour.

59. It was submitted that I should have particular regard to the evidence of two highly respected industry participants, Mr Ron Quinton and Mr Peter Snowdon, both of whom witnessed the incident. Mr Quinton described the Appellant as being *"pretty forward"* and said that he *"might have raised his voice a bit"*. Mr Snowdon described the incident as one that seemed *"a little heated"* in which the Appellant *"did mention a few things pretty strongly"* but *"never got to the point where he was swearing"*. I accept unreservedly that those statements represent the honest objective assessments of Mr Quinton and Mr Snowdon respectively as to what took place. However, as I have observed, it is not only a question of *what* was said and the particulars (which, as I have noted, the Appellant accepts) describe an incident of somewhat greater gravity. Moreover, neither Mr Quinton nor Mr Snowdon are in a position to challenge the subjective reactions of Dr Garling and Dr Moore which remain important.

60. In all of the circumstances, I am unable to accept the proposition that the footage of what occurred demonstrated the Appellant doing little more than having *"an animated discussion"* in which he was simply "*demonstrative"* in his behaviour. I am

also unable to accept that such footage put the facts into (a suggested benign) *"context"*.[53] The relevant context was, quite simply, the Appellant reacting in a generally offensive and entirely inappropriate fashion to a decision with which he was displeased, and with which he did not agree. On any view that reaction was entirely inappropriate.

61. Statements made by this Tribunal, and for that matter by the Panel, have consistently made it clear how behaviour of the present kind by industry participants will be viewed. It is a matter of concern that despite the Tribunal's statements (and statements to similar effect made by the Panel) being disseminated within in the industry, cases of this kind continue to come before the Tribunal to the point where, Mr Jones submitted, they remain problematic. It is appropriate, therefore, to state, yet again, the observations made by the Tribunal in *Berry v Harness Racing New South Wales* which encapsulate the Tribunal's position:[54]

> *[48] 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, racist 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.*
>
> *[49] That approach stems from the fundamental fact that the tasks and responsibilities of Stewards are difficult enough to begin with. Further, and at the risk of stating the obvious, their role is essential to the proper conduct and regulation of the harness racing industry. The discharge by Stewards of what are, by their inherent nature, onerous duties and responsibilities, should not be rendered even more difficult by behaviour of the kind exhibited by the Appellant in the present case. Moreover, Stewards are entitled to assume that they will be able to carry out their functions in circumstances where they are not subjected to personal abuse, and where their personal safety is not threatened or otherwise placed in jeopardy.*
>
> *[50] What must also be emphasised is that industry participants who find themselves affected by a decision of Stewards with which they disagree have rights of appeal. It is not without significance that in the present case, when the*

[53] Transcript 5.155.
[54] 4 June 2024 commencing at [48].

> *Appellant was advised of such rights, he engaged in additional unacceptable behaviour which gave rise to a further charge. It goes without saying that what the Appellant did is not an appropriate response to a decision which is unfavourable to a participant, and with which that participant disagrees. The appropriate response, is for the participant to exercise the rights of appeal which are available.*

62. Whilst *Berry* was a case involving a participant in the harness racing industry, the observations made are no less relevant in the present case. At the risk of stating the obvious, and for the avoidance of doubt, such observations apply to *every* participant, at *every* level, in *every* division of the racing industry. The only additional observation to be made is perhaps an equally obvious one: bullying, intimidation, abuse and harassment are fundamentally unacceptable in any environment, but particularly in the workplace. That is so, regardless of the circumstances in which such behaviour might take place. Consistent with that approach, LR 108(5) makes provision for a mandatory penalty. That fact should be viewed as an indication by the Respondent that, as a rule-maker, it regards conduct of this kind as being particularly serious.

63. All of those considerations lead to the conclusion that general deterrence has a significant role to play in determining penalty. Personal deterrence also has a role to play in this case, although its importance is tempered to some degree by the fact that in my view, the Appellant has some degree of insight into what he did. His apologies to Dr Moore and Dr Garling are some evidence of that, and there is no reason to conclude that those apologies are not genuine.

64. A penalty other than a period of disqualification for offending of this kind will rarely, if ever, be appropriate. Such an outcome would be likely only in circumstances which could be regarded as truly exceptional. There are no such circumstances in the present case. Any suggestion that, absent circumstances that are truly exceptional, a fine would be an appropriate penalty in a case of this kind, should be firmly rejected.

65. Bearing in mind the provisions of LR 108(5), and the reduction to be applied from the mandatory minimum penalty on account of the accepted existence of a special circumstance, the period of disqualification in the present case should be one of 4

months in the case of each offence, with such periods of disqualification to be served concurrently.

ORDERS

66. For the reasons given I make the following orders:

1. The appeal by the Appellant is dismissed.
2. The appeal by the Respondent is upheld.
3. The decision of the Appeal Panel of Racing NSW imposing a disqualification of 2 months is quashed.
4. The Appellant is disqualified, in respect of each charge, for a period of 4 months, commencing on 17 March 2026.
5. The periods of disqualification imposed by order [4] are to be served concurrently.
6. Any appeal deposit is to be forfeited.

THE HONOURABLE G J BELLEW AM SC

4 May 2026