

# TASMANIAN RACING APPEAL BOARD

## Appeal No 01 of 2025-26

<b>Panel:</b>	<b>Ms Amber Cohen (Chair) Dr Sue Martin (Member) Mr Rod Lester (Member)</b>	<b>Appellant:</b>	<b>Mr Tony Kew</b>
<b>Adviser:</b>	<b>N/A</b>	<b>Rules:</b>	<b>AR 233(a) Breach of code of practice</b>
<b>Appearances:</b>	<b>Ms Heidi Lester, on behalf of Tasracing Integrity Unit</b>		
<b>Heard at:</b>	<b>Conference Room Office of Racing Integrity Prospect Government Offices 171 Westbury Road Prospect TAS</b>	<b>Penalty:</b>	<b>2x 12 months disqualification (to be served concurrently)</b>
<b>Hearing Date:</b>	<b>8 August 2025</b>	<b>Result:</b>	<b>Varied</b>

### REASONS FOR DECISION

1. On 8 August 2025, the Board heard this appeal.
2. This appeal is against the decision of Tasracing Integrity Unit to convict, and the penalty imposed upon, Mr Kew in respect to two charges under AR233(a).
3. AR233(a) provides:

*A person must not:*

- (a) *Breach a policy, regulation or code of practice published by Racing Australia or a PRA;*
- (b) ...

4. Stewards held an inquiry on 19 June 2025 (the Inquiry), at which Stewards reviewed the evidence and heard from the appellant, Mr Kew, who was self-represented at the Inquiry.
5. At the Inquiry, Stewards charged Mr Kew under the Australian Rules of Racing 233(a), in respect to two standards under the Tasracing Code of Practice for Racehorse Welfare (the Code/the Standards):

*Charge 1:*

*Standard 7.1 – A person in charge of a racehorse must ensure that veterinary services are sought and provided to any racehorse that is sick, injured or diseased in an appropriate timeframe.*

Charge 2:

*Standard 7.4 – A person in charge of a racehorse must ensure that any racehorse that loses body condition to below BCS 2 out of 5 and does not respond to special feeding must be promptly examined by a registered veterinary practitioner.*

6. As to the two charges, the facts put by Stewards are in summary that during an inspection at Mr Kew's property on 18 March 2025, two horses were examined. Angelina's Joy, a broodmare, was found to have a chronic granulating wound on the anterior aspect of the right hind fetlock. No veterinary attention had been provided for the injury. Miss Dashwood, a retired broodmare, was assessed to be in extremely poor condition and received a body condition score (BCS) of 1 out of 5. A follow up inspection occurred on 24 April 2025. At that time, Angelina's Joy had still not received veterinary treatment. Miss Dashwood had marginally improved, having a BCS of 1.5 out of 5 but had not been examined by a registered veterinary practitioner.
7. Stewards asked Mr Kew for his plea in respect to the charges. He entered a plea of not guilty to Charge 1 and, after some consideration, a plea of not guilty to Charge 2.

**Evidence at Stewards Inquiry**

8. Stewards considered the following items at the Inquiry:
  - a. Owner/Nominator – Tony Kew SNS record, 16 May 2025;
  - b. Horse – SNS record – Angelina's Joy, 16 May 2025;
  - c. Horse – SNS record – Miss Dashwood, 16 May 2025;
  - d. Site Inspection Report – Mel McCarthy at 556-622 Lower Swamp Rd, Lachlan, TAS 7140, 18 March 2025;
  - e. Veterinary Report – Dr Bruce Jackson, Tasracing Regulatory Veterinarian, 24 May 2025
  - f. Laboratory Notice, 24 April 2025;
  - g. Certificate of Analysis – Animal Health Laboratory, 5 May 2025;
  - h. Transcript of Inquiry from 24 April 2025; and
  - i. RSPCA – Direction by an Officer (photo), 24 April 2025.
9. When considering his plea to Charge 2, Mr Kew said that Miss Dashwood had been:

*responding to special feeding. She had improved... she had gone down over the summer months... she had been the boss of the herd. She was in a herd of seven, seven mares, and she was the boss but ... by this time she was thirty-one and other mares were starting to take her food. She had been having special food for quite a period of time... I then moved her and Angelina [the horse the subject of Charge 1] to separate paddocks because Angelina respected her and did not take her food and we, and had increased, she'd been on special food for quite a long time with Omega weight gain and a number of other weight gain products in her food and she actually responded and was, by the time you'd been to inspection she was already improving...*
10. Mr Kew went on to describe what he had done after the inspection, following discussions with Dr Jackson, including changing the worming drenches, finding and adding other weight gaining

products, removing fireweed from the paddocks (as it may have been causing a liver problem) and providing some natural remedies for liver problems.

11. In submissions regarding both of the charges, Mr Kew explained the difficulty he had been having obtaining veterinary services. He said that in July 2023, he had a falling out with a veterinarian, Dr Elizabeth Cooper from Vet in the Valley. over whether or not Dr Cooper had nicked the skin of Mr Kew's horse during a scan. Dr Cooper apparently denied that she had done so and Mr Kew refused to pay for the consultation fee. He did pay for the scan, the medication and the travel but, as he felt he had been lied to, he declined to pay for the consultation. He was subsequently sent an email saying that the Vet in the Valley would cease all future veterinary access, even in an emergency. Mr Kew has had trouble accessing services ever since. He made phone contact with at least two other vets, not with Vet in the Valley and they refused to provide treatment. Mr Kew then tried to contact another vet, Dr Mark Buckerfield on 9 December 2024 but wasn't able to make contact. Mr Kew then went to see Dr Buckerfield at the Brighton stables on 11 December 2024 to show him photographs of the injury to Angelina's Joy (the subject of Charge 1). Dr Buckerfield allegedly advised that it needed surgery. Dr Buckerfield was reluctant to travel to do the surgery but eventually advised Mr Kew that he would "try and fit it in". Mr Kew followed up Dr Buckerfield but never heard back from him. Mr Kew described running into Dr Elizabeth Cooper at Mood Food in New Norfolk in early January and that he "confronted" her. He explained he had a very injured horse that needed surgery. Dr Cooper said she would not come and do it and nor would any of her vets because it was a practice decision not to provide services to him. She said that the reason was not just the incident when Mr Kew had accused her of lying but also because he was a "chauvinist". Mr Kew said that Dr Cooper had indicated she was aware that he had tried to make contact with other vets who had blocked him. It was at this stage that he formed the view that Dr Cooper had a "personal vendetta" against him and that there was "actually a conspiracy to cause, cause animal welfare issues". He said that between he and his wife, they had 29 horses and that they were tragedies waiting to happen. He said it was all because of Dr Cooper. When Dr Bruce Jackson was brought to his property [by Tasracing for the purpose of the inspection], he finally had a vet to look at the injuries.
12. In respect to other efforts made to obtain veterinary treatment, Mr Kew said that he also asked Dr Sam Lowther, who was his dog's vet from Lindisfarne if he could expand his business and advertise for an equine vet. Finally, he said that his daughter is a veterinary nurse in New South Wales and he had asked her to ask whether any vets would be prepared to travel to Tasmania for a working holiday and treat his horses. He also asked his son-in-law, who is the yearling manager at Arrowfield, if any of their vets would come to him for a working holiday. He said he had gone to the residence of another veterinary practitioner from Vet in the Valley to ask for help but had been told he would have to phone Vet in the Valley. He has done that but had no response. He said he has called every equine vet in Hobart that he is aware of but has not been able to obtain assistance. He confirmed that Angelina's Joy had not been seen by a vet in respect to her injuries, other than the Tasracing vet, Dr Bruce Jackson.
13. When asked about whether Mr Kew spoke with his daughter (who is a veterinary nurse and who works at a veterinary practice in New South Wales) about the injury, he said that he had shown her photos of it and "she believes its coming on".
14. Mr Kew showed the Inquiry panel a photo of the injury at the time he had tried to get Dr Buckerfield to attend to it and then a photo of the horse taken the day before the Inquiry. He described the injury as being managed, healing and "so much better than it was". Mr Kew said more generally

*I love my horses. I'm doing the best that I can to look after them. It is not my fault  
I cannot get a vet and I have tried every possible means to try and get a vet.*

15. The panel advised Mr Kew that the charges were sustained and that he was, therefore, found guilty of both charges. The panel accepted that Mr Kew had made multiple attempts to obtain veterinary services, however, it was the fact that veterinary services had not been *provided* that

was the basis of the charge. Mr Kew was then offered an opportunity to make a submission on penalty. He said

*I'm semi-retired. I work to be able to feed and look after my horses. My horses are my life, basically... I feed them every day. I look after them. I don't know what sort of penalty you would want to impose on someone who has tried the very hardest that I possibly could to look after my horses and to provide their appropriate care. I've gone to extreme lengths to try and provide veterinary assistance, and it is totally out of my hands that I have not been able to provide it...*

16. Relevant to penalty, Mr Kew also explained that he has stopped breeding horses because he cannot get a vet and that he does not have any horses in training at the moment. He has a four year old horse that he has been trying for a year and a half to get broken in but he cannot get someone to do that until he has been gelded. He cannot get him gelded because he cannot get a vet. He said he first bought horses to breed in 2008 so he “probably” has had a license since then.
17. The panel gave a penalty of two disqualifications for 12 months, to be served concurrently. The panel advised that they had considered a financial penalty but given Mr Kew’s submission about being semi-retired and that he spends his money to feed his horses, the panel had decided against a financial penalty. Ms Lester, Chair of the panel, then said they would “check out” how the disqualification would affect Mr Kew’s ability to keep the horses and put that in a letter to him.

#### **Appeal Against Conviction and Penalty**

18. Mr Kew, the appellant, has appealed against the conviction and penalty, and in his notice of appeal says the following:

*Certain areas of evidence were not considered or were excluded.  
Further evidence may now be available.  
Definition of terminology was not established.  
Penalty conditions disproportionate to the circumstances of the alleged offence.  
Conventional rule of law breached in that the prosecution comprised the majority of the judgment panel.*

19. The appeal grounds are each addressed in this decision as they arise in the course of the appeal and determination as to conviction and penalty.
20. The Board considered the transcript of the Inquiry and noted the matters outlined above.
21. Both Stewards and Mr Kew provided some further material for the consideration of the Board. The further material provided by the appellant, Mr Kew, was:
  - a. Screenshot of legal question;
  - b. Copies of text message correspondence with Dr Buckerfield in December 2024 and with an officer of RSPCA in July 2025;
  - c. Photographs of 24 November 2024, 12 January 2025 and 30 July 2025;
  - d. Emails from Dr Lowther of 29 Jul 2025 and Zarli Kew of 18 July 2025;
  - e. Call log screenshot;
  - f. Original injury photograph;
  - g. Statement of Tracy Pickering (Mr Kew’s wife); and

- h. Letter from Dr Rachel Nugent of 31 July 2025.
22. Stewards provided a copy of the Code of Practice for Racehorse Welfare and Inquiry Reports/Penalty Precedents in respect to similar Stewards decisions and a submission of the Tasracing Integrity Unit in respect to Mr Kew's appeal.
  23. No objection was raised in respect to the new evidence submitted by either the appellant or the respondent and the Board allowed it on the basis it had relevance to the subject of the appeal, pursuant to section 81(3) of the Act.
  24. Mr Kew was invited to speak to his appeal grounds at the hearing of the appeal. He explained that his reason for appealing his conviction in respect to Angelina's Joy (Charge 1) is that the wording of Standard 7.1 is that a person must ensure that "veterinary services are sought and provided". Mr Kew submitted that he had provided veterinary services with the help of his wife, who is a registered nurse with extensive experience in the healing of human wounds, and also with advice from his daughter and the vets his daughter works with interstate. He said that although a highly respected veterinary practitioner, Dr Buckerfield, had advised that the horse would need surgery for the wound, the quality of the care and treatment by Mr Kew was such that the wound was now healing without surgery.
  25. In respect to his appeal against conviction for Charge 2 (regarding Miss Dashwood), Mr Kew submitted that the wording of that Standard (7.4) was that a horse is to be examined by a registered veterinary practitioner if it loses body condition *and* does not respond to special feeding. He said that he had not gone out of his way specifically to seek veterinary services for Miss Dashwood as she lost condition every year and then had been "fed up" and she got through the winter every year. He said that although he was no longer able to live on site with the horses, he attended every day to feed them and had also arranged for a neighbour to give Miss Dashwood an extra feed every day to ensure she was receiving enough. He said that she was already receiving special feed before the first Tasracing inspection and had been improving somewhat.
  26. Mr Kew requested that Dr Bruce Jackson be available for cross examination at the appeal hearing, given that Dr Jackson was not available at the Inquiry to be questioned by Mr Kew. Dr Jackson acted as an expert witness for Tasracing and had attended inspections at Mr Kew's property on 18 March 2025 and 24 April 2025. Dr Jackson confirmed that he believed that the body condition score of 1 out of 5 for Miss Dashwood (assessed in March) was a result of chronic malnutrition. He said there were dental issues causing her to drop her feed. He said that the blood test results, from the tests taken in March, indicated that there was some liver and muscle damage, which may suggest the horse had been lying down a lot. Dr Jackson had noticed some fireweed around and as that can cause liver damage, he recommended to Mr Kew that he remove it. Dr Jackson explained that the faecal samples taken from Miss Dashwood and Angelina's Joy were not labelled properly and so he was not able to confirm the results of those, although one indicated a very high egg count, which he suspected was for Miss Dashwood. He recommended a change to the worming drenches. He said that he would "hate to see [Miss Dashwood] if she had been in worse condition".
  27. Regarding Angelina's Joy, Dr Jackson said that he was not able to see the bone through the injured area when he inspected it. It was granulation tissue. He said there was quite a lot of swelling, which may have caused discomfort, but whether it caused a lot of pain is difficult to say. He said that there was quite a lot of prickly vegetation around, which could agitate or re-traumatise the wound, which would likely be painful. Upon questioning by Mr Kew, Dr Jackson confirmed that he had discussed the injury with another veterinary surgeon, who had said that in his experience, it was very difficult to get a wound like that to fully heal when it was near a moving joint. Dr Jackson confirmed the lower edge of the wound in this case would experience some tension from the joint. Dr Jackson said he had been impressed by the level of healing of the injury since he had first seen the horse (in March) and agreed that the level of protection provided to the wound (by bandaging) had been a key factor in that healing. Whether the treatment the horse has now received would be sufficient for the wound to fully heal was

“yet to be seen” but Dr Jackson did agree that there has “certainly been great progress”. He said he personally felt it was worth persisting with the treatment Mr Kew had been giving but he was still not yet sure whether it “will quite get there”.

28. When asked to speak specifically to his appeal grounds, Mr Kew said that the excluded evidence he was referring to was the screen shots he had showing that he had made calls seeking to obtain veterinary services. The new evidence available is the evidence now provided to the Board and listed at paragraph 21 above. As to the “definition of terminology” not having been established, Mr Kew clarified that he was referring to the definition of veterinary services, as distinct from veterinary treatment. Mr Kew submitted that there are references in the Standards to each of those terms.
29. Regarding the appeal ground stating the penalty is disproportionate to the circumstances of the alleged offence, Mr Kew submitted that regard should be had to the fact that he has put so much time and effort into raising a foal that was orphaned, that cannot now be trained [because Mr Kew cannot get it gelded and therefore cannot have it broken in] and that it is unfair and unreasonable that he cannot have a bet on the Melbourne Cup. He also said that he cannot now breed his horses and sell them in foal, because he is unable to make a profit during a disqualification. His plan was to reduce his herd but he cannot now do that. He said his only choice is to give the horses away or to feed them for 12 months without any income from the horses as he is unable to sell them whilst disqualified. He said the penalty is “over the top” for something he had no control over.
30. As to the final appeal ground, regarding a breach of the conventional rule of law where the prosecution comprises the majority of the judgement panel, Mr Kew noted that the head of the investigation unit was on the panel for the Inquiry. He said that he believes that the fact that the head of prosecution was also the head of the panel led to bias in the decision of the Inquiry panel. He said that he was told to come to the Inquiry but that it would not make a difference to the outcome. He said he was always going to be found guilty. As to this ground, it is noted that Mr Kew had not raised any concern about bias at the Inquiry and at hearing, he indicated that he was content this issue would be addressed by the hearing of the appeal by an independent Board.
31. Given Mr Kew’s evidence that he was not breeding horses and did not have any horses in training, due to his limited access to veterinary services, the Board sought to understand what the extent of the penalty of disqualification was on Mr Kew in the circumstances.
32. At the conclusion of the hearing of the appeal, Ms Lester offered to provide a document used as a reference by Stewards, outlining the difference in penalty between a suspension of licence and a disqualification. The document was provided to the Board on 8 August 2025 and provided to Mr Kew the same day, inviting any submission he wished to make in respect to the document to be provided within 7 days. No submission was made by Mr Kew in respect to the document.
33. The document provided is, as Ms Lester had explained, an extrapolation of the Rules regarding the effect of penalties and restrictions. Ms Lester said in her cover email, attaching the document:

*It is noted that, whereas the consequences of a disqualification apply to “a person” and thereby extend to the full range of individuals associated with the industry, the consequences of a suspension are expressed as applying only to riders, trainers, bookmakers, and stablehands.*

34. As to previous cases of a similar nature, Ms Lester provided the Board with recent decisions of Stewards to which the panel had regard, at the Inquiry. A very similar case determined by Stewards in April 2025 was provided, in which the owner of a horse was charged with three offences relating to the same conduct (effectively failing to provide adequate care, failing to obtain veterinary advice and breaching a policy). In that case, the mare was euthanised due to her condition. The owner was disqualified for 6 months, 12 months and 6 months concurrently

for the three charges. The decision of the Tasracing Integrity Unit determined that the owner and registered stablehand had not obtained veterinary advice or treatment. Two other cases relating to greyhounds were provided, from New South Wales and Queensland. Each of those cases involved a larger number of charges but both included charges for failure to obtain veterinary care for injured greyhounds. The New South Wales case resulted in disqualification of three years for individual charges of this nature and the Queensland case resulted in disqualification of between one and three years for these charges.

35. At hearing, Ms Lester said that if anything, the Board should consider increasing Mr Kew's penalty, not reducing it. She said that a Racing Integrity Unit must be seen to be taking firm action against these breaches, with the failure to do so risking the industry as a whole. Ms Lester acknowledged there had been good work done to treat the horses since the intervention of her team but without that intervention, the horses may still be in that condition.
36. Mr Kew objected to that submission, saying that he was already treating the horses at the time of the first inspection.
37. The Board notes the standard of proof in these matters was outlined in the Victorian Racing Appeals and Disciplinary Board case of Oliver (30 October 2017), page 2, as follows:

*The Standard of Proof is that laid down in the well-known case of Briginshaw v Briginshaw. We must be comfortably satisfied that the charge has been proved, taking into account inter alia, the gravity of the charge and the consequences which flow from the conviction.*

#### **Determination**

38. The appellant contends both that he ought not to have been convicted of the two offences with which he was charged and, if the convictions are to stand, that the penalty imposed by the Inquiry panel was excessive.
39. The Board has carefully considered the submissions of each of the parties to this appeal and all of the evidence available.
40. In summary, the uncontroversial facts are that Mr Kew is the owner of two racehorses. On inspection by Tasracing, the horse Angelina's Joy was found to be injured and the horse Miss Dashwood was found to have a body condition score of one out of five. What was in dispute was what Mr Kew's obligations were in respect to seeking and providing veterinary services and whether Mr Kew had met those obligations. Mr Kew was charged with two breaches of the Tasracing Code of Practice for Racehorse Welfare. He has no record of related offending. Mr Kew was found guilty and a 12 month disqualification of Mr Kew on both charges, to be served concurrently, was imposed by the Inquiry panel.

#### **Appeal against Conviction**

41. Mr Kew was charged with two breaches of the Code of Practice for Racehorse Welfare, pursuant to AR233(a).
42. In respect to the first charge, relating to Angelina's Joy, no dispute has been raised by Mr Kew as to whether he was in charge of the horse, nor was there any assertion that Angelina's Joy is not a racehorse for the purposes of the application of the Standards. There was also no dispute that Angelina's Joy was injured. Mr Kew raised the question of what would constitute "veterinary services". He also argued that veterinary services had been sought and provided.
43. His submission was that he and his wife had provided veterinary services by providing care to Angelina's Joy under the guidance of advice received indirectly from a veterinarian. Mr Kew submitted evidence in the form of a letter from Dr Rachel Nugent, a registered veterinarian in New South Wales, who confirmed that she had provided advice to Mr Kew via his daughter,

Zarli Kew, who works as a veterinary nurse in her practice. The letter provided that her advice was “aimed at supporting the health and wellbeing of a horse with a chronic wound” and further stated

*I am aware of the issues [Mr Kew] has been having trying to acquire veterinary care in Tasmania and have been willing to help with advice where possible with the understanding that I have not been able to assess the horses in person.*

44. Mr Kew argued that he had “sought and provided” veterinary services and explained his significant efforts to obtain veterinary services for his horses. The evidence and submissions from Mr Kew was that following a falling out with one veterinary practitioner, that practitioner not only refused to treat Mr Kew’s horses herself, she also prevented any practitioner from within her practice from treating Mr Kew’s animals. Mr Kew also noted that she seemed to be aware that other practitioners operating in the area were refusing to treat his animals, stating this demonstrated there was a conspiracy to prevent his animals from being treated. Mr Kew did confirm that he had a historical debt with at least one of the other vets he had sought veterinary services from. It is essential to note that the other veterinary practitioners referred to by Mr Kew were not called to the hearing and did not, therefore have the opportunity to give evidence themselves as to the circumstances of treating Mr Kew’s horses or otherwise. Fortunately, it is not necessary for the Board to determine the circumstances of how or why Mr Kew was unable to obtain assistance from a veterinarian. Tasracing, at the Inquiry, and the Board, at the hearing of this appeal, accepted that Mr Kew made attempts to seek veterinary services. However, the requirement is that veterinary services are sought **and** provided (our emphasis).
45. The Board has significant reservations in accepting that veterinary services were provided to Angelina’s Joy in the circumstances. Mr Kew is correct in asserting that the term is not defined in the Standards. An appropriate place to turn for the definition of veterinary services in Tasmania is the *Veterinary Services Act 1987* (Tas), which provides at section 3:

*veterinary services means services that form part of the practice of veterinary surgery, and includes, but is not limited to including, the following services:*

- (a) the examination of, or attendance on, any animal for the purposes of diagnosing the physiological or pathological condition of the animal, including testing or imaging for diagnostic purposes;*
- (b) giving advice based on a diagnosis referred to in paragraph (a), including prescribing treatment, drugs, medications or medical appliances;*
- (c) performing medical or physical treatment of animals;*
- (d) performing surgical procedures on animals;*
- (e) administering an anaesthetic to any animal;*
- (f) conducting pregnancy testing of any animal;*
- (g) carrying out, by manual operation or use of instrumental appliances, any procedure on an animal for artificial breeding purposes – but does not include any prescribed services;*

46. Section 11 of the *Veterinary Services Act 1987* (Tas) provides:

*(1) A person shall not engage in the practice of veterinary surgery or render a veterinary service unless that person is a registered veterinary surgeon.*

47. Section 11 does provide that section 11(1) does not apply to a person who provides a veterinary service in an “emergency where a registered veterinary surgeon is not reasonably or readily available”. The term “emergency” is not defined, however, a common sense approach would dictate that the term refers to something in the nature of an urgent, sudden and serious event that requires immediate action to remedy harm or avert imminent danger.
48. Doubtless the treatment Mr Kew provided to his horses was the performing of “medical or physical treatment of animals”. However, the *Veterinary Services Act 1987* (Tas) provides that such services must be carried out by a registered veterinary surgeon. Although it was essential

that the horse be treated, and although a registered veterinary surgeon was not reasonably or readily available, the treatment cannot be said to have been given in an emergency situation on any common sense view so as to constitute “veterinary services” for the purposes of the *Veterinary Services Act 1987* (Tas).

49. Even if the *Veterinary Services Act 1987* (Tas) were not to be applied, finding that veterinary services had been provided to Angelina’s Joy indirectly following advice from Dr Nugent is not reasonably open on the evidence and certainly was not open to the Tasracing Integrity Unit at the Inquiry. In respect to advice he obtained from his daughter, when directly asked, Mr Kew said at the Inquiry only that he had shown her photos and that “she believes it’s coming on”. He did not name the registered veterinary surgeon as Dr Nugent or even say that a registered veterinary surgeon had advised him about the wound. He did not specify what advice she gave, what information he had on which to base her advice or when the advice was provided. For the purpose of this appeal hearing, Mr Kew submitted a letter from Dr Nugent stating she “provided veterinary advice to Anthony Kew via his daughter Zarli Kew” but did not disclose what advice was given, what information Dr Nugent based her advice on, or on what date(s) advice was provided. The letter is given little weight by the Board both because it does not contain those essential details and because it appears to be inconsistent with the evidence Mr Kew himself gave at the Inquiry. The usefulness of the letter is limited to supporting the notion that Mr Kew sought veterinary advice, not that veterinary services were provided. Further, at the hearing of the appeal, Mr Kew was not able to recall what advice Dr Nugent had given, nor when she had given it. Only that it was sought “well before” the first inspection. The Board accepts that Dr Nugent provided some advice but does not accept this constituted providing veterinary services for the purposes of the Standards.
50. Turning now to the second charge, relating to Miss Dashwood, Mr Kew does not dispute that he was a person in charge of a racehorse, that Miss Dashwood had a body condition score (BCS) of less than 2 (albeit, it is noted that he did not specifically admit this fact), nor that he did not have her promptly examined by a registered veterinary practitioner. The submission by Mr Kew was in essence that Miss Dashwood was responding to special feeding and, therefore, the obligation to have her seen by a practitioner did not arise.
51. The evidence before the Board as to that issue is that at the first inspection on 17 March 2025, Miss Dashwood was assessed to have a BCS of 1. The Code provides that a horse with a BCS of 1 is ‘thin’ (described in that Code as “barely any fatty tissue, skin more supple, shape of bones visible, narrow ewe-neck, ribs easily visible, prominent backbone, croup and tailhead, sunken rump, cavity under tail, gap between thighs”). Mr Kew advised that since the first inspection, he had changed the worming drenches and taken steps to reduce the fire weed in the paddocks. Dr Jackson confirmed, in a report to Tasracing dated 27 April 2025, following the second inspection, that Miss Dashwood’s condition had improved. At the second inspection, on 24 April 2025, Miss Dashwood was assessed to have a BCS of 1.5. Mr Kew said that prior to the first inspection, Miss Dashwood’s condition had been improving as she had been on special feed. Mr Kew spoke of a pattern of Miss Dashwood losing conditioning each year but improving in condition prior to and making it through the winter months. It is of significant concern that Miss Dashwood’s condition was even worse than BCS1 prior to the inspection. A score of less than BCS1 describes a horse which is emaciated. Further, it is clear that following some advice provided by Dr Jackson following the first inspection, Miss Dashwood’s condition immediately improved, demonstrating the obvious need and effectiveness of having her seen by a registered veterinary practitioner, albeit Dr Jackson was there for the purposes of assessment as an expert for Tasracing, with advice regarding the welfare of the horse being incidental to that role. At the Inquiry of 24 April 2025, Mr Kew had said Miss Dashwood was “already improving” at the time of the first inspection, although he did not answer the question put to him about how long the horse had been in the condition for. He said he had increased her feed by having co-opted a person living in the shed at or near the property to provide an extra feed for her. Mr Kew did not state when this arrangement had commenced.
52. At the Inquiry of 19 June 2025, Mr Kew again stated Miss Dashwood had been responding to special feeding but also said “she’d been on special food for *quite a long time* with Omega

weight gain and a number of other weight gain products in her food...” (our emphasis) Mr Kew also said, he had been following Bruce’s directions, “having finally had an opportunity to have some veterinary consult.” In making these statements, Mr Kew has acknowledged that Miss Dashwood had been on the special feed “for quite a long time” and also that the veterinary advice from Dr Jackson was helpful in improving her condition.

53. There is clear evidence before the Board that Miss Dashwood had a BCS of 1 on 17 March 2025 and a BCS of 1.5 on 24 April 2025, more than 5 weeks later. Mr Kew also stated that her condition had improved prior to the first inspection, indicating it had been even worse than when it was inspected that day, and she had already started to improve by that time and that she had been on special feed for “quite a long time”.
54. The relevant Standard (7.4) requires that if the horse does not respond to special feeding, it must be “promptly” examined by a registered veterinary practitioner. The word promptly indicates there is some urgency about seeking treatment for a horse with a BCS below 2 out of 5. The issue of whether it is responding to feeding does not remove the urgency of the situation altogether. In finding the charge sustained, Tasracing Integrity Unit did not accept that the horse had been adequately responding to feeding. It was assessed at the second inspection as having a BCS of 1.5, still below the acceptable level, and still at the level that would require “prompt” examination by a veterinary practitioner. Whilst the Standard does not contain a time frame for the response to special feeding, the purpose of the Code is the welfare of animals and given the requirement for the horse to be ‘promptly’ examined, it is reasonable to imply an expectation that the action is taken with the urgency necessary to relieve the suffering of an animal. The Board agrees with the assessment of Tasracing Integrity Unit. The response to special feeding was inadequate given the special feeding had begun before the first inspection and, at the time of the second inspection the condition of the horse remained below BCS2. The horse should have had the benefit of an examination by a registered veterinary practitioner.
55. Mr Kew is responsible for ensuring that his horses have access to veterinary services as and when required, regardless of his personal circumstances and relationships with veterinary practitioners. For the benefit of any doubt, the inspection of the horses on the property and assessment of the horse by Dr Jackson as an expert for Tasracing on 18 March 2025 did not constitute an examination by a registered veterinary practitioner for the purpose of relieving Mr Kew of that obligation under the Standard.
56. The decision of Tasracing in respect to conviction for Charges 1 and 2 is affirmed.

### **Appeal against Penalty**

57. Mr Kew has also appealed against the penalty imposed for each of the charges.
58. Much of what Mr Kew submitted to the Board was not persuasive in overturning the convictions for each charge, however, does serve as mitigating factors in penalty. For example, the following matters are accepted by the Board and considered mitigating circumstances:
  - a. Mr Kew made a number of enquiries and attempts to seek the provision of veterinary services for Angelina’s Joy, including seeking advice;
  - b. Mr Kew readily accepted and implemented the advice of Dr Jackson following the first inspection in respect to clearing the fire weed, changing the worming drenches and adjusting the feed for Miss Dashwood;
  - c. Arrangements have been made for a neighbour to provide Miss Dashwood with a second feed daily to increase her food supply;
  - d. Mr Kew and his wife have worked diligently to care for the wound on Angelina’s Joy’s leg since the first inspection;

- e. Mr Kew intends to reduce the size of his herd and any period of disqualification will impede his ability to do that as he is unable to sell his horses, or have them in training during the disqualification; and
  - f. Mr Kew earns very little income from his herd and works to feed them.
59. These matters are to be weighed against a number of relevant factors specific to this matter and to the principles generally of the paramount importance of the care, welfare and health of racehorses, as outlined in the Code and the expectation of the community that these standards are upheld.
60. Having reviewed the sections of the Australian Rules of Racing that Ms Lester provided following the hearing of the appeal, referred to at paragraphs 32 and 33 above, the Board observes that a disqualification is, quite appropriately, highly restrictive on the activities of a disqualified person.
61. Disqualification is undoubtedly appropriate in the case of breaches of animal welfare standards. The Board considers the length of disqualification for each charge to be neither excessive, not inconsistent with the previous matters referred to by the Tasracing Integrity Unit. The Board, however, is cognisant of the fact that Mr Kew owns a large herd of horses. He described owning, between him and his wife, 21 thoroughbreds, a Shetland, four other miniatures, two Arabs and a pony. He described having one young horse, who he had hoped to have broken in for training but had not yet been able to as the horse had not been gelded. Relevant to these circumstances, disqualification prohibits the disqualified person from attending or participating in thoroughbred horse sales or related events (AR263(1)(m)) and also prohibits the person receiving any direct or indirect financial or other benefit derived from thoroughbred racing and/or breeding in Australia (AR263(1)(o)). Given Mr Kew's ongoing difficulty accessing veterinary services, the Board considered whether it is in the interests of Mr Kew's herd to impose a penalty on him which prevents him from being able to sell his horses.
62. AR263(1) allows the PRA (Principal Racing Authority – in this case, Tasracing Integrity Unit) to authorise a change to the prohibitions on disqualified persons that would otherwise flow from the disqualification. That rule does not require that the PRA specify such other authorisation at the time of the disqualification. The Board observes, however, that a failure to authorise the sale of horses for the period of the disqualification may result, in circumstances where Mr Kew's income and access to veterinary services is already limited, and where we have heard that Mr Kew has no means of transporting his horses, in Mr Kew having limited options for the ongoing care and welfare of his herd. When questioned about whether the restrictions on Mr Kew could actually in some way endanger the welfare of his horses, Ms Lester indicated at the hearing that common sense would prevail and that Tasracing Integrity Unit would be prepared to exercise their discretion. This does not provide a clear position as to whether or not Mr Kew can sell his horses to remove them from his property and from the ongoing risk of not having access to veterinary services. With consideration also for Mr Kew's personal circumstances, the Board is of the view that it is appropriate that the penalty of disqualification be qualified, as allowed under AR263(1), by the authorisation that he may sell his horses during the period of the disqualification.
63. The decision of the Board is that the penalty is varied to a 12 month disqualification on each of charges 1 and 2, to be served concurrently but to exclude the prohibitions at AR263(1)(b), (m), (n) and (o) to the extent that it can be demonstrated that it is necessary for, and in conjunction with, efforts to reduce the number of horses in his ownership.
64. In accordance with section 99(4) and 99(5)(d) of the Act, 25% of the appellant's prescribed deposit is to be forfeited to the Secretary of the Department. The appellant is also ordered to pay 25% of the cost incurred in the preparation of the transcript in accordance with section 99(8) and 99(9)(c) of the Act.

**DATED: 17 SEPTEMBER 2025**