

APPEAL PANEL OF RACING NEW SOUTH WALES

APPEAL OF LICENSED TRAINER MR WAYNE CARROLL

Appeal Panel:	Mr R. Beasley SC, Principal Member; Mr C. Tuck; Mrs J. Foley
Appearances:	Racing NSW: Ms K. Campbell, Legal Counsel, Racing NSW Appellant: Mr M. Callinan, Solicitor
Date of Hearing:	31 May 2023
Date of Reasons:	5 June 2023
Rule involved:	AR231(1)(b)(iii) – Failure to provide veterinary treatment when necessary

REASONS FOR DECISION

Mr R Beasley SC, Principal Member

Introduction

1. In January 2023, Racing NSW Stewards commenced an investigation into the euthanasia of the 4-year-old mare *No Nats* that occurred on 30 December 2022. Following a Stewards' Inquiry which commenced on 15 February 2023, on 2 March 2023 licensed trainer Mr Wayne Carroll (the Appellant) was charged with a breach of AR231(1)(b)(iii) in relation to an alleged failure to provide veterinary treatment to No Nats in circumstances where such treatment was necessary. He was also charged with breach of AR104 relating to his failure to keep treatment records.
2. The Appellant pleaded not guilty to breach of AR231(1)(b)(iii), but on 21 March 2023 was found by the Stewards to have breached the rule. On the same date he pleaded guilty to breach of AR104. In relation to that breach he was fined \$1,000. For the breach of AR231(1)(b)(iii), his licence was suspended for a period of 6 months.
3. This appeal concerns only the finding of breach in relation to AR231(1)(b)(iii). The appeal is in relation to both the finding of breach, and the severity of the penalty imposed.

4. At the appeal hearing the Appellant was represented by Mr M. Callinan, solicitor. Racing NSW was represented by its legal counsel, Ms K. Campbell. An Appeal Book containing the transcript from the Stewards' Inquiry, and the Exhibits from that inquiry, was tendered in evidence. No oral evidence was given. Mr Callinan provided the Panel with detailed written submissions to assist it in its deliberations.

Rule and Particulars of Breach

5. AR 231 is in Division 5 of the Australian Rules of Racing (the Rules) which is headed "Misconduct in relation to the care and welfare of horses". AR231(1) is relevantly in the following terms:

AR 231 Care and welfare of horses

- (1) A person must not:
 - (a) commit or commission an act of cruelty to a horse, or be in possession of any article or thing which, in the opinions of the Stewards, is capable of inflicting cruelty to a horse.
 - (b) **if the person is in charge of a horse – fail at any time:**
 - (i) to exercise reasonable care, control or supervision of the horse so as to prevent an act of cruelty to the horse;
 - (ii) to take such reasonable steps as are necessary to alleviate any pain inflicted upon or being suffered by the horse;
 - (iii) **to provide veterinary treatment to the horse where such treatment is necessary for the horse; and/or**
 - (iv) to provide proper and sufficient nutrition for the horse."

6. The relevant particulars alleged against the Appellant were as follows:

3. On the morning of Saturday 24 December 2022, you became aware that the mare No Nats had been involved in an incident during track work at the Murrumbidgee Turf Club earlier that day and had been injured.
4. That at approximately 10.30am on Saturday 24 December 2022 and after No Nats had been transported back to your registered stable premises, you did inspect the mare's near fore fetlock

and observed that the mare had sustained a laceration just above the medial sesamoid of the palmar aspect of the fetlock.

5. That during your inspection of No Nats on the morning of 24 December 2022 you observed that the mare was lame.
6. That you observed and/or were aware that No Nats remained lame on each day from 24 December 2022 until and including the day of 28 December 2022.
7. That you did fail to provide veterinary treatment to No Nats on 24 December 2022 when the mare had a laceration above its left fore fetlock and was displaying signs of lameness.
8. That at no time from 24 December 2022 until and including the day of 28 December 2022 and whilst No Nats remained in your care, control and supervision at your registered racing stables, provide veterinary treatment for the mare when such treatment was necessary for the mare.

Construction of the Rule

7. It was not in dispute between the parties that AR231(1)(b)(iii) is one of strict rather than absolute liability. That is, an available defence is one of honest and reasonable mistake. That is also my view of the rule, having regard to matters of text, context, and purpose. As to text, the rule is not drafted in such a manner that would provide strong or conclusive support that it was intended to be one of absolute liability. In relation to context, I note that subrules (i) and (ii) introduce concepts of reasonableness. As to purpose, it would seem odd that Racing would impose a culpability under the Rules for a failure to provide veterinary treatment by a trainer in circumstances where a trainer honestly, and on an objectively reasonable basis, considered that treatment from a veterinarian was not necessary.
8. As to the words “veterinary treatment” in the rule, it was also common ground that this term should be treated as referring to treatment provided by a qualified veterinarian, rather than to some medical treatment provided to a horse by a non-qualified person (such as the Appellant here).

Evidence

Lay evidence

24 December 2022

9. Most of the matters of fact are not in dispute. The relevant evidence was as follows:
- (a) No Nats was ridden at track work on the morning of 24 December 2022 by licensed trainer and track work rider Mr Graham Byatt.
 - (b) During the course of track work, the horse “probably hit four panels of the rail” before slipping and falling: Ex 8, L35-45. Mr Byatt did not see any injury to the horse.
 - (c) When the horse ran back to the tie ups, the Appellant’s foreman (and son), Mr Myles Carroll, saw that the horse had a laceration to the fetlock that he thought was about an inch long. He washed the wound, treated it with Betadine, and applied a bandage: Ex 7; T4 L176-230. Mr Myles Carroll’s observations were that the laceration was perhaps 5cm but “wasn’t deep”. He did not think a vet was needed, although he left that to his father: T7 L323. He thought the horse was tender but not lame, and when she was put in her box on 24 December she “had a roll”: T9 L428. Myles Carroll did not treat the horse after 24 December.
 - (d) When interviewed by the Stewards on 5 January 2023 (Ex 5), the Appellant indicated that he was told that the horse had run off the track, and had hit the rails at track work that morning. When the horse returned to his stables, he took the bandage off and noticed that the horse had a cut of about an inch and a half at the bottom of her fetlock. He thought the laceration could “do with a stitch, a couple of stitches” but that it “didn’t look that bad”, and stitches “weren’t going to hold in that place anyway”. He described the horse as being “comfortable”, but he still administered some Phenylbutazone (Bute), a pain-relieving medication.
 - (e) At the Stewards’ Inquiry conducted on 15 February 2023, the Appellant also indicated that the horse was “mildly, very mildly” lame on the 24th: T37

L1781. He explained this as being “mild that she had an injury”, and agreed that she was “mildly lame” at the walk: T37 L1785-1790.

- (f) The injury to the horse was also seen by Natalie Muenger on 24 December. Ms Muenger is a stablehand employed by the Appellant, and also a third-year veterinary student. She signed a statement dated 26 January 2023 (Ex 10) in which she said that the injury to the horse appeared to her to be a “superficial laceration”. She described the horse as being “lame” but “able to walk into her box without difficulty”. At the Stewards’ Inquiry Ms Muenger explained that she had observed the injury on 24 December from a distance of perhaps one metre: T15 L728. She confirmed that the Appellant applied Betadine on the first occasion before bandaging the horse. On a lameness scale she said the horse was probably a “2”: T16 L761. In relation to her description of the wound being a “superficial laceration” in her statement, Ms Muenger explained that she calls a “superficial laceration anything that cannot be seen to be impacting the under – the main anatomical underlying structures of the horse”: T17 L812-3. She also said that if there were “visible signs of tendon tissue or other underlying tissue indicating a leg injury, [she] would’ve noticed it”: T21 L1021-2.

25 to 28 December 2022

10. The evidence concerning the horse’s condition and treatment provided on these days was relevantly as follows:
- (a) The horse continued to be treated with Bute on each of 25, 26 and 27 December 2022. The horse was also treated with Prednoderin, which is an anti-inflammatory/anti-bacterial ointment: Ex 16.
- (b) Ms Muenger said in her 26 January 2023 statement that “some days later” she saw the horse again and noticed it was “walking better in her paddock”: Ex 10. She confirms that the horse was given Bute during this period.
- (c) In his interview with the Stewards on 5 January 2023 (Ex 5), the Appellant confirmed the ongoing administration of Bute up to 27 December 2022. He

said during this period the horse was “walking in the paddock”, but it was “a bit sore in the leg”. He described it as being “mildly lame”, and that there was some swelling in the leg in the region of the laceration. There was also this relevant evidence given at his interview:

LJ Martin: She was sort of visibly lame those days between the vet coming and the initial injury, when it initially happened on the 24th. From 24th, say to 27th to the 29th –

W Carroll: Yeah, yeah.

LJ Martin: – it was lame every day.

W Carroll: Yes, yes.

LJ Martin: So there was no attempt between the 24th, the 27th and the 29th, when the horse was inspected, there was no contact from the vets at all from that time. There was just a set date that you’d organised the vet to come?

W Carroll: Yeah, yeah. I didn’t, as I said, I didn’t think there was any need because she was eating and she was drinking. She was all of the above, not a problem with that. She wasn’t laying down in a corner, you know, bellowing or nothing like that. The horse was quite comfortable in itself: Ex 5, L364-381)

- (d) At the Stewards’ Inquiry the Appellant indicated that in his nearly 40 years of experience he has had horses with similar type cuts (although not in this precise region) who “have healed up again and that’s what’s happened”: T43 L2074. He:

“...honestly did not – I didn’t think that it needed any vet. Had I thought, I would’ve got a vet ... You know, if I had thought we needed a vet, I would’ve got the vet. We’ve got no reason not to get the vet”: T43 L2089-2095.

- (e) The Appellant gave evidence of vets attending horses at his stables between 12 to 20 December. In the period 26 to 28 December 2022, the Appellant said he observed the horse walking in the paddock with what he described as a “mild” amount of lameness: T47 L2280-2292.

- (f) A veterinarian (Dr Evangeline Beech) was due to attend the Appellant's stables on 29 December 2022. As a consequence, the Appellant did not administer Bute to the horse that day, or on the 28th.

29 December 2022

11. The evidence of what relevantly occurred on 29 December 2022 is as follows:

- (a) Dr Beech examined No Nats at the Appellant's stables on 29 December 2022. She was clearly provided with information as to how the horse sustained the cut to its leg, which she described in two reports she prepared (Ex 3 and 4) as a "traumatic injury".
- (b) On examination she found the horse to be grade 5/5 lame on the left fore at walk and "would stand with the left fore toe touching during examination". The horse presented with moderate swelling and heat in the distal left fore limb. She could see a "horizontal wound approximately 5cm long was situated just above the medial sesamoid of the palmar aspect of the fetlock". On palpation it was clear the horse was in significant pain. She performed an ultrasound on the horse which revealed a "section of superficial flexor tendon was found to be severed (about 15-20% of the tendon). There was evidence of infection within the tendon and tendon sheath on ultrasound as well:": Ex. 3 and 4.
- (c) In her report of 30 December 2022 (Ex 3), Dr Beech expressed the view that "a very guarded prognosis for successful treatment was given due to the 5-day interval between injury and diagnosis". Slightly different wording was used in her report of 7 January 2023 (Ex 4). In her initial report she also expressed the opinion that "had veterinary attention been sought earlier, chances of successful treatment would have been much higher". This opinion was removed from her report of 7 January 2023 (Ex 4).
- (d) In her reports it is clear that Dr Beech offered a very guarded prognosis, but suggested one option was to refer the horse to University for specialist care (surgery to clean out the wound), but this was declined by the owner given the

low likelihood of success. Given the equally low likelihood of success with conservative management, the owner of the horse opted for euthanasia, which occurred on 30 December 2022. Dr Beech also recorded in both of her expert reports that “in the days between injury and assessment the mare’s distal left fore limb began to swell and the lameness in that limb worsened”. It can be noted that this is inconsistent with the evidence of Ms Muenger that the horse at least had a period where it appeared to be getting better.

- (e) At the Stewards’ Inquiry on 15 February 2023, Dr Beech said she was told by Myles Carroll that the horse was “a bit jiggy, but it’s gotten lamer”: T27 L1301. Dr Beech was also questioned about the comment in her first report “the wounds itself was deep enough to arise suspicion that there was tendon involvement”, which was removed from her second report. She explained that the level of swelling by the time of her examination on 29 December was such that she was able to “visualise the tendon quite easily”: T29 L1400. She was also asked about removing from her second report the opinion expressed in the first report that “had veterinary attention been sought earlier, the chances of successful treatment would have been much higher”: T31 L1492-1495. Her evidence was that she “removed that because of thinking about the tendon sheath injuries that I had seen before in other practices that it might not have changed the prognosis of that injury and I felt that that was a little bit subjective rather than objective in the wording”: T31 L1497-1499. That evidence is slightly difficult to follow, but I take it to mean that in circumstances of an injury like this, the prospect of recovery regardless of the treatment is low, something which was not best reflected by Dr Beech’s choice of words in her first report.

Expert Evidence

- 12. The following relevant expert evidence was also given at the Stewards’ Inquiry and during the course of the investigation:
 - (a) The core evidence relied upon by Racing NSW in support of its finding of breach of the rule was given by the Chief Veterinarian of Racing NSW, Dr P. Curl. In particular, Dr Curl expressed this view at the Stewards Inquiry:

P Curl: ... I think lameness in itself can be slightly deceptive, even in severe injuries or infections or whether it be over a joint or a tendon sheath compromise, which very often have a grave to hopeless prognosis because if there's drainage out of a joint, for instance, or a tendon sheath, the horse can look reasonably sound, even though there's this underlying contaminant illness brewing, if you like. Because there's draining, there's no pressure building up. So lameness in itself can be deceptive, but I think after a traumatic incident where the horse sustained an injury, presumably, at speed from it looks to be a hind leg striking into a front leg, so you've got to assume there's a degree of contamination, a high degree of contamination, a high degree of trauma of a particularly sensitive part of the horse's anatomy and where you have lameness that is persistent and you've made the assumption that it's a superficial wound, you've got a lameness that's showing through an ongoing course of analgesic treatment, such as Phenylbutazone, you know, these are the things that should – you know, obviously I think we'll all have to agree that there was an error of judgment when the wound was first assessed, but I would argue that there was an ongoing failure to acknowledge and address the lack of clinical improvement in that horse's condition and in fact the deterioration in that horse's condition from the date of injury to the date that was seen by the veterinarian on the 29th": T53 L2550-2569 (emphasis added).

- (b) Also of relevance was Dr Curl's opinion expressed earlier in his evidence where he said:

“...I would say that whenever a horse has a wound near a joint or over a synovial structure, especially if it's low down on the limb and especially if the horse is lame on that limb, I would assume that to be serious until proven otherwise because wounds in that area can be very serious, even if they appear small or simple, which is why they always require assessment by a veterinarian or at least consultation with a veterinarian to garner an opinion as to what further investigations or diagnostics might be required. So if the question is if I were a vet and I were attending to that wound, what would I do ... you would need to physically examine the wound with your hands, probably probe the wound with a finger or with an instrument and in this instance I would've, given that was over a tendon sheath, I would've flushed the tendon sheath structure to try and determine if that sheath had been compromised or annulled, if I had determined that the wound had in fact gone through the deeper layers of the skin”: T23 L1082-1105 (emphasis added).

- (c) Ultimately, Dr Curl was of this opinion:

“...If I had an injury in that location, it would be my expectation, if it had been sustained at track work, the assumption would or the supposition would be that it occurred at speed, that the horse had struck into itself and, if I had a wound where a horse was lame over that location, absolutely it would be my expectation that that trainer had a conversation, a consultation or a discussion with a veterinary surgeon to determine what was the most appropriate course of action for that horse ... I think it would be a reasonable expectation for a trainer to have knowledge of the anatomy and the potential seriousness of the underlying structures that could have been compromised”: T97 L4648-4668 (emphasis added).

- (d) Dr Curl also expressed this opinion in relation to the treatment of the horse after the 24th, and before it was seen by the vet on the 29th:

“So I would maintain you know, that there should’ve been an acknowledgment of the horse’s condition not improving and in fact deteriorating between the 24th and the 29th that should’ve prompted the trainer to request veterinary advice or intervention earlier than had happened. I have a concern also with the horse not receiving any analgesic or pain relief from the 26th onwards because I would have to think that would be very uncomfortable and a very sorry and painful horse for those 48 plus hours [Note: this may be a transcription or other error, as the evidence was that the horse received pain medication until 28 December, rather than 26 December]. So that’s something that concerns me also. ... I think there needed to be acknowledgment of, okay we’re dealing with a traumatic injury that occurred at speed over an important area of anatomy. As a professional trainer, I should be cognisant or aware of the potential complications, even if they are perhaps rare and the trainer hadn’t experienced them personally. I just feel that, you know, and perhaps it wouldn’t have, and probably most likely wouldn’t have, altered the final outcome for this horse, but certainly it could’ve ameliorated the pain and suffering by intervening a lot earlier and having the horse euthanised a lot earlier than had happened, rather than having it essentially hobbling around the paddock in the interim.”
(T60 L2882-2900)

- (e) Dr C. Lawler, a veterinarian, also gave evidence at the Stewards’ Inquiry. Relevantly, he expressed the following opinion:

“...I’ll pre-empt this by saying the fact that a veterinarian was called out to Mr Carroll’s property on the 29th for ongoing treatment of the other horses suggests to me that Mr Carroll cares about his horses and I think that invoicing records would show that that occurs on a regular basis ... I have had cause to see roughly 15 such injuries over a 38-year career. There are some prominent trainers that I have discussed this case with that have never had a laceration that’s entered a tendon, a tendon sheath, so it’s not a common occurrence. Do I think Mr Carroll afforded the horse veterinary care? Yes, he did do. He cleansed the wound, applied an antiseptic to the wound. He applied a commonly used multifactorial anti-bacterial, anti-inflammatory ointment. He’s bandaged the leg. He’s tended the leg. He’s recognised the leg is not responding as it should have and when the veterinarian is out he has asked for a veterinarian’s assessment of the wound. My understanding of these wounds, my experience with these wounds of the ones that I’ve had beforehand is that they very much – well, regularly the actual injury to the tendon and the tendon sheath is quite some distance from where the skin laceration is. The skin folds up as the limb is flexed, just as we can move skin along the arm if we graft the side of it or whatever. ... If I can be at liberty to say it appears to me in this particular case that Mr Carroll was unaware of the seriousness of the wound at the time. He has treated it as he has treated all other wounds for the 40 years of his career that have not led to such a disappointing outcome and they have all responded and resolved well, but someone without an intimate knowledge of anatomy in this particular case may not have realised the severity of the actual injury.”
(T55-56 L2662-2695)

- (f) Dr Lawler also expressed an opinion about what he would have advised if Mr Carroll had sent him a photograph of the horse’s wound on 24 December. His evidence was as follows:

“I would’ve said to Mr Carroll on Christmas eve, I would’ve said to Mr Carroll “What I’m going to do is leave it in your hands. I can come out if you like, but if you wish to bandage the limb and call me if the horse gets lamer, we can come out and see it.” Do I think it would’ve changed the outcome? Absolutely not. Do I think that the wound got contaminated and damaged at the time of penetration? Absolutely. Do I think the horse would’ve ended up with a tendon sheath infection without being put on a table and having the tendon sheath flushed? Absolutely, even if it was given preventual antibiotics and that’s my experience with even horses that have

had penicillin, gentamicin, and bandaged appropriately have ended up with infected tendon sheaths.” (T57-58, L2779-2789)

- (g) Dr Lawler expressed the view that he would have been happy for the Appellant to bandage the limb and “get back in touch with me if the horse got lamer”: T58 L2807-9. He said that a horse that has received a laceration can sometimes go acutely lame 3 to 5 days after the laceration. He said that “once we start to get oedema and swelling around the wound so that it actually seals the wound off and drainage no longer establishes, then we get pressure build up and the lameness starts to deteriorate”: T56 L2726-2731.
- (h) Dr Andy Lamont, a veterinarian at the same veterinary practice as Dr Beech, provided an undated report to the Inquiry that became Exhibit 17. Of relevance, he expressed the following opinions:

“Wounds involving digital sheaths are often picked up late in the disease process. Initially they seem like small innocuous wounds. However, when they penetrate the underlying synovial structures and infection in the tendon sheath becomes established, it is only then that the horse becomes severely lame. I have observed this in multiple other cases. In my opinion, this is the progression of events that occurred with No Nats.”

- (i) Dr Lamont also advised the Stewards that “the injury occurred on Christmas eve when only a skeleton out-of-hours service was available”.

Other Evidence

- 13. Statements of evidence were also tendered at the Stewards’ Inquiry from licensed trainers Mr John O’Shea, Mr Chris Waller, and Mr Kris Lees: Exs 25, 26 and 27. In these statements, the three trainers express nearly identical opinions based on a series of assumed facts which essentially outline the injury suffered by No Nats, and the treatment provided to her up to and including the examination by Dr Beech on 29 December 2022.
- 14. The opinions expressed by these trainers cannot be considered to be expert veterinary opinions. However, each of the trainers has vast experience in the care, management,

and training of thoroughbred horses. Their views can, to that extent, be considered expert. They each express the view that in their professional opinion it was “not necessary to immediately seek veterinary assistance on first observing a laceration and lameness”. They consider the administration of an anti-inflammatory as a reasonable response, “particularly given the time of year and the limited access to any professional assistance unless you were fortunate to have a stable veterinarian at your disposal”. While I accept that that is the genuinely held opinion of Mr O’Shea, Mr Waller and Mr Lees, their view about whether it was necessary or not to immediately seek veterinary assistance cannot be definitive. I consider that it must be weighed with expert veterinary opinion which should, without intending any disrespect, be given greater weight than the opinion they expressed on the basis of their experience. I fully accept however each of their opinions that:

“A trainer’s ability to make decisions on the appropriate stable treatment or veterinary treatment is dependent upon the availability of veterinarians at the time and the judgment of the trainer, exercising their experience and assessment of the laceration on first examination.”

15. I note that they expressed the view that “a trainer is constrained by the financial capacity of an owner to fund the necessary treatment to the injured thoroughbred”. While I accept this, the issue of money cannot, in my view, be determinative of whether AR231(1)(b)(iii) has been breached or not. If there is no reasonable basis not to obtain treatment from a veterinarian for a horse where treatment is necessary, then the rule will have been breached. Of course, a trainer cannot be found culpable under the rule if he or she has arranged for veterinary assessment and treatment if an owner subsequently says, “well I’m not paying for that particular kind of treatment”. It is not alleged against the Appellant that he failed to arrange for surgery for the horse. The issue here is really whether a qualified veterinarian needed to be contacted to examine the horse either on 24 December 2022, or on some day prior to the horse being examined by Dr Beech on 29 December 2022.
16. Also in evidence is a document prepared by Racing NSW titled “Minimum Standards and Guidelines of Equine Welfare” (**Welfare Guidelines**): Ex 23. Relevantly, these Guidelines provide as follows:

S4.6 Veterinary advice must be sought immediately if a horse:

- sustains serious injury e.g. deep wounds, severe haemorrhage, severe or unexplained lameness or eye injuries

S4.7 Veterinary advice must be sought as soon as possible if the horse has:

- lameness that does not rapidly resolve.”

Submissions

Racing NSW

17. The principal evidence upon which Racing NSW submits that breach of the rule has been established is the evidence of Dr Curl referred to above at [12(a) to (d)]. In short, Ms Campbell submitted that it was clear enough from the evidence that:

- (a) the horse had sustained a laceration from a traumatic incident that would have occurred at speed; and
- (b) the injury occurred to a sensitive part of the horse’s anatomy; and
- (c) the circumstances of the injury brought with it an obvious risk of infection which could lead to the grave consequences that occurred here.

18. Based on those matters, Ms Campbell submitted that it was unreasonable for the Appellant not to arrange for the horse to be immediately examined by a veterinarian – on 24 December - to properly determine the seriousness of the injury the horse had sustained. Further, in circumstances where the horse remained lame and required the administration of painkillers from 25 to 28 December 2022, it was necessary in those circumstances to obtain veterinary assessment and treatment.

Appellant

19. One submission made on behalf of the Appellant was that, even if veterinary assessment and treatment had been obtained for the horse on 24 December 2022, the same ultimate outcome was likely. In my opinion, there is no way of determining that on the evidence. I consider that it is likely that the horse might have had some better prospects of survival if a vet inspected the horse on 24 December 2022, but on the

evidence it would seem that unless the owner opted for surgical intervention, the prognosis was poor in any event. The issue before us in any event is not whether the horse would or would not have survived had a vet examined it on 24 December 2022, or any day prior to 29 December 2022. The issue is whether it was reasonable for the Appellant not to obtain veterinary assessment and care for the horse prior to the day that he did.

20. The detailed submissions otherwise made for the Appellant can be summarised in this way:
 - (a) The Appellant had an honest belief that the injury the horse sustained was not serious. It did not appear serious or deep when looked at. Had he considered it to be a deep or serious laceration, he would have arranged for a vet to see the horse.
 - (b) The mare was not particularly lame or distressed on 24 December 2022. The horse had a roll in its box, and did not go off its food.
 - (c) In the days leading up to 28 December 2022, the evidence was of only “mild” lameness. The horse gave no other indication that it was suffering from significant injury or infection. There was some evidence that the horse at least temporarily improved. Throughout this period, the horse’s wound was dressed, antibiotic/antibacterial medication was provided, as was pain relief.
 - (d) When the horse rapidly deteriorated on 28/29 December, appropriately veterinary examination was sought.

21. In all the circumstances then, it is submitted for the Appellant that he had an honest belief that veterinary treatment and assessment was not required until the day Dr Beech examined the horse, and an honest belief that the treatment he provided himself was adequate, and that the horse would recover. It is submitted that on the basis of:
 - (a) his long experience as a trainer;
 - (b) the fact that he had no experience with this exact kind of injury before;

- (c) that the laceration looked relatively superficial and innocuous;
- (d) the horse only ever appeared mildly lame until 29 December 2022,

it was also reasonable for the Appellant to treat the horse in the manner that he did and to not engage the services of a veterinarian until 29 December.

Resolution

- 22. Based on the evidence, I have formed the view that the Appellant should be considered to have had an honest belief that the injury the horse suffered on 24 December 2022 was not serious. I accept that the wound itself did not look deep or obviously concerning to him. I accept that he believed that in providing the horse with the treatment he did it would likely recover, and that he only considered it was necessary for the horse to be examined by a vet on 29 December 2022. I accept that this Appeal should be approached on the basis of the Appellant being someone who would arrange for a horse in his care to receive assessment or care from a vet in circumstances where he thought that was necessary.
- 23. The real issue is whether the conduct of the Appellant was reasonable. That is a harder matter to resolve.
- 24. In cases where an assessment is made as to whether conduct was reasonable or not, there is not necessarily a bright line as to where reasonableness ends, and unreasonableness begins. No pun intended, but a final conclusion could be one on which reasonable minds might differ. In assessing whether the Appellant's conduct in not contacting a vet until 29 December was unreasonable, and whether he should be found to have breached the rule, I have had particular regard to these findings of fact:
 - (a) At least on 24 December 2022, the wound itself did not appear to be particularly serious or deep.
 - (b) The horse may have exhibited some mild degree of lameness on 24 December 2022, but not a significant degree of lameness.

- (c) The horse had a mild degree of lameness up to and including 28 December 2022, and only became very lame on 29 December 2022, the day it was examined by Dr Beech.
 - (d) The horse was treated throughout the period 24 to 27 December 2022 with antibiotic/anti-inflammatory and pain relief medication, and its condition was appropriately monitored.
 - (e) The injury to the horse occurred on Christmas Eve, at a time where obtaining the services of a veterinarian, whilst by no means impossible where needed, was for obvious reasons more difficult than it ordinarily is.
25. I accept Dr Curl's evidence that a traumatic injury of the kind suffered by a horse in the location it did carries with it, for the reasons he expressed, the possibility of serious complications, particularly because of the risk of infection. These are matters in relation to which trainers should have a degree of awareness. However, considering all of the circumstances of this appeal, and in particular the crucial findings of fact I have made above, I am not comfortably satisfied that the rule has been breached in this instance. That is, based on all the circumstances relevant to this appeal, I consider that the Appellant had an honest belief that it was not necessary to obtain veterinary assessment for the horse until the time he did, and that the treatment he provided was in the four days following the injury reasonable in all the circumstances. I make that finding on the basis of the Appellant being an experienced horse trainer but not a veterinarian; on how the laceration appeared to him; and how the horse appeared both on 24 December 2022, and up to and including 28 December 2022. I have also borne in mind (but not in a decisive way) that the injury that occurred to the horse (that he thought was minor) occurred on Christmas Eve.
26. For the above reasons, I do not consider clause 4.6 of the Welfare Guidelines to have been ignored – the Appellant honestly and reasonably did not consider the horse had suffered a “serious injury” on 24 December. Because only “mild” lameness was noticed, and there was at least some evidence of improvement, I also do not consider clause 4.7 was not followed.

27. The finding I have made that the Appellant in the circumstances of this appeal acted reasonably and not in breach of the Rules should not be seen as a precedent. It is a mistake to think that all of the Panel's decisions amount to precedent. The determination of whether conduct is reasonable or not can only ever be determined on a case-by-case basis, and subject to all the relevant circumstances of the matter under consideration, which are unlikely to appear in identical terms in another appeal. Rules relating to the welfare of horses are amongst the most important in the Australian Rules of Racing. Welfare standards must be high, and breach of these rules is likely to lead to substantial penalties. There may be times and circumstances where when a horse suffers a laceration that it is absolutely necessary for the person in charge of that horse to arrange for veterinary assessment and treatment immediately. In this appeal, however, I am not comfortably satisfied the rule was breached, as I am of the view in all the circumstances that the Appellant did act both honestly and reasonably.
28. In the circumstances then, the appeal should be upheld, and the finding of breach of the rule set aside.

Ms J. Foley and Mr C. Tuck:

29. We agree with the orders proposed by the Principal Member, for the reasons he has expressed.

The Orders the Panel makes are as follows:

- (1) Appeal upheld.
- (2) Finding of breach of AR231(1)(b)(iii) set aside.
- (3) Penalty of a 6-month suspension of the Appellant's licence set aside.
- (4) Finding of breach of AR104 confirmed.
- (5) Penalty in the sum of \$1,000 for breach of AR104 confirmed.
- (6) Appeal deposit to be refunded.