

IN THE RACING APPEALS TRIBUNAL

JACK BROWN
Appellant

v

HARNESS RACING NEW SOUTH WALES
Respondent

REASONS FOR DETERMINATION

Mr P Morris for the Appellant

Mr J Elks for the Respondent

DATE OF HEARING **2 February 2026**

DATE OF DETERMINATION **23 February 2026**

ORDERS

- 1. The appeal is allowed.**
- 2. The decision of the Appeal Panel of Harness Racing New South Wales is quashed.**
- 3. In lieu thereof, the Appellant is:**
 - (a) disqualified for a total of 24 months, commencing on 20 November 2024, and expiring on 20 November 2026; and**
 - (b) suspended for a total of 6 months commencing on 20 November 2026 and expiring on 20 May 2027.**
- 4. The disqualification and suspension imposed by orders [3](a) and (b) will not operate so as to prevent the Appellant from residing at his nominated address in Wilberforce, but will prohibit him from entering, or being on, any part of that property that is used in connection with harness racing.**

5. For the avoidance of doubt, orders [3](a) and (b) will not operate so as to prevent the Appellant from entering, and living in, any residence which is erected on the property.
6. Any appeal deposit is to be refunded.

INTRODUCTION

1. By a Notice of Appeal dated 10 November 2025, Jack Brown (the Appellant) appeals against a determination of the Appeal Panel (the Panel) of Harness Racing New South Wales (the Respondent) dismissing an appeal against a determination of the Respondent to impose a disqualification of 30 months, and a cumulative suspension of 6 months, following his pleas of guilty to four charges contrary to provisions of the Australian Harness Racing Rules.
2. The Appellant adhered to his pleas of guilty on this appeal, and accordingly the sole issue is that of penalty. A Tribunal Book (TB) containing documentary evidence was provided for the purposes of the hearing.
3. The first charge against the Appellant alleged an offence contrary to r 250(1)(b) which is in the following terms:

A driver commits an offence if:

(a)

(b) he refuses or fails to deliver a sample as directed by Stewards, or tampers with, adulterates, alters, substitutes or in any way hinders the collection of such sample or attempts to do any of those.

4. The second and third charges each alleged offences contrary to r 187(2) which is in the following terms:

A person shall not refuse to answer questions or to produce a horse, document, substance or piece of equipment, or give false or misleading evidence or information at an inquiry or investigation.

5. The fourth charge alleged an offence contrary to r 250(1) which is in the following terms:

A driver commits an offence if –

(a) A sample taken from him is found upon analysis to contain a substance banned by rule 251.

6. The charges against the Appellant were in the following terms:

Charge 1 – r 250(1)(b)

That [the Appellant] at Goulburn on 21 October 2024, after being directed to provide a urine sample by Stewards, did substitute a urine sample obtained from Mr Lucan Rando in place of a sample that was directed to have been provided by [him].

Charge 2 – r 187(2)

That [the Appellant] on 24 October 2024 when interviewed by [the Respondent's] Stewards did give false and misleading evidence in relation to an investigation, in that [he] denied on more than one occasion substituting a sample obtained from [Lucas Rando] in place of a sample that was directed to have been provided by [him].

Charge 3 – r 187(2)

That [the Appellant], on 19 November 2024, when interviewed by [the Respondent's] Stewards, gave false and misleading evidence in relation to an investigation, in relation to DNA results from samples obtained at Goulburn on 21 October 2024.

Charge 4 – r 250(1)

That [the Appellant], a driver engaged at Menangle on 19 November 2024, did provide a urine sample which was based upon analysis by two approved laboratories to have contained a banned substance in accordance with r 251.

7. Following an Inquiry, the Stewards imposed the following penalties:¹

1. Charge 1 – a disqualification of 18 months
2. Charge 2 – a disqualification of 6 months
3. Charge 3 – a disqualification of 6 months
4. Charge 4 – a suspension of 6 months

8. The Stewards determined that the periods of disqualification were to be served cumulatively, followed by a further cumulative period of 6 months' suspension. The disqualification was ordered to date from 20 November 2024, with the period of suspension to commence at the completion of the disqualification period.

¹ TB 107 – 111.

9. The Appellant appealed to the Panel, who dismissed his appeal.

THE FACTS OF THE OFFENDING

10. Included within the Respondent's submissions is a helpful summary of the facts of the offending² with which Mr Morris, who appeared for the Appellant, agreed.³ That summary is generally in the following terms.

11. On 20 October 2024, the Appellant attended a bucks party at which, on his evidence, he consumed cocaine.

12. On 21 October 2024, the Respondent held a meeting at Goulburn at which the Appellant was engaged as a trainer and driver. At the meeting, the Appellant was told by Steward Moy that urine testing and breath testing were being conducted throughout the day. The Appellant understood that he had to provide a urine sample.

13. Later that day, the Appellant had a conversation with Lucas Rando (Rando). He asked Rando whether he had given a urine sample. Rando replied that he had done so. The Appellant informed Rando that he had a medical condition, chlamydia. According to the Appellant, Rando *"offered that he could piss."* The Appellant also said that Rando was *"worried for him"*.

14. Rando then provided his urine to the Appellant in a 20 ml syringe. At some point during the day, the Appellant provided that urine sample to Steward Jasprizza. The Appellant's evidence before the Inquiry was that he put the syringe provided to him by Rando in his coat, and that *"as [he] went, before the piss, [he] just undid the vest and put it in the cup."* Rando provided a separate sample.

15. Later that day, Steward Sharwood spoke with the Appellant and informed him that he needed him to provide a further urine sample before he left the track because

² Commencing at [12]; TB 18.

³ Transcript 3.1.

the sample he had provided was only 20 ml, not the required 40 ml. Steward Sharwood subsequently spoke with the Appellant again about comments the Appellant had made to Steward Jasprizza to the effect that he could not provide another sample. The Appellant said he had “*an infection ...it could even be chlamydia*”. He said that his urine “*dead set dribbles out*” and that he “*only got it over the weekend*”, having first noticed symptoms early that morning.

16. The Appellant was then warned of the provisions of r 250(1)(b). When asked about the sample he gave earlier in the day, he said “*[w]ell, obviously, I’ve come in, that’s my urine there*”. He refused to provide a further sample of urine because he “*physically couldn’t*”. He said that he had already done so.

17. The Stewards then invoked a “stand-down” and gave the Appellant until 5:00 pm on 23 October 2024 to provide submissions about why such stand-down should not remain in place.

18. On 23 October 2024, the Appellant forwarded a medical certificate to the Respondent under the hand of a Dr MacKay. The accompanying submissions of the Appellant included the following:

I went to give the urine sample, I was handed a urine cup, it was explained I needed to urinate above the black line, I urinated all I could under excruciating pain.

19. Whilst the medical certificate provided by the Appellant is difficult to read, it appears to refer to “*Dysuria, poor urine flow*”.

20. On 24 October 2024, Steward Day interviewed the Appellant. The Appellant was made aware of r 187(2), and the following exchange then took place:

MR DAY: So that particular urine sample that you've signed for, which the collection time has of 4:52 pm, are you able to confirm that the urine provided in that sample, 301036, was actually urine from yourself?

APPELLANT: Yes, it is, sir.

...

APPELLANT: I don't care what other people say. Yes, that was my urine.

21. The exchange continued:

MR DAY: No. And, is it something that, and this is just a general question, but is it something that you participate and consume illicit substances?

APPELLANT: No.

...

APPELLANT: My sister was a drug addict and she's dead now so I don't touch the fucking shit.

22. The Appellant denied that he had had any interactions with Rando at Goulburn on 21 October.

23. On 15 November 2024, the Respondent received the results of the analysis of the urine samples which had been provided. The opinion expressed was that it was “*approximately 100 billion times more likely*” that the two samples originated from the same individual rather than from unrelated persons.

24. The Appellant was interviewed on 19 November 2024 at which time the following exchanges occurred:

MR BENTLEY: And the results of that testing have revealed that it is 100 billion times more likely that item 1 and item 2 originated from the same individual than from an unrelated person chosen at random from the population. Do you understand that?

...

MR BENTLEY: Is there any reason why that result would be so, Mr Brown?

APPELLANT: No, sir.

25. On 20 November 2024, the Respondent made an interim decision to invoke r 183(b) and (d) until further notice. On the same day, the Appellant’s solicitor wrote to the Respondent, effectively suggesting that the expert evidence of analysis was equivocal in its terms. Subsequently, on 26 November 2024, the Appellant provided written submissions, describing the Respondent’s position in respect of the analysis as “*heavily flawed*”.

26. At some point in December 2024, the Appellant indicated to the Respondent that he would make full admissions as to his conduct. On 13 January 2025, the Respondent received a certificate of analysis which confirmed that the Appellant's urine sample tested positive to benzoylecgonine (a metabolite of cocaine) and ecgonine methyl ester.

27. An Inquiry was conducted by the Respondent on 28 May 2025. The Appellant admitted his guilt on that occasion. During the course of the Inquiry, the following exchanges took place:

APPELLANT: I was a little bit worried as I did have chlamydia and all that, but obviously didn't know what was going to come out of the test, anyway. So, obviously I was just standing around and was a little worried and Mr Rando come up to me and— well, I was just sitting there and I said to — I asked him if he had given a sample yet and he said yeah and I told him about my condition that I had and he also offered that he could piss, or actually, he was just worried for me. ... Well, I just — as I said, I said I had had chlamydia and found it — it was very painful to piss. I don't know if I could have been able to piss what would have come up on the testing, I'm not sure. But, yeah, so that's all it basically was. Yeah. I sort of really can't remember the whole thing as it was so long ago.

...
APPELLANT: [I'm] not lying now. now. I've come here to say the truth, nothing but the truth.

...
APPELLANT: Well, I reckon it could have been — like, they always say three days for cocaine to get out of your system. But I couldn't remember, maybe two weeks beforehand, but then as I looked, did research for it, they said it can stay in your system for up to two weeks. Some would even say it can stay in your system for six. As I'm a little body, it can stay in my system for longer and I was a regular user. So, unless it's obviously stayed in my body too long.

....
MR BROWN: Yeah, I said that earlier, that I didn't know what the test would come up, but I did have chlamydia and it was very hard for me to piss.

...
THE CHAIRMAN: Okay. So you weren't worried about having used cocaine at Goulburn?

APPELLANT: Oh, yeah, but ----

THE CHAIRMAN: Prior to Goulburn, I should say?

APPELLANT: ---- I was a regular user, so it could have popped up

28. The Appellant was then asked about his relationship with Rando:

MR DAY: Mr Brown, you might be able to elaborate, but just your relationship with Mr Rando, are you able to outline that for the stewards?

APPELLANT: Oh, sir, we're not friends. I've had some inter with his girlfriend. He doesn't like me. I'm not a fan of him. Yeah. I don't know, yeah. I wouldn't call him a mate, no.

MR DAY: Okay. And given that history, were you surprised, as you put it, that he offered to provide you his urine to ----

APPELLANT: Yeah.

MR DAY: ----- help you get around the testing?

APPELLANT: Yeah, I was. Yeah, I was very surprised he offered it.

THE APPELLANT'S SUBJECTIVE CASE

29. The Appellant relied upon a psychological report of Raymond Hudd of 19 May 2025⁴. Mr Hudd commenced treating the Appellant on 16 December 2024, and saw him on 6 occasions between that date and 15 May 2025.⁵ Mr Hudd's report recorded that the Appellant was, at the time of assessment, 21 years of age. He left school at Year 9, having consistently displayed an academic level which was below average. Mr Hudd reported that when the Appellant was a teenager, his sister took her own life. The Appellant subsequently attempted to do the same.⁶ The report set out, in some detail, the effect, on the Appellant, of the penalty which had been imposed.⁷

30. Mr Hudd reported some improvement in the Appellant's presentation over the period of his treatment of him, which appeared to coincide with the Appellant's engagement in substance abuse rehabilitation at Odyssey House.⁸ Diagnoses of Post Traumatic Stress Disorder and a Mild Intellectual Disability (at the borderline range) were made.⁹ Mr Hudd expressed the view that the Appellant would benefit from ongoing counselling, in conjunction with drug and alcohol therapy.¹⁰ Correspondence from Odyssey house dated 7 May 2025¹¹ confirmed the Appellant's enrolment in a non-residential rehabilitation program addressing substance abuse.

⁴ Commencing at TB 293.

⁵ TB 295.

⁶ TB 295.

⁷ Commencing at TB 294.

⁸ TB 295.

⁹ TB 300.

¹⁰ TB 304.

¹¹ TB 308.

31. The Appellant also relied on a series of testimonials which variously described him as “*respectful*”,¹² a person who is “*committed*”, who “*shows integrity in everything he does*”, and who is a “*well liked and valuable member of the racing community*”,¹³ and “*a great horseman*”.¹⁴ Obviously, the conduct displayed by the Appellant in committing the present offences was the antithesis of demonstrating integrity. I construed that opinion as amounting to the proposition that the offending is out of character, and should be regarded as an aberration.

SUBMISSIONS OF THE PARTIES

Submissions of the Appellant

32. The written submissions of the Appellant advanced the following propositions:

1. The Appellant had entered pleas of guilty on the earliest possible occasion, and was thus entitled to a discount of 25%.¹⁵
2. The Appellant’s mental health, as outlined in the report of Mr Hudd, was a material factor, both in terms of his subjective case generally, and the issue of general deterrence.¹⁶
3. It was important to apply the totality principle to the assessment of penalty.¹⁷
4. The proper application of that principle supported a conclusion that the penalty imposed was excessive.¹⁸
5. Over and above the issues to which reference has already been made, the Appellant’s subjective factors included:
 - (a) the absence of any relevant history;
 - (b) his prior good character; and
 - (c) his low risk of re-offending.¹⁹

¹² David Aiken at TB 326 – 327.

¹³ Joshua Gallagher at TB 328.

¹⁴ Laurance Dawson at TB 330.

¹⁵ Submissions at [3] – [7]; TB 9 – 10.

¹⁶ Submissions at [8] – [13]; TB 11 – 13.

¹⁷ Submissions at [15] – [16]; TB 13.

¹⁸ Submission at [17]; TB 13.

¹⁹ Submissions at [21]; TB 14.

33. The Appellant's ultimate submission was that a penalty of 12 months disqualification was appropriate.

34. In oral submissions at the hearing Mr Morris, who appeared for the Appellant, made reference to various authorities to make good the proposition that the penalty was excessive.²⁰ Strictly speaking, that is not the issue. The Appellant does not have to establish that the penalty was excessive in order to succeed on this appeal. The appeal proceeds as a hearing *de novo* in which I engage in a fresh exercise of the discretion to impose an appropriate penalty. In any event, I have not had to resort to the authorities to which I was referred for the purposes of performing that exercise.

35. Mr Morris also emphasised that the Appellant was 20 years of age at the time of the offending. He submitted that the Appellant's youth had manifested itself in a degree of emotional and cognitive immaturity which was linked to the offending, and should be taken into account.²¹

36. Mr Morris also relied²² on the contents of the testimonials to which I have referred which, he submitted were evidence of the level of support available to the Appellant. Mr Morris submitted that, viewed in this way, they favoured a conclusion that the likelihood of the Appellant reoffending was low.²³

37. Mr Morris further submitted that the Appellant's mental health rendered him an inappropriate vehicle for general deterrence and that specific deterrence had a limited role to play in light of the Appellant's plea of guilty, his expressed remorse, and his ongoing treatment.²⁴ Unsurprisingly, Mr Morris placed significant emphasis on the report of Mr Hudd, and the positive efforts that the Appellant had

²⁰ Commencing at T 3.25.

²¹ T 4.16 – 4.18.

²² T 7.43 – 8.5.

²³ T 8.6.

²⁴ T 8.32.

made towards his rehabilitation, to which he remained committed.²⁵ He pointed out that such rehabilitation is ongoing²⁶ and submitted that this was reflective of the Appellant's insight into his offending.²⁷

38. In summary, Mr Morris' overall position was encapsulated in the following propositions:²⁸

1. The offending was serious because it involved an element of dishonesty which was exhibited on more than one occasion.
2. As a consequence, a significant penalty was warranted.
3. It was nevertheless necessary to balance those factors against the Appellant's strong subjective case, which was characterised by his:
 - (a) prior good character;
 - (b) early plea of guilty,;
 - (c) admissions made in the course of the Inquiry,
 - (d) mental state;
 - (e) remorse; and
 - (f) low risk of re-offending.

Submissions of the Respondent

39. The written submissions of the Respondent advanced the following propositions:

1. Whilst the mental health of the Appellant was relevant, there was no cogent evidence that it was in any way causative of a propensity to be untruthful, and thus causative of the offending in charges 1, 2 and 3.²⁹
2. The objective seriousness of the offending was demonstrated by, amongst other things, the Appellant's repeated deception of the Stewards, and his general lack of honesty and candour.³⁰

²⁵ T 5.1 – 6.6.

²⁶ T 6.41.

²⁷ T 6.45 – 7.42.

²⁸ T 8.34 – 9.23.

²⁹ Submissions at [62]; TB 28.

³⁰ Submissions at [70] and following; TB 30.

3. Whilst the Appellant's ultimate acceptance of guilt was positive, the genuineness of any expressed contrition was open to question.³¹
4. A proper application of principle supported the conclusion that the penalty imposed was not excessive, particularly in light of the objective seriousness of the offending, and the importance of both general and specific deterrence.³²
5. Whilst the Appellant's efforts towards rehabilitation were to be lauded, it was necessary to balance those matters against the interests of the broader industry, in circumstances where significant reliance is placed on the honesty of participants.³³

40. In oral submissions, counsel for the Respondent generally accepted that the Appellant's ongoing rehabilitative efforts were strong and compelling (at least in respect of charge 4).³⁴ However, he emphasised the need for any penalty to be protective of the harness racing industry³⁵ and submitted that a reduction of the penalty to, in effect, "*time served*" (as had been advocated on behalf of the Appellant) would bring about a dramatic reduction in penalty which would not address the importance of general and specific deterrence, and which would reflect an inappropriate degree of weight being attached to the Appellant's subjective case.³⁶

41. Counsel emphasised what he submitted was the limited evidence of any causal connection between the Appellant's mental health issues and the majority of the offending (i.e. charges 1, 2 and 3). He submitted that in those circumstances, general deterrence remained a relevant consideration, at least in respect of those charges.³⁷ Counsel further submitted that specific deterrence had a role to play

³¹ Submissions at [73]; TB 30.

³² Submissions at [75] – [76]; TB 30 – 31.

³³ Submissions at [89] – [91]; TB 34 – 35.

³⁴ T 11.15.

³⁵ T 11.18 – 11.36.

³⁶ T 12.9 – 12.22.

³⁷ T 13.11 – 14.11.

in the present case, again more so in relation to charges 1, 2 and 3 rather than charge 4.³⁸

42. In addressing both general and specific deterrence, counsel went so far as to caution me against adopting what he referred to as a “*broad brush approach*” to any assessment of the Appellant’s subjective case, because the possible adoption of such an approach was of “*concern*” to the Respondent.³⁹ As I pointed out at the time, it can be safely assumed that a so-called “*broad brush approach*” approach will not be taken, be it in this case or in any other.

43. Finally, counsel submitted that the Appellant’s youth was of limited significance, given that he had engaged in offending conduct which was consistent with being an adult.⁴⁰

CONSIDERATION

44. Charges 1, 2 and 3 exhibited repeated and blatant dishonesty on the part of the Appellant. Charge 4 involved conduct which is fundamentally at odds with the integrity which is expected of industry participants. It follows that there is an important protective element which must be reflected in the penalty imposed. The Respondent necessarily relies on the honesty and the integrity of its participants. When such honesty and integrity are not forthcoming, there is a clear danger that public confidence in the industry will be eroded. It follows that the Appellant’s offending calls for the imposition of a significant penalty. Mr Morris did not suggest the contrary, but submitted that having regard to the Appellant’s subjective case, the necessary significance was properly reflected by what he referred to as “*time served*”, or in other words, a total disqualification of approximately 15 months.

³⁸ T 14.12 – 15.3.

³⁹ T 15.5 – 15.9.

⁴⁰ T 16.19 – 16.46.

45. A number of important issues arise in terms of the assessment of the Appellant's subjective case.
46. The first concerns the discount to be applied to reflect the Appellant's pleas of guilty. The assessment of that discount is a wholly discretionary exercise. For the reasons expressed in the associated matter of *Rando*,⁴¹ I consider that the Appellant is entitled to a discount of 25%.
47. I also accept that such pleas are *some* evidence of remorse, although it is necessarily limited. Whilst I unreservedly acknowledge that he was not under any obligation to do so, the Appellant has not provided any evidence (for example, by way of a statement or Affidavit) specifically expressing remorse for the offending.
48. Another issue concerns the Appellant's mental health, about which lengthy submissions were made by both parties. There is unchallenged evidence that the Appellant suffers from Post Traumatic Stress Disorder and a mild intellectual disability. The fact that he has undertaken treatment at Odyssey House may also tend to indicate that he suffers (or has suffered) from a substance abuse disorder. It is somewhat curious that Dr Hudd made no such diagnosis in circumstances where he was obviously aware of that rehabilitative treatment.⁴² Dr Hudd did not express the view that the Appellant's diagnosed conditions had any causative connection with any of the offending. That said, a substance abuse disorder would obviously have some connection with charge 4.
49. As a matter of general principle, if there is a causal connection between mental health and the relevant offending, then:
- (a) the offender's moral culpability may be reduced;
 - (b) the need to denounce the offending may be reduced;
 - (c) the offender may be an inappropriate vehicle for general deterrence; and

⁴¹ At [41].

⁴² See the reference at [10]; TB 295.

(d) the significance of specific deterrence may be reduced.⁴³

50. The position with respect to charges 1, 2 and 3 is that no such causal connection is established on the evidence. Accordingly, general deterrence remains a relevant consideration. That does not mean that the Appellant's mental health is entirely irrelevant. It remains a factor to be taken into account as part of the Appellant's overall subjective case. Specific deterrence is also a relevant consideration in respect of charges 1, 2 and 3.

51. The position is different, in each respect, in terms of charge 4 where there is an obvious causal connection between the Appellant's mental health and the offending (notwithstanding the absence of a formal diagnosis of a substance abuse disorder). Both general and specific deterrence are of less significance in respect of that charge.

52. The Appellant has no relevant history of prior offending and is a person of good character. I have taken those matters into account. I am satisfied that providing he avails himself of the support which is available to him, his risk of reoffending is low, and his prospects of continued rehabilitation are generally positive.

53. One of the submissions advanced on behalf of the Appellant concerned the application of the totality principle, the suggestion being that such a principle was not applied, or not properly applied, in determining the Appellant's penalty. Shortly put, the totality principle requires that in cases of multiple offending, any penalty imposed be appropriate to the entirety of the offending.⁴⁴

54. Inextricably linked to that are considerations of cumulation and concurrence of the penalties imposed. There is no general rule that determines whether penalties should be imposed concurrently or cumulatively. The issue is determined by the

⁴³ See *Director of Public Prosecutions (Cth) v De La Rosa* (2010) 79 NSWLR 1 at [177] per McClellan CJ at CL.

⁴⁴ See for example *Mill v The Queen* (1988) 166 CLR 569 at 56 – 57.

application of the totality principle. The question to be asked is whether the penalty for one offence can comprehend and reflect the culpability for the other(s). If the answer is yes, then the penalties should be concurrent. Otherwise, there is a risk that the combined penalties will exceed that which is warranted to reflect the total culpability. If the answer is no, then the sentences should be at least partly cumulative. Otherwise, there is a risk that the total sentence will fail to reflect the entirety of the culpability displayed in the commission of all of the offences. Where the offences are discrete and independent acts, it is more likely that the sentence for one cannot comprehend the culpability of the other. Conversely, where the offences are part of a single episode of offending, with common factors, it is more likely that the sentence for one of the offences will reflect the culpability of the offending in its entirety.⁴⁵

55. The essence of the position advanced by the Appellant was that the entirety of the Appellant's offending arose from the one set of circumstances, and that this would justify wholly or substantially concurrent penalties. Given the principles as I have explained them above, I am not able to accept that submission. Charges 1, 2 and 3 involved separate and distinct acts of dishonesty. Charge 4 was entirely separate again. Those circumstances support the imposition of wholly cumulative penalties.

56. I do not regard the Appellant's youth as a substantial mitigating factor. In a chronological sense, he was a young man at the time of the offending. However, the emphasis on youth as a relevant consideration when assessing penalty may be moderated where an offender conducts himself or herself in a way in which an adult might.⁴⁶ Youth is not a convenience behind which an offender can seek to protect himself or herself from the just consequences of their conduct.⁴⁷

⁴⁵ See *Cahyadi v R* [2007] NSWCCA 1 at [27] per Howie J.

⁴⁶ See *R v Tran* [1999] NSWCCA 109 at [9] – [10]; *R v Uwenait* [2021] NSWSC 1256 at [71] – [72].

⁴⁷ See *R v Mastronardi* [2000] NSWCCA 21 at [56].

57. Finally, it is important in a case such as this to ensure that that any penalty imposed on the Appellant is not “*crushing*”, in the sense of inducing a feeling of hopelessness, and destroying any expectations of a return to the harness racing industry in the fullness of time.⁴⁸ I have had regard to that principle when assessing penalty.

CONCLUSION AND ORDERS

58. The imposition of the penalty suggested by Mr Morris would, in my view, fail to have proper regard to the necessary protective element which is an essential part of assessing a civil penalty. The penalties which I have determined should be imposed strike an appropriate balance between all relevant objective and subjective considerations. For the reasons I have stated, the discount I have applied in each case is 25%.

59. The appropriate penalties are as follows:

Charge 1 – a disqualification of 15 months

Charge 2 – a disqualification of 4.5 months

Charge 3 – a disqualification of 4.5 months

Charge 4 – a suspension of 4.5 months.

60. The penalties for charges 1, 2 and 3 will be wholly cumulative. The suspension imposed in respect of charge 4 will commence upon the expiration of the period of disqualification. The commencement of the penalty imposed in respect of charge 1 will be 20 November 2024.

61. I make the following orders:

1. The appeal is allowed.
2. The decision of the Appeal Panel of Harness Racing New South Wales is quashed.

⁴⁸ See *R v MAK* [2006] NSWCCA 381 at [17].

3. In lieu thereof, the Appellant is:
 - (a) disqualified for a total of 24 months, commencing on 20 November 2024, and expiring on 20 November 2026; and
 - (b) suspended for a total of 6 months commencing on 20 November 2026 and expiring on 20 May 2027.
 - (c) Any appeal deposit is to be refunded.
4. The disqualification and suspension imposed by orders [3](a) and (b) will not operate so as to prevent the Appellant from residing at his nominated address in Wilberforce, but will prohibit him from entering, or being on, any part of that property that is used in connection with harness racing.
5. For the avoidance of doubt, orders [3](a) and (b) will not operate so as to prevent the Appellant from entering, and living in, any residence which is erected on the property.
6. Any appeal deposit is to be refunded.

THE HONOURABLE G J BELLEW AM SC

23 February 2026

AMENDMENT NOTE

The following amendments are made to the Tribunal's orders:

In order 3(b):

- 1. delete 6 months and insert in lieu thereof 4.5 months.**
- 2. delete 20 May 2027 and insert 3 April 2027.**