

# TASMANIAN RACING APPEAL BOARD

## Appeal No. 5 of 2018/19

<b>Panel:</b>	<b>Kate Cuthbertson (Chair) Suzanne Martin Wendy Kennedy</b>	<b>Appellant:</b>	<b>Christie Burt</b>
<b>Appearances:</b>	<b>Philippa Morgan (on behalf of the Appellant) Paul Turner (on behalf of the Stewards)</b>	<b>Rules:</b>	<b>AR 175 (o)(i) AR 175 (o)(ii) AR 175 (o)(iii) AR 175 (o)(iv) AR 175A</b>
<b>Heard at:</b>	<b>Tasracing Elwick Racecourse Glenorchy, Tasmania</b>	<b>Penalty:</b>	<b>Licence disqualified for a period of 3 years</b>
<b>Date:</b>	<b>22 October 2018</b>	<b>Result:</b>	<b>Dismissed</b>

### REASONS FOR DECISION

1. The appellant has been involved in the racing industry for 26 years. She has held a licence as a thoroughbred trainer for approximately 10 years and had also been employed as a Clerk of the Course by Tasracing in the five years prior to the matter giving rise to this appeal.
2. On 3 August 2016, officers from the RSPCA attended the appellant's property at Bagdad following receipt of information regarding the horses kept there. She resided at the property with her partner and her father.
3. It was determined by the RSPCA officers who attended that two thoroughbred horses and a pony should be seized from the property due to their physical condition. In the course of removing one of the horses, a thoroughbred gelding, he went down in the horse float and was unable to rise. Given the horse's state of health, a decision was made to euthanase him on site to prevent any further suffering.
4. The appellant was charged with animal cruelty offences in respect of the two thoroughbred horses which were dealt with in the Hobart Magistrates Court on 29 August 2018. She pleaded guilty to one count of aggravated cruelty and one count of cruelty to animals. She was fined \$5,000, ordered to reimburse the RSPCA \$1,074 and pay the court costs of \$66. An order was also made that she have no more than 10 horses in her care for five years.
5. Following the resolution of the criminal proceedings, stewards conducted their own inquiry under the rules of racing. That inquiry was held on 5 and 6 September 2018.

6. During the inquiry, Stewards charged the appellant with breaches of AR 175(o)(i), AR 175(o)(ii), AR 175(o)(iii), AR 175(o)(iv) and AR 175A. Those rules provide as follows:

*AR175. The principal racing authority (or the stewards existing power delegated to them) may penalise:*

...

- (o) *any person in charge of a horse who in their opinion fails at any time –*
  - (i) *to exercise reasonable care, control or supervision of a horse so as to prevent an act of cruelty to the animal; and/or*
  - (ii) *to take such reasonable steps as are necessary to alleviate any pain inflicted upon a horse; and/or*
  - (iii) *to provide professional treatment where such treatment is necessary for the horse;*
  - (iv) *to provide proper and sufficient nutrition for a horse.”*

*AR 175A. Any person bound by these rules who are within a race course or elsewhere in the principal racing authority (or the stewards exercising powers delegated to them) has been guilty of conduct prejudicial to the image, or interests, or welfare of racing may be penalised.*

7. The particulars of the charges were as follows:

The first charge is under AR175(o)(i) which states “*The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise any person in charge of a horse who in their opinion fails at any time – Part (i) – is to exercise reasonable care, control supervision of a horse so as to prevent an act of cruelty to the animal.*” The particulars of that charge are you as a licenced trainer failed to exercise reasonable care, control or supervision of horses under your care so as to prevent an act of cruelty to an animal prior to the RSPCA seizing horses on the 3<sup>rd</sup> August 2016, which led to you pleading guilty in Court to one count of aggravated cruelty and one count of cruelty to an animal...

Charge 2 is again under AR175(o) and it’s Part (ii) and reads “*Any person in charge of a horse who in their opinion fails at any time to take such reasonable steps as are necessary to alleviate any pain inflicted upon a horse.*” The particulars of that charge are that you as a licenced trainer failed to take reasonable steps as necessary to alleviate any pain inflicted upon a horse under your care prior to horses being seized by the RSPCA on the 3<sup>rd</sup> August 2016...

Charge 3 is under AR175(o)(iii) which reads “*Any person in charge of a horse who in their opinion fails at any time to provide veterinary treatment where such treatment is necessary for the horse.*” The particulars of the charge are that you as a licenced trainer failed to provide veterinary treatment where such treatment was necessary for horses under your care prior to those horses being seized by the RSPCA on the 3<sup>rd</sup> August 2016...

Charge 4 is under AR175(o)(iv) which states “*Any person in charge of a horse who in their opinion fails at any time to provide proper and sufficient nutrition for a horse.*” The particulars of the charge are that you as a licenced trainer failed to provide proper and sufficient nutrition for horses under your care prior to horses being seized by the RSPCA on the 3<sup>rd</sup> August 2016...

And the Charge 5 is under AR175A which reads “*Any person bound by these rules who either within a racecourse or elsewhere in the opinion of the Principal Racing Authority (or the Stewards exercising powers delegated to them) has been guilty of conduct prejudicial to the image, or interests, or welfare of racing may be penalised*” and the particulars of the charge are that you as a licenced trainer, on the 29<sup>th</sup> August 2018, pleaded guilty to one count of aggravated cruelty and one count of cruelty to an animal regarding horses under your care in 2016. The results were published in the media and, in the opinion of the Stewards, this conduct is prejudicial to the image or interest or welfare of racing.

8. The appellant initially reserved her plea in relation to each of those charges. Following further discussions with stewards, she later amended her plea to guilty in respect of the fifth charge and was found guilty of the remainder. She received the following penalties:

Charge 1 – disqualification for three years;

Charge 2 – disqualification for one year;

Charge 3 – disqualification for six months;

Charge 4 – disqualification for six months;

Charge 5 – disqualification for two and a half years.

9. All periods of disqualification were ordered to operate concurrently. As a consequence, she has been disqualified for an effective period of three years from 6 September 2018.
10. The appellant has appealed the severity of the penalties.

## **Background**

11. The RSPCA attended the appellant’s residence on 3 August 2016 following receipt of a complaint relating to horses in poor body condition and a pony with overgrown hooves. When RSPCA officers attended with a constable from Tasmania Police, they were met at the address by the appellant’s partner. They were directed to two bay thoroughbred mares wearing rugs. The RSPCA report describes one of the mares having a body score of 2 out of 5 and the other 1 to 1.5 out of 5. The latter of the two horses had numerous patches of hair missing where a rug had rubbed on its wither, shoulders and legs. Officers were also directed to a chestnut mare, again described with a body score of 2 out of 5 who was scouring and a black Shetland pony mare in good body condition. The pony’s hooves, however, were severely overgrown and had curled upwards and appeared to have untreated laminitis.
12. Officers were directed to a further horse, a bay thoroughbred gelding which was contained in a dog run full of blackberry bushes. The area was eaten down to dirt and no grass remained. The horse was wearing two rugs. On removal of the rugs, the horse was revealed to be extremely emaciated with a body score described as

0.5 out of 5. According to the officers, all ribs, hip bones and spine were protruding and the horse's body seemed out of proportion due to its level of emaciation. The horse appeared weak and unsteady on its feet and had an injured hind right leg which was swollen all the way to the stifle. This horse also had a large wound on the top of its wither which was raw and weeping. This appeared to have been caused by the rugs rubbing and seemed to be untreated.

13. Photographs were taken of all horses at the time of inspection. A vet was called to the property to assess the horses and deemed them fit to load onto a float and be removed from the property. Pain relief was administered to the bay gelding, *Wildest*, to assist with travelling. As noted, the attempts to transport the bay gelding were unsuccessful and the horse was euthanased at the property.
14. The pony and one of the bay mares, *Three Crowns*, were removed from the property. The vet who attended the property provided a report in respect of the condition of the animals. His report indicated the following:
  - The gelding was severely emaciated with prominent withers, ribcage and pelvic bones. He had a rub mark over the withers likely to be the result of a blanket rub. He also had soft tissue swelling on the cranial aspect of his right hind leg just proximal to the stifle. All four hooves showed signs of overgrowth and some splitting. His heart rate was 44 beats per minute, skin hydration suggested five percent dehydration and his overall body condition score was assessed as 1 out of 5. He was eating very eagerly having been moved into an area with grass available. His teeth appeared sound. His movement was limited but appeared sound. A complete lameness exam was not performed.
  - The vet assessed the horse in poor physical condition and in need of medical attention to its sores. The vet believed the horse was weak. The physical condition indicated a prolonged period without sufficient quantity and/or quality of nutrition. He believed the horse would have experienced stress and suffering as a result.
  - The brown mare he examined was underweight with prominent rib bones and pelvic bones. He assessed her body condition score as 1.5 out of 5. Her heart rate was 34 and hydration seemed good. No extant external injuries were noted.
15. Another vet examined *Three Crowns* on 5 August 2016. The horse was examined in the presence of an RSPCA staff member. This vet assessed the horse to be in very poor to poor body condition with a score grade 0 to 1 out of 5 (Caroline Huntington, 1988). The horse had a heavy infestation of lice which had been treated with "Lice 'n Simple". The horse had a faecal egg count of 800 eggs per gram. There was evidence of rubbing lesions from rugs, the most significant being around the perineum. There were superficial lesions on the medial aspect of her right hind. These had been cleaned and treated by RSPCA staff prior to the vet's examination. The vet recommended a slow increasing plan of nutrition to improve the horse's body condition score.
16. The same vet examined the horse again on 11 October 2016. At this time, the horse was clinically normal with no abnormalities detected on examination. The horse had improved from very poor body condition to a current body condition score assessed as 3 out of 5. There was no evidence of biting lice with which the horse

was previously infested. No abnormalities were detected in the blood taken for analysis.

17. A police officer who attended with RSPCA officers on 3 August 2016 stated that the appellant was not initially present at the time of the inspection. On arrival at the property, the officer spoke with the appellant's father and partner. She was advised that they had told the appellant the gelding needed to be put down some months earlier but she had refused to do so as it held sentimental value. The appellant later attended the property prior to the officer leaving. No conversation of substance was conducted with her regarding the condition of the bay mare or the gelding.
18. During the course of the inquiry, the appellant told stewards the following:
  - That she had spoken with her partner about the gelding about 2 weeks prior to the RSPCA attending and she believed that she could fix him. The horse had been in her care since he was 4 years old. She told stewards that *Wildest's* condition was absolutely shocking. When asked how the horse became to be this way, she responded that she thought the horse had just got old. She was unaware of his condition due to the rugs being on him. She claimed to be aware that both *Wildest* and *Three Crowns* had lice which she had treated 10 days before the RSPCA attended. The other two horses in her care did not have lice;
  - She told stewards she was unaware that *Wildest* had lost the amount of weight that he had lost until she had taken the rugs off. She then put him and the other mare on to the house side of her property. She claimed to be feeding the horses morning and night and also with hay. This commenced about three weeks prior to the RSPCA inspection;
  - She claimed that *Wildest* had not been put in the dog run on the day of the inspection. She had been feeding him at the front of the house but had put him in the dog run to eat the grass that was about waist height about a week prior. He had since been removed, but she thought that he must have made his own way back into the yard on the day of the inspection;
  - The rub on *Wildest's* wither was put down to having a high wither. She claimed to be treating the horse's back leg with Bute for about 2 days prior to the RSPCA arriving. This was when she first noted the swelling;
  - She had noticed the wound on *Wildest's* wither about 10 days prior to the RSPCA arrival. She thought he may have been burnt by the lice treatment;
  - She agreed that the lice treatment involved the removal of rugs to apply the treatment;
  - In relation to her personal circumstances, she referred to issues she was having at the time with her partner. Things were very difficult between the two of them and she was under a lot of emotional and financial stress;
  - Her sentimental attachment to *Wildest* was longstanding. She was previously married to a horse trainer who committed suicide when she had just given birth to their first child. *Wildest* was her husband's first winner. She considered the horse to be the last tie she had to her husband. The horse was 21 years old at the time it was euthanased;

- The appellant claims to have been feeding the horses with hard feed, grass and hay;
  - She agreed she should have taken action sooner;
  - She reminded stewards how much her horses mean to her and that the horses she brought to the racetrack were always in very good condition;
  - She told Stewards she was not a horrible person and that anything that had happened to the horses was not done intentionally. She told them that horses mean absolutely everything to her and for the last two years she had to get up every day and deal with what has happened and will continue to do so for the rest of her life.
19. The appellant's partner also gave evidence at the inquiry. He told Stewards that he had told the appellant about 2 or 3 weeks prior to the RSCPA inspection that *Wildest* was in poor condition. He said the appellant was doing everything she could to get weight back on him and treat him for lice, but that her best was not good enough when a horse was in poor condition like that. He described the appellant as struggling to have the horse euthanased because it was the last tie she had to her husband. In respect of the mare, he stated it was not in as poor condition as *Wildest*, but was a bit light. In his opinion it would probably have taken *Wildest* a couple of months to get in that condition given his age. He first moved into the property about 8 or 10 months prior to the inspection and said that *Wildest* looked fine, but fell away very quickly over a period of a couple of months. Despite the efforts to feed the horse, he was not coming to and the appellant was in the middle of a decision about what to do when the RSPCA attended.
20. In respect of penalty, the appellant made the following submissions:
- She had a good record in the racing industry. She had been a Clerk of the Course for many years and worked behind the barriers. As a trainer, her horses have raced to their ability, and she did not believe she had had any incidents with Stewards in any way whatsoever. Stewards agreed that she had not previously caused Stewards any grief;
  - She had continued to work as a trainer and Clerk of the Course since 2016;
  - She again referred to her partner's personal difficulties and the stress that had placed on her. She was focussing on helping him and not thinking about whether she was coping herself;
  - She still experienced emotional distress as a result of the death of her husband 13 years prior;
  - She has had horses since she was probably six or seven years old and comes from a family that was involved in both greyhound and horse racing;
  - She has a mortgage and normal living expenses;
  - At the time of the inquiry she had three horses in work and two more arriving in the following week;
  - Her breach of the rules was not intentional;

- She was absolutely devastated that she had actually allowed the horses to get into the condition in which they were in. She said that she was not strong enough at that time to be aware of what was going on in her life and what she needed to do to be able to fix it;
- In respect of penalty, she would struggle to pay a fine. A suspension would hurt her in a big way as horses were her life and her only source of income. She described a disqualification as probably destroying her.

21. In imposing penalty, Stewards took into account the following:

- *your time and involvement within the industry,*
- *your overall disciplinary record,*
- *your personal and financial circumstances,*
- *your remorse,*
- *the serious nature of this case,*
- *relevant penalty precedents relating to similar type cases,*
- *that you failed in your obligation as a licenced trainer to take the necessary measures to ensure the welfare of horses under your care,*
- *the need to uphold and protect the image of the racing industry,*
- *that any penalty must act as an individual and general deterrent, and*
- *your guilty plea in respect to charge 5.*

### **The Appellant's Submissions**

22. Counsel for the appellant submitted that an effective three year disqualification is a high penalty to have been imposed. It was argued that the disqualification ought be reduced because a number of factors were not given sufficient weight by Stewards. Those were:

- The appellant's impeccable record. Her only prior matter was for failing to do stable paperwork;
- Her training facilities were at Brighton and she was under the constant observation of Stewards. She was known by racing authorities and was known to present well;
- Her employment as a Clerk of the Course spoke of her exceptional reputation within the industry. She was engaged in that position in both thoroughbred and harness racing;
- She initially started in the industry as a track work rider and was an apprentice to Charlie Goggin. She was apprenticed at 18 years old;
- Racing was an inherent part of her lifestyle and identity. Her father has always held an interest in greyhound racing and the appellant had a long history of working on courses;
- She had been married to a jockey and trainer and he committed suicide within weeks of the appellant giving birth to their son. This was a significant and devastating personal loss;
- These charges arose out of the only time the RSPCA were called to her property. Two other horses on her property were in good condition and not seized;

- Her partner's issues at the time of the inspection were causing her significant personal and financial stress. In that context she was described as having 'dropped the ball' in respect of looking after the horses on her property;
- The charges arose from conduct that was not overt, deliberate or intentionally cruel;
- She had attempted to de-lice the horses with a pour on treatment, but it had not worked;
- There was some evidence of effort on her part to feed the horses and she described increasing their feeds, continuing to offer the horses hay, moving *Wildest* onto grass that was available and providing hard feeds of oat and barley twice a day;
- The condition of the horses had dropped relatively quickly;
- She accepted that had not attempted to get a vet to visit as her usual vet had retired;
- The rugs on the horses were not examined by the RSPCA. If they had been, they would have noted that extra padding had been sewn into the rugs to protect *Wildest's* high wither;
- She claimed that she checked the horses every single day;
- She had a 14 year old son, mortgage and had lost her career. Her capacity to get back into the industry after 3 years was described as very difficult;
- She had \$118,000.00 mortgage on her 12 acre property which she had owned for 10 years. She was currently keeping up, but not getting ahead;
- Her father also lived on the property, but provided her no financial assistance;
- She had a large fine to pay as a result of the Magistrates Court proceedings, but a conviction had not been recorded;
- The situation was described as one of doing 'too little too late' in respect of the welfare of the animals. She had been publically shamed, was clearly remorseful and accepted that the condition of her horses was shocking;
- It was not appropriate for the appellant to be held to higher standards than others. It was recognised that the conduct was required to be condemned, but that the appellant had neglected her duties in respect of her horses over a short period of time, which was described as a few months at the most.

### **Stewards' Submissions**

23. Stewards submitted that it was inept to describe the charges as arising out of one event. They viewed the charges as arising from a prolonged period during which the horses were without sufficient quantity and/or quality of nutrition. It was pointed out that of the five horses on the appellant's property, one was euthanased, two were seized (one of the bay mares and the pony) and the two that were not removed (a bay mare and a chestnut mare) were not in particularly good body

condition (described as 2 out of 5). This evidenced a consistent failure to provide a proper quality and quantity of nutrition to those horses.

24. It was noted that s.6 of the *Animal Welfare Act 1993* imposed a duty on a person who has the care or charge of an animal to take all reasonable measures to ensure the welfare of the animal. The charges arose out of circumstances where the appellant had clearly not complied with those duties which were reflected in her pleas of guilty and the penalties imposed by the Magistrates Court.
25. Fortunately there have been few previous cases dealt with under the Rules of Racing in Tasmania in relation to animal cruelty. The only appellate decision in recent times is the matter of *Donaldson* No.16 of 2014/15. That matter involved a greyhound with two malignant tumours, including a large skin tumour that was weeping. The overall condition of the greyhound was very poor and it was required to be euthanased. In that case, Stewards had imposed a period of seven years' disqualification. That was varied by the Board to a two year disqualification on appeal. The evidence disclosed significant suffering was caused to the dog, but that the appellant was sentimentally attached to it and reluctant to take active steps to shorten his life. He was hoping the dog would pass away peacefully and that the family had a burial planned. Though he knew the dog needed to be put down, he just wanted to keep him.
26. In September 2017 a local harness racing trainer, Mr Keith Toulmin, was dealt with by Stewards in respect of animal welfare matters. He had been charged and dealt with by the Magistrates Court in respect of aggravated cruelty, animal cruelty and failure to comply with instructions issued by the RSPCA. Following finalisation of his court matters, he was charged and pleaded guilty to breaches of AHRR267(1) and (2) which give Stewards power to disqualify a person in circumstances where they are either found guilty of a crime or where they have been sentenced to a period of imprisonment. In the latter case, a period of disqualification is mandatory and is to be at least equivalent to the period of imprisonment imposed. In that case, Mr Toulmin was sentenced to a period of two months' imprisonment which was wholly suspended for 12 months. Stewards imposed penalties amounting to an effective disqualification of seven years in respect of all matters. That penalty was not appealed. Mr Toulmin's case related to 15 horses, four of which had to be destroyed. Mr Toulmin had been given an opportunity to improve the condition of the horses, but they had continued to deteriorate in the eight week period given to him. He told the Court that he could not afford to properly care for the horses.
27. Against this background, Stewards submitted that emotional attachment did not justify the behaviour which was confirmed in the decision of *Donaldson*. That case involved one animal, whereas this involved two animals to whom proper nutrition and monitoring of physical health had not been afforded. Stewards submitted it was a very serious welfare issue that was properly reflected in the penalty of three years' disqualification that had been imposed.

### **Consideration**

28. In *Donaldson*, the Board referred to two other cases involving animal cruelty. In *Medhurst* No.5 of 2007/08, the Board reduced a period of disqualification of eight years to three years in respect of a trainer who had shot 11 greyhounds owned and trained by him and where he had dishonestly attempted to hide from the Stewards that he had done so. In the matter of *Stokker* (3.11.1999) the Queensland Greyhound Racing Authority reduced a 10 year period of suspension to a two year period of suspension in respect of a trainer who neglected eight greyhounds by

malnourishment. Both decisions noted the need to treat with appropriate seriousness cases of neglect and/or cruelty to animals and the need for general deterrence. In *Donaldson*, the Board noted the need to discourage conduct which may lead to a perception of animal maltreatment or cruelty within the greyhound racing industry. Those considerations are apt to all of the racing codes, not just greyhounds.

29. Cruelty to animals, whether intentional or as a result of wilful blindness or neglect, is to be condemned. Those participating in the racing industry not only owe a duty to the animals in their care, but are also required to uphold the standards of and not adversely affect the perception of the industry. There is no question that in allowing her horses to get into the condition in which they were found by the RSPCA on 3 August 2016, that the appellant failed in both of those respects. *Three Crowns* quickly recovered condition under the care of the RSPCA. This tends to suggest that the efforts made by the appellant to address the condition of the horses in her care fell woefully short of what was required. It is not sufficient to say that *Wildest's* age had contributed to his poor condition. It was apparent that other horses on her property were also in poor condition, which speaks of a general failure to properly care for her horses.
30. The Board notes that the appellant had difficulties in her personal life at the time. There was no suggestion however that this affected her duties as a Clerk of the Course or resulted in the deterioration generally of the condition of the horses that were under her care as a trainer at the relevant time.
31. The Board considers that the appellant's conduct amounted to a significant departure from the standards expected of horse owners in general and participants in the racing industry in particular. The Board accepts that the appellant had failed to provide sufficient quantity and quality of nutrition to the two thoroughbred horses involved in the charges which was reflected in the poor condition of two other thoroughbred mares located on but not seized from the property. *Wildest*, in particular, had injuries which were being inadequately treated. No veterinary care had been sought for either of the horses.
32. In those circumstances, the disqualification imposed by stewards of three years is appropriate. The appeal against penalty is dismissed.
33. In accordance with s.34(1A) and (2)(a) of the *Racing Regulation Act 2004*, 50% of the appellant's prescribed deposit is to be forfeited to the Secretary of the Department. The appellant is also ordered to pay 50% of the cost incurred in the preparation of the transcript in accordance with s.34(4A) and (4B)(a) of the Act.