

# RACING NSW STEWARDS – PENALTY DETERMINATION



## PENALTY DETERMINATION OF CHARGES ISSUED AGAINST MS. CHYNNA MARSTON AND MR. ALEX KEAN.

**Wednesday 6 September 2023**

**Stewards:** J R Johnstone (Chair)  
T P Moxon

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On 1 June 2023, Racing NSW's Integrity Department commenced an investigation into allegations of equine welfare breaches concerning thoroughbred horses in the care of Ms. Chynna Marston and Mr. Alex Kean after being contacted by the RSPCA and an industry participant. Racing NSW Investigators conducted an inspection and assessment of the thoroughbred horses in the care of both Ms. Chynna Marston and Mr. Alex Kean which revealed welfare concerns. Following the investigation and Stewards inquiry, Stewards issued the relevant charges against Ms. Marston and Mr. Kean on 23 June 2023 and 16 August 2023.

On 22 August 2023, Racing NSW Stewards scheduled the hearing of eight (8) charges issued against Ms. Chynna Marston and seven (7) charges issued against Mr. Alex Kean. Both Ms. Marston and Mr. Kean did not attend the hearing of charges as scheduled. Stewards determined the following charges in their absence.

Ms. Chynna Marston was found guilty of the following charges.

- Charge 1: LR114(2)(a)
- Charge 2: LR114(2)(d)
- Charge 3: AR228(a)
- Charge 4: AR232(b)
- Charge 5: AR232(b)
- Charge 6: AR232(h)
- Charge 7: LR114(2)(a)
- Charge 8: LR114(2)(d)

Mr. Alex Kean was found guilty of the following charges.

- Charge 1: LR114(2)(a)
- Charge 2: LR114(2)(d)
- Charge 3: LR114(4)
- Charge 4: AR228(a)
- Charge 5: AR232(b)
- Charge 6: AR232(b)
- Charge 7: AR232(h)

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## Penalty Submissions

On 22 August 2023, Stewards wrote to Ms Marston and Mr Kean in respect of the determination of charges issued against them. At this time, Ms Marston and Mr Kean were afforded the opportunity to make submissions on penalty by Wednesday 30 August 2023. Stewards received submissions in writing from Mr Kean and Mr Tim Egan, on behalf of Ms Marston and have considered those submissions.

## General Principles

The Stewards have considered the principles of general and specific deterrence, in addition to the subjective factors of Ms Marston and Mr Kean when considering an appropriate penalty, including:

1. The importance of equine welfare for the thoroughbred racing industry prior to, during racing and on retirement.
2. Ms Marston's extensive involvement in the thoroughbred racing industry.
3. Ms Marston's antecedents with respect to her disciplinary record.
4. Mr Kean's clean disciplinary record.
5. Not guilty pleas entered by Ms Marston on charges 1-3. No pleas entered in respect of charges 4-8.
6. No pleas entered by Mr Kean in respect of all charges; 1-7.
7. The lack of cooperation from Ms Marston and Mr Kean during the investigation and Stewards inquiries.

## Submissions on behalf of Ms. Marston

Stewards considered the following matters in respect to penalty, after receiving submissions from Mr Egan on behalf of Ms Marston.

- a. The personal and professional impacts of the investigation and inquiry on Ms Marston both now and in the future.
- b. Ms Marston is no longer a member of the Board or Committee of the *Recycled Racehorses* Charity.
- c. Ms Marston is not an owner of the horses in the care of the *Recycled Racehorses* Charity.

## Submissions made by Mr. Kean

Stewards were not provided with any meaningful submissions for consideration in respect to penalty for Mr Kean.

Having considered the submissions received, together with the principles of specific and general deterrence, Stewards determined the following penalties for the charges as set out below.

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### Penalty – Individual Charges

#### *Ms. Chynna Marston*

- **Charge 1: LR114(2)(a)** Between the period on or around 27 March 2023 and 5 June 2023, did fail to provide sufficient nutrition to 12 thoroughbred horses.  
**Penalty - 2.5 years disqualification**
- **Charge 2: LR114(2)(d)** Between the period on or around 14 February 2023 and 27 March 2023, did fail to provide veterinary treatment to 6 named thoroughbred horses where such veterinary treatment was necessary.  
**Penalty - 2.5 years disqualification**
- **Charge 3: AR228(a)** Did engage in conduct that was prejudicial to the image, interests, integrity or welfare of racing, by failing to ensure the welfare of thoroughbred horses.  
**Penalty - 6 months disqualification**
- **Charge 4: AR232(b)** Between the period on or around 5 August 2023 and 8 August 2023, failed to comply with the directions of the Stewards.  
**Penalty – 18 months disqualification**
- **Charge 5: AR232(b)** On 9 August 2023, failed to comply with a requirement of the Stewards.  
**Penalty – 18 months disqualification**
- **Charge 6: AR232(h)** On 10 August 2023, failed to attend an inquiry when directed to do so by the Stewards.  
**Penalty – 6 months disqualification**
- **Charge 7: LR114(2)(a)** Between the period on or around 24 March 2017 and 27 April 2018, did fail to provide proper and sufficient nutrition to two thoroughbred horses.  
**Penalty – 2 years disqualification**
- **Charge 8: LR114(2)(d)** Between the period on or around 24 March 2017 and 27 April 2018, did fail to provide veterinary treatment to two thoroughbred horses where such veterinary treatment was necessary.  
**Penalty – 2 years disqualification**

The cumulative total of the above periods of disqualification for Ms Marston is 13 years.

#### *Mr. Alex Kean*

- **Charge 1: LR114(2)(a)** Between the period on or around 27 March 2023 and 5 June 2023, did fail to provide sufficient nutrition to 12 thoroughbred horses.  
**Penalty – 2.5 years disqualification**

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- **Charge 2: LR114(2)(d)** Between the period on or around 14 February 2023 and 27 March 2023, did fail to provide veterinary treatment to 6 named thoroughbred horses where such veterinary treatment was necessary.  
**Penalty – 2.5 years disqualification**
- **Charge 3: LR114(4)** Did destroy a thoroughbred horse and failed to confirm the decision to destroy that horse with a veterinary surgeon.  
**Penalty – 18 months disqualification**
- **Charge 4: AR228(a)** Did engage in conduct that was prejudicial to the image, interests, integrity or welfare of racing, by failing to ensure the welfare of thoroughbred horses.  
**Penalty – 6 months disqualification**
- **Charge 5: AR232(b)** On 9 August 2023, failed to comply with a direction of the Stewards.  
**Penalty – 18 months disqualification**
- **Charge 6: AR232(b)** On 9 August 2023, failed to comply with a requirement of the Stewards.  
**Penalty – 18 months disqualification**
- **Charge 7: AR232(h)** On 10 August 2023, failed to attend an inquiry when directed to do so by the Stewards.  
**Penalty – 6 months disqualification**

The cumulative total of the above periods of disqualification for Mr Kean is 10.5 years.

### Concurrency and Totality

Pursuant to AR283(4), unless otherwise ordered by the person or body imposing the penalty, a disqualification or suspension is to be served cumulatively to any other disqualification or suspension. Having regard to the charges, Stewards ordered that the principle of concurrency be applied to the penalty for charges of relatable conduct.

Stewards considered the totality of the conduct when determining the appropriate penalty. In determining penalty, Stewards considered that the overall penalty must reflect the objective seriousness of the conduct of both Ms Marston and Mr Kean, while also assessing the conduct that Ms Marston has previously engaged in the past.

Stewards determine that the appropriate orders in respect of concurrency and totality are as follows.

#### *Ms. Chynna Marston*

- a. Charges 1 and 2 – 12 months of the 5 years disqualification to be served partially concurrent therefore a total period of 4 years disqualification.

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- b. Charge 3 – 6 months disqualification to be served wholly concurrent with the period of disqualification imposed for charges 1 and 2.
- c. Charges 4 and 5 – 18 months disqualification for each charge to be served concurrently, therefore a total period of disqualification of 18 months.
- d. Charge 6 – 6 months disqualification to be served cumulative.
- e. Charge 7 and 8 – 12 months of the 4 years disqualification to be served partially concurrent, therefore a total period of 3 years disqualification.

**The total penalty after taking into account the above concurrency is 9 years' disqualification. Having regard to the principle of totality, the Stewards consider that the total period of disqualification should be 7 years', to commence on 6 September 2023 and to expire on 6 September 2030. Such penalty reflecting the total wrongdoing involved.**

### *Mr. Alex Kean*

- a. Charges 1 and 2 – 12 months of the 5 years disqualification to be served partially concurrent therefore a total period of 4 years disqualification.
- b. Charge 3 – 18 months disqualification to be served cumulatively.
- c. Charge 4 – 6 months disqualification to be served wholly concurrent with the period of disqualification imposed for charges 1 and 2.
- d. Charges 5 and 6 – 18 months disqualification for each charge to be served concurrently, therefore a total period of disqualification of 18 months.
- e. Charges 7 – 6 months disqualification to be served cumulatively.

**The total penalty after taking into account the above concurrency is 7.5 years' disqualification. Having regard to the principle of totality, the Stewards consider that the total period of disqualification should be 6 years', to commence on 6 September 2023 and to expire on 6 September 2029. Such penalty reflecting the total wrongdoing involved.**

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### *Relevant Rules*

#### **LR114(2)(a)**

*(2) A registered owner, trainer or any person that is in charge of or has in his or her possession, control or custody of any horses (Eligible Horses, Unnamed Horses and Named Horses) must ensure that any such horses are provided at all times with:*

- (a) proper and sufficient nutrition and water.*

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### LR114(2)(d)

*(2) A registered owner, trainer or any person that is in charge of or has in his or her possession, control or custody of any horses (Eligible Horses, Unnamed Horses and Named Horses) must ensure that any such horses are provided at all times with:*

*(d) veterinary treatment where such treatment is necessary or directed by Racing NSW.*

### AR228(a)

*A person must not engage in:*

*(a) Conduct prejudicial to the image, interests, integrity, or welfare of racing, whether or not that conduct takes place within a racecourse or elsewhere;*

### AR232(b)

*A person must not:*

*(b) Fail or refuse to comply with an order, direction or requirement of the Stewards or an official;*

### AR 232(h)

*A person must not:*

*(h) refuse or fail to attend or give evidence at an interview, investigation, inquiry, hearing or appeal when directed or requested to do so by a PRA, the Stewards or a person authorised by a PRA or the Stewards.*

**J R JOHNSTONE  
GENERAL MANAGER - INTEGRITY**