IN THE RACING APPEALS TRIBUNAL

HARNESS RACING NEW SOUTH WALES
Appellant

v

JARRED HETHERINGTON
Respondent

REASONS FOR DETERMINATION

Date of hearing: **5 March 2026**

Date of determination: **16 March 2026**

APPEARANCES: **Ms S Jeliba for the Appellant**

Mr J E Murdoch KC for the Respondent

ORDERS

1. **The appeal is upheld.**
2. **The orders of the Appeal Panel are quashed.**
3. **In lieu thereof, the Appellant is found guilty of the offence contrary to r 190 of the Australian Harness Racing Rules.**
4. **The Appellant is to file any submissions in relation to penalty by 27 March 2026.**
5. **The Respondent is to file any submissions in reply by 10 April 2026.**
6. **Subject to any application by either party, the question of penalty will be determined on the papers.**

INTRODUCTION

1. By a Notice of Appeal dated 1 December 2025, Harness Racing New South Wales (the Appellant) has appealed against a determination of the Appeal Panel of the same date, upholding an appeal by the Respondent against a finding of guilt in respect of a charge contrary to r 190(1) of the *Australian Harness Racing Rules* (the Rules).

2. The parties prepared a Tribunal Book (TB) containing all evidence relevant to the present appeal.

FACTUAL BACKGROUND

3. The factual background is not in dispute and may be summarised as follows.

The relevant provisions of the Rules

4. Rule 190 of the Rules is partly in the following terms:

> ***190 Presentation free of prohibited substances***
> *(1) A horse shall be presented for a race free of prohibited substances.*
> *(2) If a horse is presented for a race otherwise than in accordance with sub-rule (1), the trainer of the horse and the person left in charge is each guilty of an offence.*
> *(3) ...*
> *(4) An offence under sub-rule (2) or sub-rule (3) is committed regardless of the circumstances in which the prohibited substance came to be present in or on the horse.*

5. Rule 188A relevantly provides:

> *(1) The following are prohibited substances:*
> *...*
> *(k) Cobalt at a concentration of 100 micrograms per litre in urine or 25 micrograms per litre in plasma.*

6. Importantly for present purposes, r 191 addresses the issue of Evidentiary Certificates and provides as follows:

191 Evidentiary certificates

(1) A certificate from a person or drug testing laboratory approved by the Controlling Body which certifies the presence of a prohibited substance in or on a horse at, or approximately at, a particular time, or in blood, urine, saliva, or other matter or sample or specimen tested, or that a prohibited substance had at some time been administered to a horse is prima facie evidence of the matters certified.

(2) If another person or drug testing laboratory approved by the controlling body analyses a portion of the sample or specimen referred to in sub-rule (1) and certifies the presence of a prohibited substance in the sample or specimen that certification together with the certification referred to in sub-rule (1) is conclusive evidence of the presence of a prohibited substance.

(3) A certificate furnished under this rule which relates to blood, urine, saliva, or other matter or sample or specimen taken from a horse at a meeting shall be prima facie evidence if sub-rule (1) only applies, and conclusive evidence if both sub-rules (1) and (2) apply, that the horse was presented for a race not free of prohibited substances.

(4) A certificate furnished under this rule which relates to blood, urine, saliva, or other matter or sample or specimen taken from a horse shall be prima facie evidence if sub-rule (1) only applies, and conclusive evidence if both sub-rules (1) and (2) apply, that the prohibited substance was present in or on the horse at the time the blood, urine, saliva, or other matter or sample or specimen was taken from the horse.

(5) Sub-rules (1) and (2) do not preclude the presence of a prohibited substance in or on a horse, or in blood, urine, saliva, or other matter or sample or specimen, or the fact that a prohibited substance had at some time been administered to a horse, being established in other ways.

(6) Sub-rule (3) does not preclude the fact that a horse was presented for a race not free of prohibited substances being established in other ways.

(7) Notwithstanding the provisions of this rule, certificates do not possess evidentiary value nor establish an offence, where it is proved that the certification procedure or any act or omission forming part of or relevant to the process resulting in the issue of a certificate, was materially flawed.

7. For the purposes of the present case the focus is upon r 191(3) as the urine sample was taken from the horse at the meeting at which it competed.[1]

[1] See the reasons of the Appeal Panel at [11].

The analysis of the urine sample taken from the horse

8. The Appellant is the trainer of "*DANCIN WITH LUSH*" (the horse) which was presented to compete in race 1 at a meeting at Tamworth on 22 May 2025. The horse won the race.[2] As previously noted, a urine sample was taken from the horse on that day.[3]

9. The sample was analysed by the National Measurement Institute on 7 July 2025 who provided a report (the NMI Certificate) dated 8 July 2025. The NMI Certificate certified that Cobalt at a level of 110 ug/L was found to be present in the sample.[4]

10. The Respondent accepts that the NMI Certificate constitutes prima facie evidence of the presence of Cobalt in the urine sample taken from the horse, at a level which exceeded the threshold.[5]

11. The Respondent was interviewed by Stewards on 10 July 2025 at which time he was informed of the contents of the NMI Certificate.[6] In the course of the interview, the following exchange took place between the Respondent and Mr Cullen, a Steward:[7]

CULLEN:	*... Now there is a degree of uncertainty with these measurements.*
RESPONDENT:	*Mm-hmm.*
CULLEN:	*And that degree of uncertainty will always go to your favour. So when the next sample ---*
RESPONDENT:	*Yep. Sorry.*
CULLEN:	*When the next sample is analysed, it will again be subject to the degree of uncertainty in analysis.*
RESPONDENT:	*Yep.*

[2] TB 121.
[3] TB 116; sample reference N293712.
[4] TB 117.
[5] Transcript 4.3 – 4.15.
[6] Commencing at TB 127.
[7] Commencing at TB 132.26.

CULLEN:	*And that degree of uncertainty will always be in your favour. So, for example, if the sample comes back at a – I'm just pulling numbers ---*
RESPONDENT:	*Yeah. No, I'm not ---*
CULLEN:	*--- at 150?*
RESPONDENT:	*Yep.*
CULLEN:	*Then we would record that level as 141 as opposed to 159.*
RESPONDENT:	*Yep.*
CULLEN:	*Do you understand that?*
RESPONDENT:	*Yep.*
CULLEN	*That's the way it works.*

12. On the same day Mr Keledjian, the General Manager of the Australian Racing Forensic Laboratory, wrote to Dr Nicola Beckett of ChemCentre. His letter was headed *"REQUEST FOR CONFIRMATORY ANALYSIS"* and asked Dr Beckett to "*analyse sample number N293712 (urine and control) for the presence of cobalt*".[8] A separate letter sent by Mr Keledjian to Dr Beckett on the same day said the following:[9]

> *I have dispatched to you overnight a container by World Courier consignment number 610165566 with an expected time of arrival of 10.30 am on 11 July 2025.*
>
> *The container holds the sample N291712 (urine and control) which are secured with a green security bag (number 091550 with a white external seal number 138403. I request you analyse this sample for the presence and concentration of cobalt.*

13. Handwritten notations on the copy of that letter suggest that the sample was received in tact on the morning of 11 July 2025.

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[8] TB 175.
[9] TB 176.

14. On 21 July 2025, in response to Mr Keledjian's request, a Certificate of Analysis was received from ChemCentre (the ChemCentre Certificate)[10] which included the following table:[11]

Results of analysis	Sample Number	Sample Type	Cobalt (ug/L)
	N293712	Urine	105
	N293712	Control	<1

15. Under that table the following was stated:

> *The reported value is the mean of 4 measurements. The expanded measurement uncertainty for cobalt determination at the threshold (100 ug/L) is 10 ug/L at .99.7% confidence.* ***This means that results greater than 110g/L should be considered positive*** (emphasis added).

16. On 24 September 2025, Mr Prentice, the Chief Integrity Officer of the Appellant, wrote to Andrew Evans, Laboratory Supervisor at the National Measurement Institute, in the following terms:[12]

> *In April 2019, you advised that the 'measurement uncertainty for the determination of cobalt in urine was estimated to be 9% (the expanded uncertainty is calculated using a coverage factor of 2 which gives a level of confidence of approximately 95%.*
>
> *In July 2022 you confirmed that the 'MU is still 9% for cobalt in urine'.*
>
> *Could I trouble you to advise whether there has been any change since that time?*

[10] TB 188.
[11] TB 189.
[12] TB 211.

17. Mr Evans responded:[13]

> *Yes, I can confirm that the MU is still 9% for cobalt in urine.*

Analysis of a blood sample taken from the horse

18. The evidence includes a document headed "sample cobalt results".[14] That document indicates that a blood sample was taken from the horse on 22 May 2025, analysis of which confirmed the presence of Cobalt at a level of 2.6ug/L.

The charge against the Respondent and the penalty imposed

19. On 22 September 2025, the Appellant advised the Respondent that in light of the results of analysis, an inquiry would be conducted on 30 September 2025.[15] The Respondent was subsequently charged with, and found guilty of, an offence contrary to r 190 of the Rules in the following terms:[16]

> *That [the Respondent], being the licenced trainer of the horse DANCIN' WITH LUSH did present that horse to race at Tamworth on Thursday 22 May 2025 not free of a prohibited substance, namely Cobalt above the threshold of 100 micrograms per litre in urine, as reported by a laboratory approved by [the Appellant] being the Australian Government National Measurement Institute.*

20. A disqualification of 2 years was imposed on the Respondent.

THE ISSUE

21. The issue between the parties is a narrow one and revolves principally around the terms of the ChemCentre Certificate. Whilst I have summarised the submissions advanced by each party below, it is useful to shortly state their respective positions at this point.

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[13] TB 210.
[14] TB 204.
[15] TB 216.
[16] TB 59.

22. The Appellant submits that on the basis of what was described as an *"orthodox application"* of the relevant rules, the NMI Certificate and the ChemCentre Certificate establish the offence alleged against the Respondent. That approach involves essentially ignoring the additional words in the ChemCentre Certificate set out at [15] above.

23. The Respondent's position is that on its proper construction, the analysis which was certified in the ChemCentre Certificate was not, in light of the words set out in [15] above, considered positive by those who performed it, and is thus incapable of enlivening r 191(3) or (4) . In advancing that position, the Respondent places considerable emphasis on the statement in the ChemCentre Certificate that "*results greater than 110 ug/L should be considered positive"*. The Respondent argues that taking into account those words, in circumstances where the ChemCentre Certificate certifies the presence of Cobalt in the horse at a concentration of 105 ug/L, the result is "*not positive"* and that the ChemCentre Certificate does not, in combination with the NMI Certificate, constitute the conclusive evidence referred to in r 191(3).

SUBMISSIONS OF THE PARTIES

Submissions of the Appellant

24. The written submissions of counsel for the Appellant advanced the following propositions:

    1. Both the NMI Certificate and the ChemCentre Certificate certify the results of analysis which was undertaken by the respective laboratories.[17]
    2. The NMI Certificate constitutes prima facie evidence for the purpose of r 191(1).
    3. The ChemCentre Certificate and the NMI Certificate constitute conclusive evidence for the purpose of rr 191(2) and (3).[18]

[17] At [5].
[18] At [6] – [7].

4. Any explanatory words which might appear in either Certificate are, given the terms of r 191, not to the point and should be ignored.[19]
5. The words which appear in the ChemCentre Certificate (set out at (15) above) which are relied upon by the Respondent do not:
   (a) amount to the proposition that absent a reported value of 110ug/L or greater, a "negative" result ensues;
   (b) undermine the certified result of analysis which is stated in the certificate.[20]
6. Rule 188A(2)(k) is directed to specified levels of Cobalt, not measurements of uncertainty.[21]

25. Counsel for the Appellant expanded upon these propositions in oral submissions and advanced the following further submissions:

    1. The resolution of the issue between the parties must necessarily commence with a consideration of r 191 which must be interpreted and applied strictly according to its terms.[22]
    2. It is necessary to give primacy to the language of r 191 which is directed towards the analysis of samples, and the certification of the results of such analysis.[23]
    3. To "go behind" the certified results of analysis in ChemCentre Certificate would be an error because it would run contrary to the approach in [1] above.[24]
    4. It is not the function of this Tribunal to seek to interpret the additional words in the ChemCentre Certificate in the absence of evidence.[25]
    5. The approach discussed by Dixon J in *Briginshaw v Briginshaw*[26] have no role to play in the present case given that the Respondent had been charged with a

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[19] At [8].
[20] At [8].
[21] At [8].
[22] Transcript 2.42 – 3.40.
[23] Transcript 6.25.
[24] Transcript 5.5 – 5.21.
[25] Transcript 6.10 – 6.18.
[26] (1938) 60 CLR 336 at 361 per Dixon J at 361.

presentation offence rather than an administration offence. In any event, the evidence relied upon by the Appellant to prove the offence is not inexact .[27]

Submissions of the Respondent

26. The written submissions of King's Counsel for the Respondent advanced the following propositions:
    1. The ChemCentre certificate constitutes an insurmountable flaw in the Appellant's case because the certified results were not considered positive by those who conducted the analysis.[28]
    2. Because the results were not considered positive, the Chem Centre Certificate is incapable of rendering conclusive the prima facie evidence constituted by the NMI Certificate.[29]
    3. The reading of 2.6 ug/L of Cobalt in the blood sample is strong evidence favouring the Respondent.[30]
    4. Strict compliance with the evidentiary provisions contained in the rules is essential.[31]
    5. The principles discussed in *Briginshaw* remain applicable.[32]

27. In oral submissions, Mr Murdoch KC advanced the following further submissions:

    1. Rule 191 must be read in conjunction with r 188A, such that r 191 is to be read as incorporating a requirement as to the level of cobalt in a given case.[33]
    2. Accepting that the NMI Certificate constitutes prima facie evidence of the presence of cobalt in the sample at a level above the threshold,[34] it remains the case that the ChemCentre Certificate was produced in response to a

[27] Transcript 10.1 – 10.11.
[28] At [2].
[29] At [2].
[30] At [3].
[31] At [4].
[32] At [5].
[33] Transcript 11.1 – 11.36.
[34] Transcript 11.30 – 11.39.

request for a confirmatory analysis. On its proper construction, the NMI Certificate does not provide that confirmation.[35]

3. The level of Cobalt present in the blood sample taken from the horse was significantly below the prescribed threshold, an objective fact which provides further support for the Respondent's position.[36]

Submissions of the Appellant in reply

28. Counsel for the Appellant advanced the following submissions in reply:

   1. The present case is based upon an analysis of a urine sample as opposed to a blood sample. Any reliance by the Respondent on the analysis of the blood sample taken from the horse is misplaced and irrelevant[37]
   2. The task of this Tribunal is to concentrate on, and give effect to the relevant certification(s) in accordance with the Rules, not to descend into issues of measurements of uncertainty.[38]
   3. The additional words in the ChemCentre Certificate are not to be construed as meaning that a reading of 105 ug/l should be treated as a negative result for present purposes.[39]

<u>CONSIDERATION</u>

29. It is appropriate to firstly address the issue of whether the decision in *Briginshaw* has a role to play in the determination of the present appeal. I make the following observations in circumstances where, although the parties made short submissions in respect of this issue, it could not really be said that the matter was fully argued.

30. It is important to bear in mind that the decision in *Briginshaw* does not create a separate standard of proof for the purposes of proceedings such as the present.

[35] Transcript 13.13 – 14.23.
[36] Transcript 14.25 – 15.37.
[37] Transcript 17.3 – 17.36.
[38] Transcript 18.15
[39] Transcript 18.35 – 18.47.

It remains the position that the Appellant must prove the offence alleged against the Respondent on the balance of probabilities.

31. In *Briginshaw,* Dixon J said the following:[40]

> *The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters, "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect references.*

32. Subsequently, in *Neat Holdings Pty Limited v Karajan Holdings Pty Limited*[41] the plurality, in the context of a number of authorities including *Briginshaw,* said this:

> *The ordinary standard of proof required of a party who bears the onus in civil litigation in this country is proof on the balance of probabilities. That remains so even where the matter to be proved involves criminal conduct or fraud. On the other hand, the strength of the evidence necessary to establish a fact or facts on the balance of probabilities may vary according to the nature of what it is sought to prove. Thus, authoritative statements have often been made to the effect that clear or cogent or strict proof is necessary "where so serious a matter as fraud is to be found". Statements to that effect should not, however, be understood as directed to the standard of proof. Rather, they should be understood as merely reflecting a conventional perception that members of our society do not ordinarily engage in fraudulent or criminal conduct and a judicial approach that a court should not lightly make a finding that, on the balance of probabilities, a party to civil litigation has been guilty of such conduct.*

33. Having cited the passage from the judgment of Dixon J in *Briginshaw* set out above, their Honours continued:

> *There are, however, circumstances in which generalisations about the need for clear and cogent evidence to prove matters of the gravity of fraud or crime are, even when understood as not directed to the standard of proof, likely to be unhelpful and even misleading.*

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[40] At 361 and following.

[41] (1992) 110 ALR 449 at 449 – 450 per Mason CJ; Brennan, Deane and Gaudron JJ.

34. The reference by Dixon J to the "*gravity of the consequences flowing from a particular finding*" has some significance in the present case. The potential consequences for the Respondent of a finding that the offence is established necessarily include a period of disqualification. A period of disqualification is, in my view, properly regarded as "*consequence of gravity*". Accepting that to be the case, clear proof of the commission of the offence is necessary.

35. I turn to the substantive issue between the parties.

36. Rule 191 creates what might be described as an "*evidentiary scheme*" in respect of proof of the presence of prohibited substances in horses. The essence of that scheme may be summarised as follows: [42]

    1. A certificate from a person or drug testing laboratory which certifies the presence of a prohibited substance in (inter alia) blood or urine is *prima facie evidence* of the matters certified: r 191(1).
    2. If another person or drug testing laboratory analyses a portion of the sample referred to in (1) and certifies the presence of a prohibited substance in the sample, that certification, together with the certification referred to in sub-rule (1), is conclusive evidence of the presence of a prohibited substance: r 191(2).
    3. A certificate furnished under r 191 which relates to urine taken from a horse at a meeting shall be conclusive evidence, if both sub-rules (1) and (2) apply, that the horse was presented for a race not free of prohibited substances: r 191(3).
    4. A certificate furnished under r 191 which relates to urine taken from a horse (i.e. urine which is not restricted to having been taken from a horse at a meeting as referred to in sub-rule (3)), shall be conclusive evidence, if both sub-rules (1) and (2) apply, that the horse was presented for a race not free of prohibited substances: r 191(4).

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[42] Formal parts of the Rules which are not in dispute have been omitted.

37. As previously noted, the urine sample in the present case was taken from the horse at a meeting. Accordingly, the focus is upon rr 191(1), (2) and (3).

38. There is no issue in the present case that the NMI Certificate satisfies the requirements of r 191(1), and thus constitutes prima facie evidence of the presence of Cobalt, at a level above the threshold, in the sample. So much was expressly conceded by the Respondent. Rule 191(2) makes reference to (inter alia) a person who certifies the presence of a prohibited substance in the sample. The Appellant's position is that the ChemCentre Certificate answers that description, notwithstanding the additional observations which are made within it. The Respondent's position is that it does not because on its proper construction, the results of analysis were not considered positive by the person who made the certification.

39. I accept the Respondent's position that r 191 must be read in light of r 188A(k), which renders Cobalt a prohibited substance when it is found to be present at a concentration which exceeds the threshold level of 100 ug/L in urine. As a consequence, in a case involving the presence of Cobalt, the certifications of analysis referred to in r 191 must be construed as extending beyond a certification of *the presence* of Cobalt, to a certification of the *concentration of the Cobalt found to be present*. A contrary approach would bring about an absurd result, as it would completely ignore the threshold requirement imposed by r 188A(k).

40. However, for the reasons that follow, I am unable to accept the balance of the case advanced by the Respondent.

41. Rule 191 does not form part of a statute. The approach to its interpretation involves giving its terms their natural and ordinary meaning, consistent with what

such terms were intended to convey.[43] It is also important, when construing r 191, not to read words into the rule which are simply not there.

42. Adopting that approach, the rule is directed specifically to the *analysis and certification of the presence of a prohibited substance in a sample*. The additional words (set out in [15] above) which appear in the ChemCentre Certificate are inconsistent with the terms of r 191. The rule says nothing about certification of the results of an analysis expressed in terms of being "*positive"* or *"negative",* nor does it call upon the author of a certificate of analysis to express such certification in those terms. Notions of *"positive"* or *"negative"* results fall outside the terms of r 191. The additional words in the ChemCentre Certificate are, from the point of view of the application of r 191, surplusage. They do not respond to the terms of the rule, and have no role to play. Once the requirements of rr 191(1), (2) and (3) are met, the evidence in the certificates is rendered conclusive.

43. I am also unable to accept that the ChemCentre certificate does not provide the confirmatory analysis sought by Mr Keledjian. What was sought by Mr Keledjian was an analysis confirming the presence of Cobalt above the prescribed threshold. That is precisely what the ChemCentre certificate states.

44. Moreover, as counsel for the Appellant submitted, the present case centres upon the analysis of a urine sample. What may or may not have been the results of analysis of a blood sample is irrelevant. No certification of analysis within the meaning of r 191 is before me.

45. Finally, for the sake of completeness, it should be emphasised that the provisions of r191(7) are not engaged. There is no suggestion that there was any material flaw in the certification procedure.

[43] See generally *Day v Harness Racing New South Wales* (2014) 88 NSWLR 594 at [79] – [81]; *Porter v National Union of Journalists* [1980] IRLR 404 at 407; *Jaques v Amalgamated Union of Engineering Workers* [1987] 1 All ER 621 at 628.

CONCLUSION AND ORDERS

46. For the reasons expressed, and bearing in mind the strict terms of r 191:

    1. the NMI Certificate constitutes prima facie evidence of the presence of Cobalt in the sample: r 191(1);
    2. the ChemCentre Certificate:
       (a) relates to the analysis of a portion of the urine sample taken from the horse: r 191(2);
       (b) certifies the presence of a prohibited substance, namely Cobalt, at a level above the prescribed threshold: r 191(2).
       (c) together with the NMI Certificate, constitutes conclusive evidence of the presence, in the sample, of Cobalt at a level which exceeds the prescribed threshold: r 191(2); and
       (d) together with the NMI Certificate, constitutes conclusive evidence that the horse was presented for a race not free of a prohibited substance, namely Cobalt at a level which exceeds the prescribed threshold: r 191(3).

47. It follows that the offence is made out.

48. It was accepted by the parties that if I reached the conclusions to the effect of those set out above, it would follow that the Respondent was guilty of the offence. In that event, both parties sought a further opportunity to make submissions on penalty.

49. I therefore make the following orders:

    1. The appeal is upheld.

    2. The orders of the Appeal Panel are quashed.

    3. In lieu thereof, the Appellant is found guilty of the offence contrary to r 190 of the Australian Harness Racing Rules.

    4. The Appellant is to file any submissions in relation to penalty by 27 March 2026.

5. The Respondent is to file any submissions in reply by 10 April 2026.

6. Subject to any application by either party, the question of penalty will be determined on the papers.

THE HONOURABLE G J BELLEW AM SC

16 March 2026

IN THE RACING APPEALS TRIBUNAL

HARNESS RACING NEW SOUTH WALES
Appellant

v

JARRED HETHERINGTON
Respondent

REASONS FOR DETERMINATION OF PENALTY

Date of determination: 28 April 2026

ORDERS

1. **The Respondent is disqualified for a period of 18 months, commencing on 29 October 2025, and expiring on 29 April 2027.**

INTRODUCTION

1. In a determination dated 16 March 2026, I upheld an appeal brought by Harness Racing New South Wales (the Appellant) against a determination of the Harness Racing Appeal Panel, and concluded that Jarred Hetherington (the Respondent) had breached r 190 of the *Australian Harness Racing Rules* (the Rules). That breach was pleaded in the following terms:[1]

> *That [the Respondent], being the licenced trainer of the horse DANCIN' WITH LUSH did present that horse to race at Tamworth on Thursday 22 May 2025 not free of a prohibited substance, namely Cobalt above the threshold of 100 micrograms per litre in urine, as reported by a laboratory approved by [the Appellant] being the Australian Government National Measurement Institute.*

2. Following that determination, the parties were given the opportunity to make submissions on the issue of penalty. Those submissions having been received, this determination deals with that issue.

3. I do not propose to repeat the facts and circumstances surrounding the offending. What follows assumes familiarity with my previous determination in which such circumstances were set out in full.

SUBMISSIONS OF THE PARTIES ON PENALTY

Submissions of the Appellant

4. The principal submissions advanced on behalf of the Appellant were as follows:

    1. A two year disqualification is appropriate, to expire on 29 October 2027.[2]

    2. General deterrence has a particularly significant role to play in determining penalty,[3] as does the need to protect the integrity of the harness racing industry.[4]

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[1] TB 59.
[2] At [2].
[3] At [4].
[4] At [5].

3. Having regard to the Penalty Guidelines published by the Appellant (the Guidelines), the starting point for a breach of this kind is a disqualification for 5 years. Accordingly, the proposed penalty of a disqualification of 2 years reflects the application of a significant discount, particularly in circumstances where the Respondent pleaded not guilty.[5]

4. There is an additional need for the penalty imposed in this case to reflect a need for specific deterrence in light of the Respondent's history of unsatisfactory stable security and procedures, along with the fact that the evidence supports a finding that the cobalt was administered for non-therapeutic reasons.[6]

5. The circumstances of the offending should be regarded as falling within the second of the so-called *McDonough principles,* namely a case in which I am left in the position of having no real idea as to how the cobalt came to be present in the bloodstream of the horse.[7]

6. Assuming the submission in [5] is accepted, the testimonials tendered on behalf of the Respondent, at least to the extent that they make reference to the *"knowing"* administration of a prohibited substance, are deserving of little weight.[8]

7. The decisions relied upon by the Respondent are of limited use for comparative purposes.[9]

8. It follows from all of these factors that the imposition of any penalty less than a period of disqualification would be inappropriate.[10]

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[5] At [8].
[6] At [10] – [15].
[7] At [15].
[8] At [16].
[9] At [18].
[10] At [20] – [21].

Submissions of the Respondent

5. The principal submissions advanced on behalf of the Respondent were as follows:

    1. The Respondent's background generally supports the imposition of something less than a period of disqualification. The appropriate penalty is a wholly suspended period of suspension.[11]

    2. The specific aspects of the Respondent's background which justify such an outcome include:[12]
        (a) the absence of any previous infringements of the rules over a period of 20 years;
        (b) his personal circumstances;[13]
        (c) his prior good character, including the absence of any breaches of regulatory provisions directed towards the preservation of animal welfare.[14]

    3. Other cases have seen the imposition of penalties less than that advocated by the Appellant in this case.[15]

    4. Even if the submissions of the Appellant as to the Respondent's stable security were accepted at a threshold level, there are a series of mitigating factors surrounding that issue including, but not limited to, the fact that harness racing in Narrabri is conducted at a location which is administered by a Trust, as a consequence of which the Respondent is restricted as to the practical steps that he is able to take to enhance stable security.[16]

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[11] At [1].
[12] At [2].
[13] I have chosen, for reasons of protecting the Respondent's privacy, not to disclose the detail of the personal circumstances which are relied upon, but I have taken the entirety of them into account.
[14] At [15].
[15] At [3] – [4]; [11].
[16] At [8].

5. The Guidelines predate the decision of the High Court in *Australian Building and Construction Commissioner* v *Pattinson*[17], and *"hark back to an earlier era where there was a particular problem with drugs in harness racing".*[18] For those reasons, they are of limited relevance.

6. The Respondent's personal circumstances (which, as previously noted, I have chosen not to disclose in order to protect his privacy) are a significant mitigating factor, and lend further weight to the proposition that the imposition of something less than a disqualification is an appropriate outcome.[19]

7. The Appellant's case does not advance the proposition that the Respondent was responsible for the elevated levels of cobalt through any administration of (for example) products containing cobalt salts.[20]

CONSIDERATION

6. Before considering the issue of penalty it is appropriate to address some specific matters arising out of the submissions outlined above.

7. First, although the Guidelines may be viewed a yardstick for the purposes of considering penalty, it is not a yardstick to which I am tethered. In other words, I am not bound by the Guidelines. Given that, any submission on penalty which is advanced, in a case such as this, by reference to the Guidelines, is likely have limited weight.

8. Secondly, the proposition advanced on behalf of the Appellant that my assessment of penalty should be approached by adopting a so-called starting point is, curiously, at odds with the position which has been taken on behalf of the

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[17] [2022] HCA 13.
[18] At [9].
[19] At [12] – [13].
[20] At [14].

Appellant before the Tribunal in other cases.[21] The position previously taken has (with respect, correctly) recognised that:

1. the adoption of a starting point is somewhat misguided, given that such an approach stems from the Guidelines by which I am not bound; and

2. assessment of penalty is not a mathematical exercise in any event.[22]

9. Thirdly, and apart from what appears to be an inconsistency in approach, advocating the adoption of a fixed starting point, to which increments and decrements are then applied according to various aggravating and mitigating factors, is contrary to the notion of the application of instinctive synthesis. It is that latter approach which the Tribunal has previously recognised as being the appropriate one to take in matters of this kind.[23]

10. Fourthly, there is a degree of tension between the proposition (with which I agree) that the present case falls within the second of the so-called *McDonough* principles, and the submission advanced on behalf of the Appellant that the evidence supports a finding that the administration of cobalt in the present case was for non-therapeutic purposes. The second *McDonough* principle proceeds on the assumption that the evidence falls short of establishing how the prohibited substance came to be present in the horse. If that cannot be established, it would be difficult to make a positive finding as to the reasons for the administration of the substance in the first instance. In any event, the Respondent is charged with a presentation offence. Questions of administration are largely irrelevant.

11. I turn to the general principles which govern the assessment of penalty, of which three are of particular importance.

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[21] See for example *Wade v Harness Racing New South Wales* (4 March 2025) at [18].
[22] *Wade* at [18].
[23] See *Wade* at [22].

12. First, a principal purpose of the imposition of a penalty in matters of this kind is that of general deterrence. Any penalty must send a clear message to all industry participants that offending of this kind is likely to meet with a substantial penalty.

13. Secondly, depending upon the circumstances, personal deterrence may also have a role to play.

14. Thirdly, the Respondent is obviously entitled to have his subjective case taken into account. The caveat however, is that the weight to be given to that subjective case, no matter how strong the case might be, cannot lead to the imposition of a penalty which does not reflect the objective seriousness of the offending.

15. Bearing in mind those principles, my conclusions are as follows.

16. To begin with, the offending is, by its very nature, objectively serious. It has the capacity to adversely affect the integrity of, and public confidence in, the harness racing industry. I am unable to accept the proposition that concerns about drugs in sport generally, or in the harness racing industry in particular, are, as it were, concerns of a bygone era. The number of cases involving the presence of prohibited substances in horses which are dealt with by Stewards, and by this Tribunal, give weight to the proposition that such concerns are very much ongoing.

17. All of that said, and as I have already noted, it is generally not to the point that the Appellant's case does not allege any form of prohibited *administration* by the Respondent. He is charged with a presentation offence.

18. The Respondent is entitled to the full benefit of his subjective case, subject to the caveat that I have identified. In that regard, the evidence establishes that he is a person of prior good character who, over a significant period of time, has not come under notice for any regulatory (or for that matter, any other) offence.

19. It would not be unreasonable to assume that over the long period during which the Respondent has been an active participant in the harness racing industry, a number of horses he has trained would have been subject to scrutiny in terms of urine sampling and analysis. The fact that the Respondent has never come under notice for this kind of offending supports a conclusion that he is an industry participant who is honest, conscious of his obligation to respect the rules to which he is subject. All of those matters support the further conclusion that he is cognisant of the need to protect the integrity of the harness racing industry.[24]

20. I am mindful of the limitations of the testimonial evidence which were pointed out by counsel for the Appellant. However, my conclusions as to the Respondent's prior good character are generally consistent with the opinions expressed in those testimonials in any event.

21. For all of these reasons, I am prepared to accept that the offending should be regarded as something of an aberration. That conclusion, along with the Respondent's subjective circumstances, reduce the need for any penalty to reflect considerations of personal deterrence, although I accept that in light of the evidence surrounding the inspections of the Respondent's stables, that need is not entirely extinguished. The Respondent must bear some degree of culpability, but at a level consistent with the acceptance of the fact that the case is one that falls within the second of the *McDonough* principles.

22. Undertaking a comparison of the outcomes of other cases is not a particularly productive exercise. As has been said on numerous occasions, no two cases are factually identical and in any event, what is sought to be achieved between cases is the consistent application of principle, not mathematical equivalence of penalty. In the present case, despite the weight of the Respondent's subjective circumstances, considerations of general deterrence in particular mean that

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[24] See similar comments made in *Gatt v Greyhound Welfare and Integrity Commission* (28 March 2024) at [57].

nothing less than a period of disqualification must be imposed. To adopt the course urged on behalf of the Respondent, namely to impose a fully suspended suspension, would involve a departure from the approach that this Tribunal has consistently adopted, in which it has been made clear that it is all but inevitable that offending of this kind will result in the imposition of a period of disqualification. Adopting the Respondent's suggested course would also result in the imposition of a penalty which failed, not only to reflect the objective seriousness of the offending, but to send the necessary message to the harness racing industry as a whole.

23. Taking all factors into account, a disqualification of 18 months should be imposed.

ORDERS

24. I make the following orders:

    1. The Respondent is disqualified for a period of 18 months commencing on 29 October 2025 and expiring on 29 April 2027.

THE HONOURABLE G J BELLEW AM SC

28 April 2026