

NEW SOUTH WALES HARNESS RACING APPEAL PANEL

APPEAL PANEL MEMBERS

**Hon W Haylen KC
D Kane
J Murphy**

DECISION

1 December 2025

APPELLANT JARRED HETHERINGTON

RESPONDENT HRNSW

AUSTRALIAN HARNESS RACING

RULES 190(1), (2) & (4)

DECISION

The Appeal Panel makes the following orders:

- **That the Appellant's appeal be upheld.**
- **That the disqualification imposed by the Stewards be set aside as from 25 November 2025.**
- **Any appeal fee paid by the Appellant be refunded to him.**

Jarred Hetherington

Appellant

Harness Racing New South Wales

Respondent

Determination

Background

- 1 Jarred Hetherington (**Appellant**) is a licensed harness racing trainer.
- 2 On 30 October 2025, the Appellant lodged with Harness Racing New South Wales (**Respondent**) a **Notice of Appeal** dated that same date. That Notice of Appeal is lodged in respect of a **Decision** made by the Respondent's **Stewards**. That Decision of the Stewards is dated, and was delivered on 29 October 2025.
- 3 The Decision concerns a charge (**Charge**) laid by the Stewards pursuant to **rules 190(1), (2) and (4)** of the *Australian Harness Racing Rules (AHRR)*. **Rule 190** is in these terms:

AHRR 190.

- (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 is guilty of an offence ...*
- ...
- (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 ...*

- 4 The particulars of the Charge were framed by the Stewards in these terms:

That you, Mr Jarred Hetherington, being the licensed trainer of the horse DANCIN WITH LUSH did present that horse to race at Tamworth on Thursday the 22nd of 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 HRNSW being the Australian Government National Measurement Institute ...

5 **Rule 188A(1)(k)** is the rule that declares Cobalt a prohibited substance when present in excess of specified thresholds. That rule is framed in these terms:

188A. (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 Cobalt is classified under the AHRR as a Class 1 prohibited substance. Class 1 prohibited substances represent the most serious subset of prohibited substances, where those substances:

- (a) Have no generally accepted use in the racing horse; and/or
- (b) Pose a significant risk to the welfare of the horse; and/or
- (c) Pose a significant risk to the integrity of the harness racing industry.

7 Accordingly and quite properly, the sanctions that can and are imposed, for breaches of **rule 190(1), (2) and (4)**, for matters involving Class 1 prohibited substances, are severe in nature. Those sanctions typically are in the nature of a disqualification.

8 The Appellant is the trainer of the horse DANCIN WITH LUSH (**Horse**). The Appellant presented the Horse to race on 22 May 2025, at a meeting at Tamworth. The Horse won race 1 on the card, that being the ABERMAIN METRO – KAEI HEPWORTH PACING FOR PINK PACE (**Race**).

9 Before the Race, the Stewards took a blood sample from the Horse.

10 Following the Race, the Stewards took a urine sample from the Horse. That sample bears sample identification number N239712.

11 The results of the analysis of the blood sample and the urine sample, each taken on 22 May 2025, were put into evidence in the proceedings before the Appeals Panel. The consideration of that evidence is crucial to the Appeals Panel's determination in these proceedings.

12 The Decision records that on 12 June 2025, the Horse was administered another post-race urine sample, following a race on that day. The Stewards' decision records that the analysis of this particular urine sample showed that Cobalt was present in the Horse's urine sample at the concentration of 10 ug per litre (where "ug" is the shortened reference to "micrograms").

- 13 Upon finding the Appellant guilty of the Charge and after taking submissions made on the Appellant's behalf as to sanction and mitigating factors, the Stewards imposed a penalty under the AHRR in the form of a *disqualification*. That disqualification is for a period of two (2) years commencing immediately from the date of the Decision, and therefore from 29 October 2025 and ending at 11.59pm on 29 October 2027 (**Sanction**).
- 14 By his Notice of Appeal, the Appellant appeals against conviction *and* penalty. The Notice of Appeal was filed within time.
- 15 This matter proceeded by way of a hearing before the Appeals Panel on 25 November 2025. At the conclusion of the appeal hearing the Appeals Panel determined that it was in a position to announce its decision on the day, with reasons to follow. The orders made by the Panel on 25 November 2025 are as follows:
- (a) That the Appellant's appeal be upheld.
 - (b) That the disqualification imposed by the Stewards be set aside.

Reasons

- 16 This written decision records, to the extent required to explain the Appeals Panel's decision, the reasons why the Appeals Panel determined to uphold the Appellant's appeal and then set aside the disqualification imposed by the Stewards. Matters irrelevant to the Appeals Panel's reasoning are not recorded below.
- 17 **Rule 188A(1)(k)** declares Cobalt a prohibited substance when it appears in a horse's system at a concentration of either 100 micrograms per litre in urine, or 25 micrograms per litre in plasma. This is unlike many other prohibited substances, which are prohibited at any level of concentration and not only concentrations over a particular threshold.
- 18 As to the presence of, and the concentration of Cobalt present in the Horse's system on 22 May 2025, there were three pieces of evidence before the Appeal Panel.
- 19 **The first piece** of evidence is a report of analysis dated 8 July 2025, issued by the National Measurement Institute (**NMI**). That report of analysis is in respect of the NMI's analysis of the A-part of urine sample N239712. The NMI certificate, number RN14700029, records the presence of Cobalt in the sample at the concentration of 110 ug/L.
- 20 This first piece of evidence is prima facie evidence of the matters certified in the report of analysis, as per **rule 191(1)**.

21 **The second piece** of evidence is a certificate of analysis dated 21 July 2025, issued by Chem Centre Expert Solutions (**Chem Centre**). That certificate of analysis is in respect of Chem Centre's analysis of urine sample N239712. The Chem Centre certificate, number 25R0039, records the presence of Cobalt in the sample at the concentration of 105 ug/L.

22 The Chem Centre certificate also includes the following words:

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

[emphasis added]

23 Because of that notation on the Chem Centre certificate of analysis, that document does not trigger **rule 191(2)**. The Chem Centre certificate of analysis comes with it a written warning, as to what analysis results should be considered positive. The certified result is not one which, on the face of the Chem Centre certificate, should be considered positive by reference to **rule 188A(1)(k)**.

24 **The third piece** of evidence is a table of sample cobalt results for horses trained by the Appellant, including the Horse. That document appears to be a document prepared by the Respondent.

25 Relevantly, the document records the results of the analysis of the pre-race blood sample taken from the Horse on 22 May 2025. That blood sample, assigned sample number B243688, was analysed and found to have Cobalt present at the concentration of 2.6ug/L.

26 It is not clear on the evidence as to the identity of the laboratory that conducted the blood sample analysis. There is no certificate of analysis put into evidence.

27 Pausing there, the three key pieces of analysis evidence adduced before the Appeals Panel are:

- (a) The NMI certificate, which records the presence of Cobalt in the post-race urine sample at the concentration of 110 ug/L.
- (b) The Chem Centre certificate, which records the presence of Cobalt in the sample at the concentration of 105 ug/L, and which also states that results greater than 110ug/L should be considered positive; that is, positive by reference to the threshold set in **rule 188A(1)(k)**.
- (c) Uncontested evidence, that the pre-race blood sample was analysed and found to have Cobalt present, at the concentration of 2.6ug/L.

- 28 As to the consideration of this evidence, the Stewards' Decision records the following reasoning:

The certificate of analysis issued by the Australian Government National Measurement Institute (NMI) reported a Cobalt level of 110 ug/L (micrograms per litre) in urine with a 9% measurement of uncertainty and the certificate of analysis issued by the ChemCentre reported a Cobalt level of 105 ug/L in urine with a measurement of uncertainty 10 ug/L at the threshold of 100 ug/L.

Consequently, when taking into account the respective measurements of uncertainty, the NMI Cobalt level had a range of 100.1 ug/L to 119.9 ug/L and ChemCentre Cobalt level had a range of 94.5 ug/L to 115.5 ug/L.

Stewards in finding the offence proven against Mr Hetherington determined that the most likely level of cobalt in the urine sample obtained from horse DANCIN WITH LUSH when both NMI and ChemCentre ranges were considered is the overlap between 100.1 ug/L and 115.5 ug/L in urine, which was above the allowable threshold.

In addition to the subject urine sample, a pre-race blood sample was obtained from the horse DANCIN WITH LUSH on the same date which returned a Cobalt level of 2.6 ug/L in plasma.

At the conclusion of the evidence and following consideration of that evidence, HRNSW Stewards issued a charge against Mr Hetherington pursuant to Australian Harness Racing Rule (AHRR) 190 (1), (2) & (4) as follows ...

- 29 In accordance with **section 34C(1)** of the *Harness Racing Act 2009* (NSW), an appeal before the Appeals Panel is to be conducted as a new hearing. The Appeals Panel does, accordingly, come at the matter afresh.


- 30 It is however important that some brief observation be made regarding the reasoning of the Stewards, extracted above:

- (a) As to the statement "... Australian Government National Measurement Institute (NMI) reported a Cobalt level of 110 ug/L (micrograms per litre) in urine with a 9% measurement of uncertainty ...", the report of analysis and accompanying quality assurance report, issued by the NMI, does not expressly state this 9 percent (%) measurement of uncertainty. Instead, the quality assurance report that accompanies the NMI report of analysis is in these terms:

LOR = Limit Of Reporting RPD = Relative Percent Difference LCS = Laboratory Control Sample NA = Not Applicable
Acceptable recoveries for the LCS and Matrix Spike are 80 - 120 % for Limit Testing and 93 - 107 % for Assay Testing.
Acceptable RPDs on duplicates are 30 % for Limit Testing and 15 % for Assay Testing, at concentrations more than 5 times LOR.
#: Spike level is less than 50% of the sample's concentration, hence the recovery data is not reliable.
**.: reference value not available

Signed:

Date:


Dr Andrew Evans
Inorganics, NMI (North Ryde)
08/07/2025

- (b) The Stewards' reasoning does not grapple with the part of the Chem Centre certificate, which reads "... This means that results greater than 110ug/L should be considered positive ...".

- (c) The Stewards' reasoning, in determining "...that the most likely level of cobalt in the urine sample obtained from horse DANCIN WITH LUSH when both NMI and ChemCentre ranges were considered is the overlap between 100.1 ug/L and 115.5 ug/L in urine, which was above the allowable threshold ..." does not appear to correlate with any identified procedure in the AHRR or anywhere else, that sets out how the Stewards should proceed when two different sets of analysis are obtained, for the A-part and the B-part of the post-race urine sample, including where the analysis of the A-part of the sample is arguably on one side of the relevant concentration threshold, and where the analysis of the B-part of the sample is framed in the terms that the Chem Centre certificate is.
- (d) The Stewards say this about the analysis of the pre-race blood sample "... In addition to the subject urine sample, a pre-race blood sample was obtained from the horse DANCIN WITH LUSH on the same date which returned a Cobalt level of 2.6 ug/L in plasma ..." but the Stewards then otherwise seemingly disregard that blood analysis result. The blood sample analysis result is disregarded in the context of the relevant threshold set in **rule 188A(1)(k)**, where that threshold is 25ug/L and therefore over 9 times greater than the level of Cobalt detected in the blood sample.

31 In relation to the laying of the Charge, the onus of proof lies at all times with the Respondent.

32 Relevantly, the Respondent must prove each of the elements of the Charge, including that the Horse was presented to race with Cobalt in its system at concentrations in excess of those allowed by **rule 188A(1)(k)**.

33 The Respondent must discharge its onus in accordance with the standard set out in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361–362. As Dixon J observed in *Briginshaw*:

... when the law requires the proof of any fact, the tribunal must feel an actual persuasion of its occurrence or existence...It cannot be found as a result of a mere mechanical comparison of probabilities." The standard is of "reasonable satisfaction" "...but reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. 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.... In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inference ...

34 The penalty of disqualification under the AHRR is a most serious sanction. **Part 16** of the AHRR is devoted to a codification of all the activities and things that a disqualified person is prohibited from doing and engaging in.

35 Given the seriousness of the imposition of the sanction and the consequences that follow, the Appeals Panel must be reasonably satisfied as to the cogency of the evidence relied on by the

Respondent, in asking the Appeals Panel to dismiss the appeal and uphold the Decision of the Stewards.

36 It has been held in previous matters by this Appeals Panel as relevantly constituted, and by the Racing Appeals Tribunal (see, for example, *Gallagher v Harness Racing New South Wales*, 22 September 2021) that in determining issues relating to the breach of the rules of racing, and in the application of the principles set in *Briginshaw*, the Appeals Panel must be “comfortably satisfied” that the facts support the claims or issues in question.

37 The Appeals Panel proceeds on that same basis in determining this case.

38 The Appeals Panel in this instance is not satisfied that the Respondent has met, and discharged, its evidentiary onus and burden.

39 Plainly, the analysis of the pre-race blood sample taken from the Horse constitutes no basis for any contention that **rule 188A(1)(k)** has been breached.

40 The Chem Centre certificate of analysis expressly states that while the detected concentration of Cobalt in the B-part of the urine sample was 105ug/L, “... *results greater than 110ug/L should be considered positive* ...”.

41 The obvious inference to be drawn from a reading of that statement made in the Chem Centre certificate of analysis, is that a result of 105ug/L, being *less than* 110 ug/L, should not be considered positive.

42 Pausing there, the Appeals Panel has two pieces of sample analysis evidence before it, that points in the same direction, to there being no breach of **rule 188A(1)(k)**.

43 Against that evidentiary backdrop, there then is the NMI report of analysis.

44 Taken at face value, the Stewards consideration of the NMI report of analysis is recorded in this way:

... Australian Government National Measurement Institute (NMI) reported a Cobalt level of 110 ug/L (micrograms per litre) in urine with a 9% measurement of uncertainty ... when taking into account the respective measurements of uncertainty, the NMI Cobalt level had a range of 100.1 ug/L to 119.9 ug/L ...

45 Leaving to one side the question of whether the Stewards read the NMI report of analysis correctly, that NMI report of analysis exists in the context of, *first*, the Chem Centre analysis and what Chem Centre has certified; and *second*, the report of the pre-race blood sample analysis.

46 The NMI certificate is one piece of evidence, which on its face appears to indicate that the Cobalt levels *reliably* detected in the Horse’s system were *marginally* in excess of that permitted

by **rule 188A(1)(k)**. It appears to have been obtained first (it is not known as to the date on which the result of the analysis of the blood sample was obtained by the Stewards), and its existence establishes the *prima facie* case under **rule 191(1)**. But the NMI report of analysis does not have any greater evidentiary force than that.

47 The other two pieces of analysis evidence, those being the Chem Centre certificate and the recording of the result of the analysis of the pre-race blood sample, cannot on their own or in combination be relied on as proof of the Charge. Moreover, those pieces of evidence effectively rebut any *prima facie* case made out by the NMI report of analysis.

48 Accordingly, the Appeals Panel orders:

- (a) That the Appellant's appeal be upheld.
- (b) That the disqualification imposed by the Stewards be set aside as from 25 November 2025.
- (c) Any appeal fee paid by the Appellant be refunded to him.

1 December 2025

Wayne Haylen KC
Jim Murphy
Darren Kane