IN THE RACING APPEALS TRIBUNAL

NATHAN JACK
Appellant

v

HARNESS RACING NEW SOUTH WALES
Respondent

REASONS FOR DETERMINATION

Date of hearing:	**1 July 2025**
Date of orders:	**1 July 2025**
Date of reasons:	**7 July 2025**
Appearances:	**The Appellant in person (assisted by Mr R Jones)**
	Ms C Chua for the Respondent

ORDERS

1. **To the extent that it may be found necessary to do so, and pursuant to cl 7(3) of the *Racing Appeals Tribunal Regulation 2024,* the time for filing the Notice of Appeal in this matter is extended to 5.00 pm on 28 April 2025.**

2. **The appeal is upheld.**

3. **The decision of the Appeals Panel of Harness Racing New South Wales of 14 April 2025 is quashed.**

4. **In lieu thereof, the Appellant is disqualified for a period of 6 months for each of the offences contrary to r 190 of the *Harness Racing Rules*.**

5. **The disqualification imposed by order [4] shall commence on 28 December 2024 and the two disqualifications shall be served concurrently.**

6. **The appeal deposit is to be refunded.**

INTRODUCTION

1. By a Notice of Appeal dated 28 April 2025, Nathan Jack (the Appellant) appealed against a determination of the Appeal Panel (the Panel) of Harness Racing New South Wales (the Respondent) confirming a disqualification for a total period of 9 months in respect of two breaches of r 190 of the *Harness Racing Rules*. Those breaches were committed on 7 July 2023 and 21 July 2023. Each concerned the horse *Skinnydip NZ* which was presented by the Appellant to race when it had quantities of the prohibited substance *Levamisole* in its system, in concentrations of .038ng/ml and .015 ng/ml respectively.

2. The appeal was heard on 1 July 2025, and proceeded on the basis that the only issue was that of penalty. At the conclusion of the hearing I made orders (amongst other things) allowing the appeal, quashing the determination of the Panel, and imposing, in lieu thereof, a disqualification of 6 months. In making those orders I indicated that my reasons would be published in due course. Those reasons now follow.

3. For the purposes of the hearing I was provided with a Tribunal Book (TB) by the parties containing all documentary evidence.

4. I should note for the sake of completeness that an issue was raised as to whether the Appellant required an extension of time in which to bring his appeal. That issue involved, amongst other things, considering the question of how time is calculated for the purposes of cl 7 of the *Racing Appeals Tribunal Regulation 2024* (the Regulation). The resolution of that issue is best left to a case where both parties are legally represented, and in which I have the benefit of comprehensive submissions. For present purposes, and without deciding the point, I need only note that in the course of the hearing, the Appellant advanced a number of circumstances[1] which would arguably justify an extension of time if that were

[1] Transcript 3.14 – 7.36.

necessary. Ms Chua, who appeared for the Respondent, helpfully did not argue against that proposition.[2]

THE FACTS

5. I am grateful to the parties for the preparation of agreed facts which are in the following terms:[3]

> 1. *Levamisole is a class 2 prohibited substance.*
>
> 2. *The appellant breached Australian Harness Racing Rule (Rule) 190(1) on 2 occasions, as follows:*
>
> > *a. When presenting Skinnydip NZ ('the horse') to race at Wagga Wagga on 7 July 2023 (First Breach).*
> > *b. When presenting the horse to race at Wagga Wagga on 21 July 2023 (Second Breach).*
> > *(Together, the Breaches).*
>
> 3. *In respect of each of the Breaches the estimated concentrations of levamisole are as follows:*
>
> > *a. In respect of the First Breach, 0.038 ng/ml.*
> > *b. In respect of the Second Breach, 0.015 ng/ml.*
> > *(Together, the Estimated concentrations).*
>
> 4. *The Estimated concentrations are very low.*
>
> 5. *The horse had been transferred to the appellant from New Zealand by licensed New Zealand trainer, John Morrison.*
>
> 6. *The horse arrived at the appellant's stable on or about 31 May 2023.*
>
> 7. *The appellant did not subject the horse to elective testing prior to racing it under his name.*
>
> 8. *The horse raced for the first time in Australia on 30 June 2023 at Wagga Wagga, which race it won. At this time the horse had been stabled at the appellant's stables for approximately 31 days. A sample was taken from the horse after it won on 30 June 2023.*
>
> 9. *The appellant after being notified of the second breach requested the results of the analysis of the sample taken from the horse after the horse's first run in Australia on 30 June 2023.*

[2] Transcript 9.4 – 9./28.
[3] TB 83 – 84.

10. *It was subsequently ascertained that levamisole was detected in the sample taken on 30 June 2023, the estimated concentration of the levamisole being 0.049 ng/ml. No charge(s) have been preferred against the appellant arising from presenting the horse to race on 30 June 2023.*

11. *Each of the estimated concentrations referred to at [3] and [10] above were likely the result of a single exposure to Levamisole, some time prior to the horse racing for on 30 June 2023.*

12. *Dr. Wainscott in his evidence to the Stewards Inquiry said when asked his opinion as to when the horse was exposed to levamisole said that he could not exclude either of the two following possibilities:*

    a. That the horse was exposed to levamisole prior to the horse entering the appellant's stable.
    b. That the horse was exposed to levamisole after the horse entered the appellant's stable.

13. In addition to those agreed facts, two additional matters might be noted.

14. The first, is that Mr Morrison (who is referred to at [5] of the agreed facts) was interviewed by Stewards on 20 November 2024. In the course of that interview he said that:

    (i) he had not, to his knowledge, ever used any products containing Levamisole on his horses, including *Skinnydip NZ*;[4]

    (ii) at the time of the horse being transferred to Australia, it has "*joust won a trial and been blood tested"*;[5]

    (iii) the horse had not been treated with any substance prior to leaving his property, other than being wormed and drenched.[6]

15. The inference to be drawn from Mr Morrison's statements is that *Skinnydip NZ* left New Zealand free of Levamisole.

[4] TB 221.18 – 221.25.
[5] TB 222.25 – 222.29.
[6] TB 224.32 – 22.435.

16. The second, is that Levamisole is the subject of two Notices issued to participants in the Harness Racing Industry[7] which (amongst other things) warn of the danger of it metabolising into derivatives which are performance enhancing.

ADDITIONAL EVIDENCE RELIED UPON BY THE APPELLANT

17. The Appellant relied upon two specific areas of evidence as part of his subjective case.

18. The first, was that in circumstances where he has been a participant in the Harness Racing industry for a long period of time, the present charges represent the first occasion on which he has come under notice for offending of this kind.[8] The Appellant's position was that he had been a participant for more than 20 years. Although the Respondent pointed to the fact that the Appellant appeared to have some reduced level of participation for parts of that overall period,[9] no issue was taken with the fact that he had never previously come under notice for matters of this kind. That said, it should also be noted that the Appellant did not participate in the industry for some time due to the matters referred to in [21] below.[10]

19. The second, was a series of testimonials which are unchallenged, and which variously describe the Appellant as:

    (i) professional, diligent, reliable, committed, and a good influence on the industry;[11]
    (ii) experienced in all facets of training;[12]
    (iii) a principled and valued contributor to the industry;[13]

[7] TB 215 - 217
[8] Transcript 8.1 – 8.40.
[9] Transcript 9.38 – 11.5; TB 226.
[10] See the Appellant's written submissions at [25].
[11] Michael Guerin at TB 227; Martin and Kevin Riseley at TB 229; Dr Virginia Brosnan at TB 231.
[12] Wayne Aylett at TB 228.
[13] Martin and Kevin Riseley at TB 229.

(iv) a person of integrity and dedication;[14]

(v) trustworthy in the discharge of his duties as an industry participant.[15]

SUBMISSIONS OF THE PARTIES

Submissions of the Appellant

20. Mr Jones, who is not legally qualified but who assisted the Appellant in the presentation of his appeal, prepared comprehensive written submissions, from which the following propositions may be distilled:

(i) the Appellant accepted his guilt;[16]

(ii) the level of prohibited substance was low in each case;[17]

(iii) any further period of disqualification would exacerbate the already significant financial impact which has been visited on the Appellant;[18]

(iv) the Appellant had the benefit of a good disciplinary history[19] and positive good character;[20]

(v) the Appellant had engaged extensively in charitable causes in the community at his own cost, including (but not limited to) making his property available for outings and events for the benefit of intellectually disabled persons, and making financial contributions to assist other industry participants who have faced circumstances of personal difficulty.[21]

21. The written submissions provided by Mr Jones sought that I have regard to the fact that some years ago, the Appellant was charged with various criminal offences

[14] Noel Alexander and Jayne Davies at TB 230.
[15] Gary Hall at TB 233.
[16] At [5].
[17] At [8] and [9].
[18] At [3].
[19] At [6].
[20] At TB 13 – 14.
[21] At [13] – [14].

alleging that he had engaged in race fixing, all of which were dismissed following a finding that no prima facie case could be made out. For the reasons expressed during the hearing,[22] those matters have limited relevance, be it as a subjective consideration or otherwise, and I have not taken them into account.

22. Mr Jones expanded on his written submissions during the course of the hearing. He emphasised the Appellant's disciplinary record in the industry.[23] He accepted that there was an expectation that participants would familiarise themselves with notifications which were issued in relation to prohibited substances but submitted, in effect, that the Appellant was now more cognisant of that obligation.[24] He also emphasised the financial impact on the Appellant[25] although he accepted that this was an inevitable consequence of any period of disqualification.[26]

23. The Appellant also made oral submissions and explained that irrespective of the outcome of the appeal, he would have to (as he put it) "*start from scratch"* and effectively re-establish himself[27]. Importantly, the Appellant explained that in circumstances where he is based in Victoria, he would be required to make the necessary application(s) for registration with the regulator in that State which, on the information obtained by Mr Jones, would involve an administrative process taking between 8 and 10 weeks to complete.[28] The Appellant will obviously remain disqualified for that period.

Submissions of the Respondent

24. I also had the benefit of comprehensive written submissions on behalf of the Respondent which may be summarised as follows:

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[22] Transcript 12.14 and following.
[23] Transcript 13.33.
[24] Transcript 14.45 – 15.44.
[25] Transcript 16.38 and TB 234.
[26] Transcript 16.40 – 16.42.
[27] Transcript 17.17 – 18.16.
[28] Transcript 18.22 – 19.22.

(i) the level of culpability fell within the second of the *McDonough* categories, namely where a participant provides no explanation for the presence of Levamisole such that the Tribunal is left in a position of having no real idea of how the substance came to be present in the horse's system;[29]

(ii) it was not reasonable to conclude that the horse arrived in Australia with traces of the substance in its system;[30]

(iii) the Appellant's acceptance of guilt afforded him a discount of 25%;[31]

(iv) the subjective matters on which the Appellant relied could be taken into account in his favour, particularly his charitable endeavours for the benefit of those both within and outside the industry;[32]

(v) however, the need to protect the industry,[33] along with the need for any penalty to reflect the need for both general and specific deterrence,[34] tended against any reduction in penalty.

25. In oral submissions, Ms Chua emphasised the proposition in (i) above, and submitted that there was a complete absence of evidence which might allow me to reach any conclusion about the source of the substance in the horse's system.[35] She also pointed to the fact that in the course of the inquiry before Stewards, the Appellant had effectively admitted that he did not turn his mind to any need to have the horse tested upon its arrival in Australia.[36] As I understood it, Ms Chua submitted that this failure tended to increase the Appellant's level of culpability.[37]

26. Whilst Ms Chua emphasised what she submitted was a need for specific deterrence, she appeared to accept that such a need was reduced, at least to

[29] At [21].
[30] At [22].
[31] At [30].
[32] At [31].
[33] At [34].
[34] At [28].
[35] Transcript 21.36 – 21.40.
[36] TB 163.
[37] Transcript 23.37 – 23.40.

some degree, by the fact of the Appellant's blemish-free history.[38] Ms Chua also reiterated the industry's expectation that participants will be vigilant in keeping abreast of the content of notices issued by the regulator about specific substances.[39]

27. Ms Chua's ultimate submission was that prohibited substances were (as she described it) a *"scourge on the sport"*, and that the imposition of a significant penalty should be viewed by participants as the inevitable outcome of offending of the present kind.[40]

CONSIDERATION

28. There is no substantive dispute that the circumstances of the offending fall into the category previously identified.[41] However, there are three additional matters which have some bearing upon an assessment of the level of the Appellant's culpability.

29. The first, is that it is an agreed fact that the concentrations of the substance were "*very low*".

30. The second stems from the question of whether the horse arrived from New Zealand with traces of the substance in its system. As I have already stated[42] the inference to be drawn from the evidence of Mr Morrison is very much to the contrary of that proposition. Moreover, testing a horse which arrives from overseas before it commences to race in Australia should, in my view, be regarded as best practice. The Appellant did not take that step but I am satisfied that the Appellant now appreciates the importance of doing so.

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[38] Transcript 23.21.
[39] Transcript 24.47.
[40] Transcript 38.30 – 38.44.
[41] See [23](i) above.
[42] See [14] – [15] above.

31. Thirdly, it is necessary to reiterate the expectation that participants will be diligent in taking heed of the content of industry notices. In *Ross v Harness Racing New South Wales*[43] I emphasised the obligation placed upon industry participants to appraise themselves, not only of the relevant rules, but of the content of publications disseminated by the relevant Regulator, and to act in accordance with those publications. It is in this respect that specific deterrence does have some role to play in this case, although any broader significance is limited given that the Appellant's history as a participant is essentially blemish free. General deterrence, however, remains a relevant consideration.

32. In terms of his subjective case, the Appellant did not contest his guilt and is thus entitled to a discount of 25%. Leaving aside his positive history as an industry participant, the Appellant has put before me a substantial body of evidence of positive good character. Whilst this appeal proceeds before me as a hearing *de novo,* I infer that the Panel did not have the benefit of any of that evidence.[44] That said, whether that was the case or not, I regard such evidence as significant. It is entirely unchallenged, it comes from a wide range of people, and it establishes the Appellant's positive good character both within and outside the industry.

33. I am also satisfied that the Appellant has learned a valuable lesson from the circumstances of his offending. I had the opportunity to observe, and engage with, the Appellant during the course of the hearing, and am satisfied that he is genuinely remorseful. Whilst I have had regard to the financial impact of the disqualification on the Appellant, the weight that can be attached to that circumstance is limited. The simple fact is that impact of that kind is an inevitable consequence of disqualification.

[43] A determination of 22 April 2024 at [70].
[44] See the reasons of the Appeal Panel at [43]; see also Transcript 13.4.

34. I have also had regard to the delay which will be occasioned in the Appellant securing registration in Victoria. That, in my view, amounts to a form of extra-curial punishment which should be taken into account.

35. At a level of generality, I accept the submission advanced on behalf of the Respondent that the outcome of offending of this nature is likely to be the imposition of a *significant* period of disqualification. However, it always remains the position that each case must be determined on its own facts. In my view, it cannot be said that in a case such as this, where the levels of substance are low and the Appellant's subjective case strong, a disqualification of 6 months is *insignificant*.

36. In *Wade v Harness Racing New South Wales*[45] I emphasised that any assessment of penalty which is made by this Tribunal is not a process which is akin to a mathematical calculation in which there are increments to, or decrements from, a predetermined starting point or range. Rather, the assessment of penalty is a discretionary determination which is made having regard, firstly to the circumstances of the individual case (both objective and subjective) and secondly, to the purposes which are intended to be served by such a penalty as set out in *Australian Building and Construction Commissioner v Pattinson*.[46] In other words, the process is one of instinctive synthesis in which all relevant factors are taken into account, the appropriate degree of weight is ascribed to each of them, and a determination is then reached.

37. Taking all factors into account, and for the reasons I have set out, I am satisfied that a disqualification of 6 months is an appropriate penalty in the circumstances of this case. It is also one which sits comfortably, and is generally consistent, with penalties imposed in other cases of similar offending, bearing in mind that what is sought to be achieved is consistent application of principle and not numerical equivalence.

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[45] A determination of 4 March 2025 at [22].
[46] (2022) 274 CLR 450; [2022] HCA 13.

CONCLUSION

38. It was for these reasons that I made the orders set out above at the conclusion of the hearing.

THE HONOURABLE G J BELLEW SC

7 July 2025