IN THE RACING APPEALS TRIBUNAL

TOBY INWOOD
Appellant

v

HARNESS RACING NEW SOUTH WALES
Respondent

REASONS FOR DETERMINATION

Date of hearing	**11 November 2025**
Date of determination	**8 December 2025**
APPEARANCES	**Mr P Morris for the Appellant**
	Ms C Chua for the Respondent

ORDERS

1. **The appeal is upheld.**
2. **The disqualification of 2½ years is quashed.**
3. **In lieu thereof, the Appellant is disqualified for a period of 1 year and 9 months.**
4. **The disqualification in order [3] will commence on 28 May 2024 and will expire on 28 February 2026.**
5. **The appeal deposit is to be refunded.**

INTRODUCTION

1. By a Notice of Appeal dated 12 September 1995, Toby Inwood (the Appellant) has appealed against a determination made by Harness Racing New South Wales (the Respondent) on 7 September 2025, imposing a disqualification of 2½ years for a breach of r 190(1) of the *Australian Harness Racing Rules* (the Rules) which is in the following terms:

> ***Presentation free of prohibited substances***
> *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.*

2. The charge against the Appellant was particularised as follows:

> *That [the Appellant], being the licenced trainer of the horse Magic Tulhurst, did present that horse to race at Bathurst on Wednesday 29th February 2024 not free of a prohibited substance, namely Cobalt in excess of the allowable threshold of 100 micrograms per litre in urine, as reported by two (2) laboratories approved by [the Respondent].*

3. The Appellant pleaded guilty to that charge. He also faced a second charge which is not material for present purposes.

4. The Appellant has been stood down since 28 May 2024. The disqualification which was imposed was expressed to commence on that date.

5. The parties prepared a Tribunal Book (TB) containing all relevant documentation. A supplementary book containing additional material relied upon by the Appellant was also made available. The sole issue for the purposes of the present appeal is that of penalty, the Appellant's position being, in effect, that the penalty imposed at first instance is too severe.

THE FACTS OF THE OFFENDING

6. The facts of the offending are not in dispute and may be summarised as follows.

7. On 28 February 2024, at a time when the Appellant held a trainer's licence with the Respondent, he presented *Magic Tulhurst* (the horse) to participate a race at Bathurst.

8. The horse won the race, following which a urine sample was taken. An analysis of that sample established the presence of cobalt in excess of the prescribed thresholds.[1]

THE STEWARDS' INQUIRY

9. At a subsequent inquiry conducted by Stewards, the Appellant described *Hemoplex* as the "*main culprit"* for the increased cobalt levels which were detected in the sample.[2] He went on to outline the feeding regime which he had administered to the horse, and which included a product called *Hygain Release*.[3] The Appellant said that such regime did not vary on race day.[4]

10. Dr Martin Wainscott, a Veterinary Surgeon, described cobalt as a substance which is subject to an international threshold, and which is considered under r 188A to be a prohibited substance at a concentration greater than 100 micrograms per litre in urine, or 25 micrograms per litre in plasma.[5] He confirmed that both *Hemoplex* and *Hygain Release* declared cobalt as an ingredient.[6] He expressed the view that the Appellant's feeding regime was *"at the more intense level … at the higher end of what you would consider a normal treatment regime, certainly not excessive but …. more intensive than perhaps other regimes, but certainly within the realms of being unremarkable".*[7] Dr Wainscott was not able to identify the source of the cobalt detected in the sample. He considered the result of the

[1] TB 129.
[2] TB 104.10.
[3] T B 105.17 – 106.14.
[4] TB 107.5.
[5] TB 108.10 – TB 108.12.
[6] TB 108.36 – 108.47.
[7] TB 109.31 – 109.35.

analysis to be inconsistent with findings in other cases, as well as with specific studies.[8]

THE EVIDENCE OF MR WEAVER

11. The evidence before the Tribunal included a statement from Peter Weaver, the Chief Executive Officer of Hygain, dated 16 October 2025. Hygain is the manufacturer of *Hygain Release*.

12. The Tribunal is not bound by rules of evidence in the hearing of an appeal and may inquire into or inform itself about any matter as it thinks fit, subject to the rules of natural justice.[9] That said, whether evidence is accepted, and if so, what weight is to be attached to that evidence, remain matters for the Tribunal. In that regard, as I observed in the course of the hearing, much of Mr Weaver's statement is entirely self-serving and in my view, deserving of little weight. Ultimately, it was accepted by the Respondent that:[10]

    (i) it would be open to me to accept, and take into account, the factual assertions made by Mr Weaver regarding the system of manufacture of *Hygain Release*; and

    (ii) it would not be open to me to accept the various opinions expressed by Mr Weaver as to the cause of the levels of cobalt detected in the sample.

13. As to (i) above, I accept that:[11]

    (a) *Hygain Release* is a commercially successful product which attracts high sales;

[8] TB 113.11 – 113.15.
[9] *Racing Appeals Tribunal Regulation 2024, cl. 17*.
[10] Transcript 20.32 – 20.47.
[11] Statement of Mr Weaver commencing at TB 77 [3].

(b) it is produced at a modern manufacturing facility, using advanced technology with a high degree of automation in order to minimise human intervention and potential error;

(c) cobalt is not *added* to *Hygain Release,* or any other high performance feed which Mr Weaver's company produces;

(d) any cobalt in *Hygain Release* is naturally-occurring, and is present at trace levels in the grains and raw materials which are used in the product;

(e) no cobalt products are stored on the manufacturing site;

(f) no cobalt is present on the manufacturing site that could be accidentally or deliberately added to any batch of *Hygain Release*;

(g) quality assurance testing over the past 3 years demonstrates that cobalt levels in *Hygain Release* have consistently ranged between .25 mg/kg and .75 mg/kg, which reflects the natural variation inherent in raw material composition and is considered acceptable within the assurance parameters which are applied;

(h) there have been no instances of cobalt levels in *Hygain Release* exceeding the acceptable variation range during the past 24 months.

THE APPELLANT'S SUBJECTIVE CASE

14. Before the Appeal Panel, the Appellant's case centred on a single proposition, namely that the level of cobalt detected in the sample was due to the usual regime of feeding the horse *Hygain Release.*[12] Before me, the Appellant's position on that issue shifted somewhat. Initially, the Appellant's Solicitor submitted that such a proposition *"could not be ruled out"*. However, he stopped short of affirmatively putting that I could *"definitively find"* that *Hygain Release* was the cause of the elevated level[13]. He then submitted[14] that he was advancing the ingestion of *Hygain Release* as a "*theory*" which explained the cobalt level. In circumstances

[12] Transcript 3.8 – 3.13.
[13] Transcript 3.24 – 3.26.
[14] Transcript 3.43.

where these various propositions were apt to confuse, the Appellant's Solicitor ultimately agreed[15] that his case could be summarised as follows:

1. On the entirety of the evidence, it would be open to infer that the heightened level of cobalt found in the sample was the result of the ingestion of *Hygain Release*.
2. If I were not prepared to draw that inference, it would follow that this was a case where there is simply no explanation for what occurred.
3. The circumstances of this case would therefore fall within the second category of *McDonough*[16]*,* because in either case I would be left in a position of having no real idea as to how the cobalt came to be in the horse's system.[17]

15. The Respondent took the same position on that issue.[18]

16. The Appellant relied upon a number of testimonials[19] in which he is variously described as professional and respectful,[20] a person of good character and high integrity,[21] a person of integrity and ethics,[22] honest and thoughtful,[23] and polite honest and reliable.[24]

17. Finally, a statement[25] provided by the Appellant (on which he was not cross-examined) made reference to:

    1. his history in the industry.
    2. his prior good record.

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[15] Transcript 6.11.
[16] [2008] VRAT 6.
[17] Transcript 4.6.
[18] Transcript 4.24.
[19] Supplementary material commencing at 12.
[20] Shane Lewis.
[21] Steve Turnbull.
[22] Michael Cope
[23] Lorne Steer.
[24] Wendy Campbell.
[25] Supplementary material commencing at 9.

3. his remorse.
4. the embarrassment and shame he felt as a consequence of the offending.
5. the fact that he has already served a significant penalty.

SUBMISSIONS OF THE PARTIES

Submissions of the Appellant

18. The written submissions of the Appellant advanced the following propositions:

1. There was no evidence that cobalt improves the performance of a horse.[26]
2. The only plausible explanation for the presence of the substance was the use of *Hygain Release*[27] which was consistent with the Appellant's evidence before the inquiry.[28]
3. The Appellant was not aware that *Hygain Release* was capable of increasing the levels of cobalt above the threshold.[29]
4. The cobalt levels had increased due to a *"one off, singular event"*.[30]
5. Subjectively, the Appellant:
   (a) is 31 years of age;
   (b) pleaded guilty at the first available opportunity;
   (c) has been involved in the harness racing industry for approximately 16 years;
   (d) has never come under notice for this kind of offending;
   (e) has trained approximately 115 starters, and has driven in 279 races;
   (f) has already served a substantial penalty;
   (g) has taken full responsibility for the offending as a person who has a generally positive reputation in the industry.[31]

[26] TB 58 at [3].
[27] TB 59 at [7].
[28] TB 59 at [7].
[29] TB 59 at [10].
[30] TB 60 at [16].
[31] TB 61 – 62 at [20] - [33].

6. This was not a case in which there had been an intentional administration, or for that matter any negligence, on the part of the Appellant.[32]

19. In oral submissions at the hearing, it was put on behalf of the Appellant that the offending fell at the lower end of the range of objective seriousness, particularly in circumstances where there was an absence of evidence that cobalt enhanced a horse's performance.[33] It was further submitted that the Appellant had a strong subjective case which justified a reduced penalty.[34]

Submissions of the Respondent

20. The written submissions of the Respondent advanced two primary propositions:

    1. The evidence did not support the proposition that the presence of the cobalt was caused by *Hygain Release*.[35]
    2. The penalty imposed was consistent with that imposed in other cases involving the detection of cobalt.[36]

21. The following oral submissions were advanced on behalf of the Appellant at the hearing:

    1. There was a total absence of any evidence to support the proposition that the presence of cobalt was brought about by the use of *Hygain Release*.[37]
    2. A cogent belief is held by a number of persons in the industry that cobalt is performance enhancing.[38]

[32] TB 62 at [36].
[33] Transcript 9.25 – 9.31.
[34] Transcript 11.25 – 12.16.
[35] TB 71 at [32] – [37].
[36] TB 74 – 75 at [43].
[37] Transcript 15.23.
[38] Transcript 24.35.

3. Cobalt has, in the past, been administered for the purposes of horses gaining an unfair advantage.[39]

4. In any event cobalt is, on any view, a prohibited substance, and such substances are not confined to those which are performance enhancing.[40]

CONSIDERATION

22. This is an appeal where two straightforward issues arise, namely:[41]

    1. Can I be satisfied on balance that the cause of the cobalt was *Hygain Release*?
    2. What is the appropriate penalty?

23. As to the first of those matters there was, as I have pointed out, a degree of confusion in the Appellant's position. However, irrespective of how the case was variously put on that issue, I am unable to accept the proposition that the evidence establishes that *Hygain Release* was the source of the elevated cobalt levels found in the sample. Such a finding would involve a considerable degree of speculation, in circumstances where the factual matters to which Mr Weaver made reference,[42] and which I accept, tend completely against it. This leaves the circumstances of the present case as falling within category 2 of *McDonough*.

24. I turn to the question of penalty.

25. Offending of this present kind has the capacity to threaten the integrity of, and public confidence in, the harness racing industry as a whole. To that extent, whether cobalt is performance enhancing may not be to the point. The fact is that it is a Class 1 prohibited substance. By virtue of the objective circumstances

[39] Transcript 24.40.
[40] Transcript 25.22.
[41] Transcript 7.19 – 7.20.
[42] At [13] above.

alone, the offending is serious and general deterrence is a relevant consideration on the question of penalty.

26. However, what must be balanced against that is the Appellant's subjective case as I have summarised it. It is trite to observe that whilst the weight given to a subjective case cannot be allowed to lead to the imposition of a penalty which is inappropriate, it remains the case that a person in the Appellant's position is entitled to the full weight of the subjective factors on which he or she relies, even in a case of serious offending. In the present case those factors include the early plea of guilty, what I consider to be genuine remorse, and prior good character which is reflected not only by the absence of similar offending, but in the unchallenged testimonial evidence which is before me. It follows that although general deterrence is a relevant consideration, personal deterrence is not.

27. This hearing proceeds *de novo*. Accordingly, I look at the matter entirely afresh and make my own determination as to what penalty I consider to be appropriate. I am unable to accept the submission advanced on behalf of the Respondent that the penalty imposed on the Appellant at first instance is consistent with that imposed in other cases. The decisions of this Tribunal (differently constituted) in *Mifsud*[43] and *Hughes,*[44] although obviously not determinative, are clearly relevant to any assessment of penalty. Penalties which are imposed must reflect the consistent application of principle. In my view, a consideration of the facts and circumstances of each of those cases supports a view that the penalty imposed upon the Appellant at first instance reflects inconsistency.

28. Further, and even allowing for the objective seriousness of the offending, I am unable, for my part, to identify any single factor, or a combination of factors, which would justify a penalty of the magnitude of that which was imposed on the

[43] 11 March 2019
[44] 31 August 2018.

Appellant. Indeed in my view, that penalty appears to reflect little weight having been given to the Appellant's subjective case at all.

29. For all of those reasons, the appeal should be upheld.

ORDERS

30. For the reasons given, I make the following orders:

1. The appeal is upheld.
2. The disqualification of 2 ½ years is quashed.
3. In lieu thereof, the Appellant is disqualified for a period of 1 year and 9 months.
4. The disqualification in order [3] will commence on 28 May 2024 and will expire on 28 February 2026.
5. The appeal deposit is to be refunded.

THE HONOURABLE G J BELLEW SC

8 December 2025