QUEENSLAND RACING INTEGRITY COMMISSION

DECISION

Queensland Racing Integrity Commission Stewards

Mr Michael Costa

Delivered on: 14 September 2026

Date of hearing: 2 September 2026

Panel: Mr Joshua Adams (Chairperson), Mr Geoffrey Goold, Mr James Williamson

Appearances: Mr Michael Costa; Mr Will Slack, Clutch Legal, for Mr Costa

Application: Australian Rules of Racing ('AR'): AR 261(7), recognition of a penalty imposed overseas

Orders:

1. The Panel is not satisfied that Mr Costa exhausted all avenues of appeal provided under the rules of the Emirates Racing Authority, as required by AR 261(8)(b). The purported application therefore does not satisfy the requirements prescribed by AR 261(8) and is not a valid application.

2. Mr Costa's request under AR 261(11)(a) that compliance with AR 261(8)(b) be waived is refused. It follows that the ordinary operation of AR 261(5) is unaffected. The penalty specified in the Notice of Penalty is to be applied in Queensland according to its terms, and subject to the proper calculation of the period already served.

3. Further, and in the alternative, if the refusal to waive compliance with AR 261(8)(b) is erroneous, the application would nevertheless be dismissed under AR 261(12)(b). Mr Costa has not discharged the onus imposed by AR 261(13) of establishing exceptional circumstances warranting an order or declaration under AR 261(12)(a).

4. The Panel makes no determination concerning the setting aside, reopening or determination of Mr Costa's application for a Thoroughbred General Trainer licence. Any licensing matter must be dealt with separately under the applicable licensing powers and procedures.

BACKGROUND

1. On 3 June 2026, the Emirates Racing Authority ('ERA') imposed a 12-month disqualification after Mr Michael Costa pleaded guilty to presenting SALEETT (USA) to race in Race 4 at Jebel Ali Racecourse on 15 March 2026 when cobalt was detected at a level in excess of the applicable threshold in a pre-race urine sample collected from that horse. The ERA also imposed an AED 5,000 fine as a result of Mr Costa's failure to maintain accurate medication records.

2. On 11 August 2026, Mr Costa was served with a Notice of Penalty pursuant to AR 261(4). On 21 August 2026, Mr Costa applied under AR 261(7) for a declaration that the disqualification not be applied by the Queensland Racing Integrity Commission ('QRIC') ('the Application').

3. The grounds on which the Application was made were as follows:

    a. The penalty imposed by the ERA was manifestly excessive;

    b. The penalty imposed by the ERA was otherwise unjust and unreasonable in all the circumstances;

    c. The Applicant was unfairly prejudiced by the procedure to be followed by the ERA with respect to lodging an appeal against the penalty pursuant to rule 84 of the ERA Rules of Racing; and

    d. The Applicant has suffered extra-curial punishment as a result of the penalty and any further application of the penalty would be manifestly unjust or unreasonable in all the circumstances.

4. Mr Costa sought the following orders or declarations:

    a. A declaration under AR 261(7)(a) that the ERA penalty not be applied by QRIC at all; and

    b. An order or declaration that QRIC not consider the disqualification as evidence that the Applicant is not a fit and proper person to hold a trainer's licence due to the particular circumstances of the ruling by the ERA.

5. The second form of relief sought does not fall within the orders or declarations contemplated by AR 261(7). AR 261 is concerned with whether the overseas penalty is to be applied, either wholly or partly, within the relevant State or Territory. It does not confer upon the Principal Racing Authority a power to determine, prospectively or otherwise, how the disqualification should be treated in a separate licensing process. Any question concerning Mr Costa's fitness and propriety to hold a trainer's licence must be determined separately under the applicable licensing regime.

6. AR 261(10) requires the Principal Racing Authority receiving an application to hear and determine it within seven days of receipt. By agreement, the parties consented to the hearing and determination of the Application occurring outside that period.

7. AR 261 establishes recognition of an overseas penalty as the ordinary consequence. A person seeking to displace that consequence must make an application satisfying the requirements of AR 261(8), subject to the power in AR 261(11)(a) to waive compliance with some or all of those requirements. If a valid application is before the Principal Racing Authority, the relief sought may be granted only if the Panel is satisfied that exceptional circumstances exist. By AR 261(13), the applicant bears the onus of establishing those circumstances.

8. The Panel heard and determined the matter as duly authorised delegates of QRIC. In accordance with AR 261(11)(b), the Panel permitted Mr Costa to be represented at the hearing by a legal practitioner. Mr Costa was afforded the opportunity to give oral evidence, adduce documentary and expert evidence, and make written and oral submissions in support of both his request for waiver and the substantive declaration and orders sought.

9. The hearing was not an appeal, rehearing or review on the merits of the ERA decision. The Panel was not determining whether it agreed with every factual finding made by the ERA, or what penalty it would have imposed had the charge arisen in Queensland. Its task was confined to the Application made under AR 261.

10. Three questions arose in their proper sequence. The first was whether Mr Costa had exhausted all avenues of appeal provided under the ERA Rules, as required by AR 261(8)(b). If the Panel were not so satisfied, the second question was whether the Panel should exercise the discretion conferred by AR 261(11)(a) to waive compliance with that requirement. Only if compliance were waived would a valid application arise for substantive determination under AR 261(12), requiring the Panel to consider whether Mr Costa had established exceptional circumstances sufficient to justify a declaration that the ERA penalty not be applied, or be applied only in part, by QRIC.

11. At Mr Costa's request, the Panel permitted the evidence and submissions concerning the substantive application to be presented in full before determining the questions of compliance and waiver. This course avoided the possible fragmentation of the proceeding and ensured that, if waiver were granted, the Application could be determined without the need for a further hearing.

12. At the hearing of the Application, Mr Costa gave oral evidence, adduced documentary material, and advanced submissions addressing both the request for waiver and the asserted exceptional circumstances.

13. In determining the Application, the Panel considered the application and affidavit, written submissions dated 31 August 2026, oral evidence and submissions, the three-

part hearing transcript, the post-hearing clarification and additional documents, the ERA Brief of Evidence and exhibits, the report of Dr Derek Major, the ERA Notice of Penalty, comparative authorities, character references, the ERA appeal documents, the employment contract, the appeal-cost message and all other material received.

AR 261 RECOGNITION OF PENALTIES IMPOSED OVERSEAS

14. AR 261 establishes a scheme for the recognition and application within Australia of penalties imposed by an Overseas Racing Authority. The purpose of the scheme is to preserve the efficacy and integrity of disciplinary action taken by overseas racing authorities. It also gives effect to the principle of finality. Subject to the confined avenues of relief for which AR 261 expressly provides, a disciplinary determination made by an Overseas Racing Authority, is to be recognised in Australia.

15. Pursuant to AR 261(8), a person served with a Notice of Penalty may apply for a declaration that the overseas penalty not be applied, or applied only in part, by the relevant Australian Principal Racing Authority within its State or Territory. The entitlement to seek such a declaration is not unconditioned. Subject to AR 261(11)(a), AR 261(8) prescribes four requirements governing the making of an application. *First*, the application must be made within 14 days of the date of service of a Notice of Penalty under subrule (4). *Second,* the application must be accompanied by a statement confirming that the applicant has exhausted all avenues of appeal provided for under the rules of the Overseas Racing Authority which imposed the initial penalty. *Third,* the application must set out the ground(s) on which the application is made. *Fourth*, the application must set out, including by reference to subrules (7)(a) and (b), the terms of any orders or declarations sought. The requirements prescribed by AR 261(8) are expressed conjunctively and operate cumulatively. Subject to the exercise of the waiver power under AR 261(11)(a), each requirement is a necessary precondition to a valid application, and all must be satisfied. If any requirement is not met and compliance is not waived, the purported application does not answer the description of a valid application capable of substantive determination under AR 261(12).

16. AR 261(11)(a) confers upon the Principal Racing Authority a discretion, exercisable at the request of an applicant to waive compliance with all or some of the requirements prescribed by AR 261(8) as it thinks fit. The discretion conferred by AR 261(11)(a) must be exercised consistently with the text, context and purpose of the requirement from which relief is sought.

17. AR 261 permits an applicant, with the permission of the Principal Racing Authority, to be represented by a legal practitioner or agent, to adduce oral or written evidence, and to make oral or written submissions in support of the application. Those procedural entitlements facilitate the fair and informed determination of the questions arising under the rule. They do not enlarge the nature of the jurisdiction or convert the proceeding into an appeal from, or rehearing or merits review of, the overseas decision.

18. AR 261(12) governs the substantive determination of an application validly made under AR 261(8).

19. At the conclusion of the hearing, the Principal Racing Authority must grant the application and make the appropriate order or declaration if satisfied that exceptional circumstances exist. If not so satisfied, it must dismiss the application. By AR 261(13), the applicant bears the onus of establishing those circumstances.

EXHAUSTION OF APPEAL RIGHTS

20. AR 261(8)(b) provides that, subject to AR 261(11)(a), an application must be accompanied by a statement confirming that the applicant has exhausted all avenues of appeal available under the rules of the Overseas Racing Authority which imposed the initial penalty. Compliance with AR 261(8)(b) is expressed as a mandatory requirement of a valid application, subject only to the qualification contained in AR 261(11)(a).

21. AR 261(8)(b) requires the applicant to have "exhausted all avenues of appeal". This quoted part of the provision, and particularly the use of the word "exhausted" indicates that the processes established by the Overseas Racing Authority are first to be invoked and completed before a person makes an application to an Australian Principal Racing Authority seeking a declaration that the overseas penalty not be applied at all, or be applied only in part by that Principal Racing Authority within its State or Territory.

22. "Exhausted" is not defined in the Australian Rules of Racing and will have its ordinary meaning. Its ordinary meaning includes "to use up or consume completely; expend the whole of".[1] The ordinary meaning shows that the term is concerned with the use and completion of the process, not simply its present availability. In the composite expression "has exhausted all avenues of appeal", the verb "exhausted" gives operative content to the otherwise general noun "avenues". It requires each avenue of appeal to have been invoked and pursued to the point at which nothing remains to be obtained from it. The word "all" identifies the full extent of the appellate processes to which resort must be had; "exhausted" identifies what must have occurred in relation to each of them. Read together, the words require completion, not mere cessation of availability.

23. It follows that an avenue of appeal is exhausted when it has been invoked and pursued to the point at which it is spent, ordinarily by final determination. An avenue which was available but was not invoked does not answer that description merely because the time for invoking it has since expired. In that circumstance, the appeal right has been lost through non-exercise; it has not been exhausted through use.

24. Any contrary construction would produce an incongruous result. It would permit an applicant to satisfy AR 261(8)(b) by taking no appellate step, allowing the prescribed period to expire, and then asserting that all avenues had been exhausted because none remained presently available. The requirement intended to secure appellate finality in

[1] Macquarie Concise Dictionary (9th edition) 'exhaust' (def 4).

the originating jurisdiction would thereby be reduced to a requirement merely to await procedural default.

25. Properly construed, the expression "has exhausted all avenues of appeal" requires the applicant to have invoked and pursued to completion every avenue of appeal provided under the rules of the Overseas Racing Authority and available in respect of the initial penalty.

26. Mr Costa did not lodge an appeal against the ERA decision. Counsel ultimately accepted that, prima facie, a person who does not lodge an available appeal has not exhausted that avenue but submitted that Mr Costa was practically unable to do so. The Panel is therefore not satisfied that Mr Costa exhausted all avenues of appeal within the meaning of AR 261(8)(b).

27. The expiry of the seven-day appeal period brought finality to the ERA decision, but finality is not the same as exhaustion. In the circumstances of this Application, the Panel is not satisfied that the appeal avenue was exhausted. Mr Costa did not invoke the available appeal process, and the evidence does not establish that the process was unavailable or incapable of practical use.

REQUEST FOR WAIVER UNDER AR 261(11)(A)

28. AR 261(11)(a) provides that, upon the request of an applicant, the Principal Racing Authority may waive compliance with all or some of the requirements prescribed by AR 261(8) "as it thinks fit".

29. The phrase "as it sees fit" confers a discretion of considerable breadth. It indicates that the rule drafter did not prescribe an exhaustive list of circumstances in which waiver may be granted, nor confine the Principal Racing Authority to a closed class of considerations. The discretion takes its meaning from the subject matter, scope and purpose of AR 261 and must be exercised rationally and consistently with the structure of the scheme. Relevantly, AR 261 is directed to the reciprocal recognition of penalties imposed by Overseas Racing Authorities. The scheme serves the purposes of finality and institutional respect for the processes of the originating authority. AR 261(8)(b) is conducive to achieving those purposes by requiring the originating authority's appellate processes to be invoked and completed before an applicant seeks a declaration from the Australian Principal Racing Authority that the overseas penalty not be applied at all, or applied only in part within its jurisdiction.

30. Mr Costa requested waiver only of AR 261(8)(b).

31. The content of the discretion is necessarily informed by the requirement from which waiver is sought. Here, the Applicant seeks relief from AR 261(8)(b), which requires confirmation that all avenues of appeal provided under the rules of the Overseas Racing Authority have been exhausted. The purpose of that requirement is to ensure that the originating authority's appellate processes are first invoked and completed before an

Australian Principal Racing Authority is asked to consider whether the resulting penalty should be recognised wholly or in part.

32. The question is whether the circumstances relied upon by Mr Costa, considered individually and cumulatively, provide a sufficient reason, consistent with the structure and purpose of AR 261, to excuse his failure to invoke the ERA appeal process.

33. In addressing that question, it is necessary to distinguish between an impediment peculiar to the applicant and the ordinary incidents of the appellate regime itself. A procedural feature which applies generally to persons seeking to appeal under the ERA Rules does not become a sufficient reason for waiver merely because it is exacting or inconvenient. If that was so, features inherent in the overseas appellate scheme could routinely be invoked to circumvent it, with the consequence that the exception in AR 261(11)(a) would tend to displace the requirement in AR 261(8)(b).

34. Mr Costa received the ERA Rules, the Notice of Appeal form and contact details for the ERA Appeals Secretary. Mr Costa had access to Australian legal advice. Mr Costa did not contact the Appeals Secretary for clarification, did not ask whether an appeal could be heard remotely, and did not lodge a protective notice while investigating costs or arrangements. Mr Costa had participated remotely in the original ERA inquiry.

35. The ERA Rules confer procedural flexibility upon the ERA Appeal Panel. Rule 84(xi) provides: "*The Appeal Panel shall conduct Appeal hearings in such manner as it deems fit and receives such documentary, video records, oral submissions and evidence as it considers will be fair to all parties."* Further, Rule 84(x) provides that, "*The ERA, the Stewards and the appellant shall be entitled to make oral submissions or written submissions (or both) to the Appeal Panel*". Rule 84(xvi) contemplates that the Appeal Panel may determine an appeal in the appellant's absence if the appellant elects not to appear, or in any other circumstances considered appropriate by the Panel.

36. In oral evidence, Mr Costa accepted that the principal deterrent was financial rather than an initial inability to understand the appeal rules. Mr Costa said that Mr Sam Shinsky had previously referred to the cost of a different jockey appeal and that Mohammed Al-Shahi later advised by message that this appeal could cost between AUD 150,000 and AUD 250,000. Mr Shinsky did not provide an estimate for this appeal. The Notice of Appeal stated that the Appeal Panel had a discretion to make orders as to costs. The evidence does not establish the precise cost that would have been incurred, that Mr Costa would necessarily have paid all Appeal Panel costs, or that an appeal was financially impossible.

37. The Panel accepts that Mr Costa genuinely anticipated substantial expense and was concerned about a possible increase in penalty, perceived lack of independence, the breakdown of the employment relationship, lack of employer support, family responsibilities and departure from the UAE. Those matters explain why an appeal was regarded as unattractive or risky. They do not establish that the appeal right was incapable of being exercised. There is an important distinction between an avenue that

cannot reasonably be accessed and one that an applicant elects not to pursue because of cost, uncertainty, perceived prospects or strategic disadvantage.

38. Expense, uncertainty as to costs, and the possibility of an adverse costs order, are not circumstances peculiar to Mr Costa. They are features capable of being encountered by persons seeking to invoke the ERA appeal processes generally. The same is true of the need to assess prospects, the forensic risk of an increased penalty, and the absence of certainty as to outcome.

39. The Panel considered the seven-day period in which Mr Costa could file any notice of appeal. Short appeal periods are a feature of racing disciplinary systems, and the seven-day period was a feature of the ERA appellate regime applicable to prospective appellants generally. It was not imposed uniquely upon Mr Costa. The evidence did not establish that the period, alone or with the other matters, prevented the filing of a notice of appeal. Mr Costa did not seek an extension, clarification or remote arrangement.

40. The Panel also considered the asserted deficiencies in the notice of appeal form. The form invited grounds of appeal and the Rules were supplied. The evidence did not establish that supporting documents could not be attached to the notice, or that clarification was unavailable. Given Mr Costa's access to legal advice and the Appeals Secretary, the form did not make an appeal practically unavailable. The space provided in the form was common to persons seeking to appeal under the ERA Rules.

41. The complaints now advanced concerning the ERA's treatment of the feed evidence, Dr Major's opinion, comparative authorities, penalty, deterrence, and procedural fairness were matters capable of being raised in an ERA appeal. They allege the familiar forms of appellate error: incorrect factual findings, insufficient weight to evidence, failure to apply relevant authority, procedural unfairness, and manifest excess. To waive exhaustion so that those matters could instead be determined in Australia would risk making AR 261 the substitute appeal that its structure is designed to prevent.

42. None of this is to treat the failure to appeal as an absolute bar to the exercise of the discretion. Such a conclusion would deprive AR 261(11)(a) of meaningful operation in relation to AR 261(8)(b). There may be some cases in which the appeal legally available could not reasonably be accessed, was incapable of providing effective relief, or was not invoked because of some external circumstance beyond the applicant's control.

43. Instead, some of the matters relied upon by Mr Costa comprise features of the ERA appellate regime itself, or considerations commonly encountered by persons deciding to pursue an appeal: a short filing period, the use of the appeal form, potential costs, uncertainty of outcome, and the prospect of an increased penalty. Those matters may be onerous, but they are not exceptional to Mr Costa. Nor are they shown to have operated upon him in a manner qualitatively different from their operation upon other prospective appellants in that jurisdiction.

44. That consideration assumes particular importance when AR 261 is viewed as a whole. If the ordinary incidents of an overseas appeal process were sufficient to justify waiver, AR 261(8)(b) would be liable to routine circumvention whenever an applicant considered the overseas appeal costly, inconvenient or strategically unattractive. The AR 261 application process could then assume the function of an alternative appellate forum, notwithstanding that the originating authority had never been afforded the opportunity to correct the errors alleged against its decision.

45. Ultimately, Mr Costa made an informed decision not to invoke an available appeal mechanism. That choice is relevant but is not treated as creating an absolute bar to waiver. Rather, the Panel has considered the reasons for the choice, the practical accessibility of the appeal, the nature of the alleged errors, and the purpose of the requirement to exhaust all avenues of appeal.

46. To waive compliance with AR 261(8)(b) in the present circumstances would extend beyond relieving against procedural hardship. It would allow the application process under AR 261 to assume, in substance, the function of the appeal which Mr Costa did not pursue. Such a course would be difficult to reconcile with the principles of reciprocity, finality, and institutional respect upon which the recognition scheme proceeds. Read in the context of AR 261 as a whole, AR 261(11)(a) does not support the exercise of the discretion in that way.

47. Having considered the evidence and submissions, both individually and cumulatively, the Panel is not satisfied that there is a sufficient basis to waive compliance with AR 261(8)(b). The request under AR 261(11)(a) is refused.

CONSEQUENCES OF REFUSAL AND ALTERNATIVE DETERMINATION

48. The refusal to waive compliance with AR 261(8)(b) is sufficient to dispose of the Application. Mr Costa has not satisfied that requirement, and the Panel has declined to waive compliance with it under AR 261(11)(a). It follows that the purported Application does not satisfy the requirements prescribed by AR 261(8), and, accordingly, is not a valid application requiring determination under AR 261(12). In those circumstances, the ordinary operation of AR 261(5) remains unaffected, with the consequence that the penalty specified in the Notice of Penalty is to be applied in accordance with that subrule.

49. However, at Mr Costa's request, the Panel permitted the substantive application to be presented in full before determining the questions of compliance and waiver. Mr Costa gave oral evidence, adduced written evidence and made extensive submissions on each asserted ground. In those circumstances, the Panel considers it appropriate to record the conclusion it would have reached under AR 261(12) had compliance with AR 261(8)(b) been waived, and in case the refusal of waiver otherwise is found to be erroneous.

50. It must not be understood as a rehearing of the ERA charge or as acceptance that AR 261 ordinarily permits merits review. It does not involve a rehearing of the charge determined by the ERA, nor does it proceed upon the premise that AR 261 confers a

general jurisdiction to review the factual or discretionary merits of an overseas disciplinary decision. It addresses only the question posed by AR 261(12), namely whether Mr Costa has discharged the onus of establishing exceptional circumstances sufficient to warrant the orders or declarations sought under AR 261(7).

51. For the reasons below, the Panel is not satisfied that exceptional circumstances have been established. Accordingly, if the Panel's refusal of waiver is erroneous, the Application would nevertheless be dismissed under AR 261(12)(b).

Exceptional Circumstances

52. The expression "exceptional circumstances" is not defined in the Australian Rules of Racing. Its meaning is therefore to be ascertained from the language of AR 261(12), read in its context and having regard to the object and structure of AR 261 as a whole. The ordinary meaning of "exceptional" includes "forming an exception or unusual instance; unusual; extraordinary".[2]

53. That meaning accords with the function performed by AR 261(12). AR 261 proceeds upon the ordinary application in Australia of a penalty imposed by an Overseas Racing Authority. The application process in AR 261(7) to (12) provides a confined means by which that consequence may be displaced. The adjective "exceptional" marks the boundary of that relief. It requires circumstances which cause the particular case to form an exception to the ordinary operation of the reciprocal recognition scheme, and which are sufficiently unusual or extraordinary to justify the declaration sought.

54. The word "circumstances" is broad. It permits consideration of the whole factual setting and does not confine the Panel to predetermined categories. Nor is it necessary that any single circumstance, viewed in isolation, be exceptional. Matters which are unexceptional separately may, by their combination or interaction, give the case an exceptional character. The assessment is therefore evaluative and cumulative.

55. AR 261(12) does not confer a general merits-review jurisdiction. The Panel is not constituted to rehear the overseas charge, reconsider the evidence afresh, or substitute its assessment of the appropriate penalty merely because another conclusion may have been reasonably available. That is not to say that the nature and severity of the overseas penalty is irrelevant. The Application concerns whether that penalty should be applied wholly or partly by QRIC. The question remains whether the circumstances possess the unusual quality necessary to justify treating the case as an exception to the ordinary recognition scheme.

56. The requirement that the Principal Racing Authority be "satisfied" calls for an affirmative state of persuasion founded upon the evidence. Pursuant to AR 261(13) the onus of establishing exceptional circumstances is upon the applicant.

[2] Macquarie Concise Dictionary (9th edition) 'exceptional' (def 1).

57. If, after considering the circumstances individually and cumulatively, the Principal Racing Authority is not satisfied that there are exceptional circumstances, the application must be dismissed under AR 261(12)(b).

Analytical Finding and Nature of the Offence

58. SALEETT's pre-race urine sample was reported at 159 micrograms per litre and the reserve sample at 170 micrograms per litre. The applicable threshold was 100 micrograms per litre. Mr Costa does not challenge the horse's identity, sample integrity, chain of custody, or reserve-sample confirmation. Mr Costa pleaded guilty to the presentation charge and does not challenge the horse's disqualification.

59. This case does not involve demonstrated laboratory error, a compromised sample, mistaken identity, or failure to confirm the prohibited substance finding. The issues are explanation, culpability, proportionality, and whether recognition would be exceptional.

Culpability, Treatment and Stable Management

60. The Panel accepts that the ERA did not find deliberate administration of cobalt by Mr Costa and accepted that SALEETT was likely exposed to more cobalt than Mr Costa appreciated.

61. Mr Costa was outside the UAE from 5 to 13 March 2026 but continued to manage the stable remotely. On 9 March 2026, Mr Costa directed that SALEETT receive scope, fluids and Metacam. Other communications directed Lasix and Nupafeed.

62. Dr Gregory Fox administered Metacam and two litres of intravenous fluids, adding Aminomax. The Panel accepts that the addition of Aminomax was not shown to have been specifically authorised by Mr Costa. The treatment was not entered in the medication logbook or Prism and was identified only after CCTV review and later communications.

63. ERA officials had previously identified Aminomax at the stable as an unregistered product and advised Mr Costa that it was not permitted. The evidence does not establish that Aminomax caused the threshold breach. Its continued availability and unrecorded use nevertheless distinguish this case from one involving the absence of any preventable stable-management risk.

64. These matters do not establish intentional wrongdoing. They do prevent a finding that Mr Costa was wholly removed from the treatment regime or that no relevant management failure occurred.

Feed Evidence and Dr Major's Opinion

65. ERA testing identified cobalt in the custom race feed, custom aminolyte, salt block, Speedi-Beet, shavings and other materials. The custom race feed was reported at 1,150 nanograms per gram.

66. Dr Major calculated that approximately six kilograms of feed supplied about 6.6 milligrams of cobalt daily, excluding other sources. Dr Major concluded that the feed provided ample explanation and that cobalt doping or performance enhancement had not occurred.

67. This evidence provides a plausible and substantial explanation for elevated cobalt exposure. The result should not, without more, be treated as proof of intentional cobalt doping.

68. The stable history also requires consideration. Excluding the positive result, the ERA reported a mean urine cobalt concentration of 7.3 micrograms per litre across 40 samples. SALEETT had earlier returned 20 micrograms per litre and later returned results below the threshold. These matters are consistent with variable exposure but do not prove the source of the 159 micrograms per litre result.

69. The ERA considered, but did not accept, that the identified sources adequately explained the result. The Panel finds that the evidence materially mitigates culpability but does not establish a complete and specific exculpatory explanation.

Comparative Authorities and Proportionality

70. The authorities relied upon establish that presentation is distinct from administration, culpability is central to penalty, and no penalty or a fine may be appropriate where a trainer proves a specific exculpatory explanation and no blameworthiness.

71. *Waldron* involved relevant feed batches containing substantially more cobalt than stated on the label and a finding of no blameworthiness. *Freedman* involved no negligence, lack of supervision, warning or risky course concerning a widely used commercial feed. *Kavanagh* and *O'Brien* involved secret veterinary use of a concentrated product and findings that the trainers were not negligent.

72. The present case has favourable features, but also unrecorded treatment, a record-keeping breach, prior identification of Aminomax as an unregistered product, continued remote involvement in treatment, and no source established to the satisfaction of the ERA or this Panel.

73. The comparative decisions demonstrate that different factual assessments and evaluative judgments may arise in presentation cases. That does not establish exceptional circumstances. Differences in regulatory approach, penalty practice, and decision-making judgment between jurisdictions, are foreseeable incidents of

international racing. AR 261 does not authorise intervention merely because another decision-maker might have assessed the same material differently or reached a different conclusion.

74. The Panel accepts that there was no deliberate administration and that substantial mitigating circumstances are present. However, AR 261 does not authorise reconsideration of the overseas decision merely because another conclusion was reasonably available on the evidence. While low culpability is a relevant consideration, it is not, of itself, necessarily exceptional in a presentation case.

Unfairly prejudiced by appeal process

75. Mr Costa further submitted that the appellate procedure prescribed by the ERA Rules was inconsistent with Article 14 of the *International Covenant on Civil and Political Rights,* and that he was unfairly prejudiced by the process in place under the ERA Rules to appeal the decision of the ERA inquiry. Mr Costa was not denied access to a higher tribunal. The ERA Rules conferred a right of appeal to an Appeal Panel. The matters criticised by Mr Costa including the seven-day filing period, the alleged deficiencies in the appeal form, the possibility of a costs order, the potential costs, and the risk that the penalty may be increased, were conditions or incidents attending to the exercise of that appellate jurisdiction. Those features formed part of the appellate regime applicable generally to persons seeking appeal of an ERA disciplinary decision. The material does not establish denial of notice, participation, legal advice, evidence, reserve-sample testing, expert evidence, or appeal rights. Mr Costa participated remotely, supplied extensive material, and relied upon Dr Major's report.

76. Mr Costa also relied upon what he described as perceived conflicts of interests arising from an asserted overlap between senior ERA and Jebel Ali Personnel. The Panel was invited to infer that those connections gave rise to a concern that the ERA inquiry may not have been conducted by a fair, independent and impartial tribunal. Mr Costa accepted that the organisational structure existed for most of the employment, had not previously caused concern, and was not raised as an objection during the ERA inquiry. The evidence does not establish actual bias or a disqualifying conflict. The alleged conflict was capable of being raised on appeal as a matter of procedural fairness. Mr Costa did not invoke that process.

Character, Financial Position and Other Consequences

77. The Panel accepts the strong character evidence, prior unblemished disciplinary history, cooperation and professional reputation of Mr Costa. The Panel also accepts that serious financial, professional, and reputational consequences have occurred.

78. The employment contract, of which Mr Costa was a party to, establishes substantial salary and benefits. In oral evidence, Mr Costa confirmed that some savings remained after returning to Australia, no money had been invested in establishing a Queensland

stable, and bloodstock purchases of approximately AUD 140,000 had been made on credit before the ERA inquiry decision, with clients prepared to take the horses if necessary.

79. Those matters do not negate hardship, but qualify the submission that Mr Costa had no practical financial capacity or opportunity. Loss of employment, income, professional opportunity and reputation are serious but are also consequences commonly associated with professional disqualification. They carry mitigating weight but are not, without more, exceptional.

Extra-curial punishment

80. Mr Costa also relied upon what he characterised as additional punishment flowing from the disqualification, and when considered with the asserted excessiveness of the disqualification, amount to exceptional circumstances warranting the declaration sought. He submitted that he had been forced to flee the United Arab Emirates out of fear for his own safety, and the safety of his wife and children; that his employment had been terminated with immediate effect almost three months prior to the ERA decision; that he had received no income since March 2026; and that the disqualification had attracted media attention and caused reputational harm. He further contended that, but for the disqualification, he could earn as much as $500,000 as a trainer in Queensland. Although those consequences disclose hardship, they do not diminish the protective and regulatory purposes served by reciprocal recognition, nor are they shown to be unusual in kind or extraordinary in degree.

Cumulative Assessment of Exceptional Circumstances

81. The Panel has considered the circumstances relied upon by Mr Costa both separately and in their totality. That course is necessary because circumstances which are unexceptional when viewed individually may, by their conjunction, give a case an exceptional character. The inquiry, however, is not answered by accumulating matters of mitigation and describing their combined effect as exceptional. The question remains whether, taken together, they cause this case to form an exception or unusual instance sufficient to justify departure from the ordinary recognition of the ERA penalty.

82. The combined circumstances are significant and provide some mitigation. Considered individually and cumulatively, however, they do not establish the exceptional circumstances required to displace the ordinary recognition of the ERA penalty.

83. Having considered all matters individually and cumulatively, the Panel is not satisfied that Mr Costa discharged the onus under AR 261(13). If waiver ought to have been granted, the Application would nevertheless be dismissed under AR 261(12)(b).

LICENSING REQUESTS

84. AR 261 concerns whether an overseas penalty is applied at all or in part. It does not clearly confer a separate merits-review jurisdiction over an earlier licensing decision. At the hearing, the Panel advised Mr Costa that the licensing of a person was a separate process. Mr Costa's legal representative acknowledged that the Panel might reach that view and maintained the licensing submission out of an abundance of caution.

85. The Panel therefore does not make any determination in respect of the licensing requests. Any licence application, reconsideration, or reopening must be dealt with under the applicable licensing powers and procedures.

STEWARDS' FINDINGS

86. Mr Costa did not exhaust the available ERA appeal process, and therefore did not satisfy AR 261(8)(b). The circumstances upon which he relied explain why he elected not to appeal, but do not establish that the appeal avenue was unavailable or inaccessible and do not justify waiver of AR 261(8)(b). The request under AR 261(11)(a) is therefore refused. The ordinary operation of AR 261 is therefore unaffected, with the consequence that the penalty specified in the Notice of Penalty is to be applied in Queensland according to its terms.

87. Further and in the alternative, if the Panel's refusal to waive compliance with AR 261(8)(b) is erroneous, the Panel is not satisfied that Mr Costa discharged the onus under AR 261(13) of establishing exceptional circumstances. On that alternative basis, the Application would be dismissed under AR 261(12)(b).

88. For the avoidance of doubt, this decision does not find that Mr Costa deliberately administered cobalt, directed its administration, or engaged in intentional doping. It reflects the distinct task imposed by AR 261.

DECISION

89. The Panel determines that:

    a. The Panel is not satisfied that Mr Costa exhausted all avenues of appeal provided under the rules of the Emirates Racing Authority, as required by AR 261(8)(b). The purported Application therefore does not satisfy the requirements prescribed by AR 261(8) and is not a valid application.

    b. Mr Costa's request under AR 261(11)(a) that compliance with AR 261(8)(b) be waived is refused. It follows that the ordinary operation of AR 261(5) is unaffected. The penalty specified in the Notice of Penalty is to be applied in Queensland according to its terms, and subject to the proper calculation of the period already served.

c. Further, and in the alternative, if the refusal to waive compliance with AR 261(8)(b) is erroneous, the Application would nevertheless be dismissed under AR 261(12)(b). Mr Costa has not discharged the onus imposed by AR 261(13) of establishing exceptional circumstances warranting an order or declaration under AR 261(12)(a).

d. The Panel makes no determination concerning the setting aside, reopening, or determination of Mr Costa's application for a Thoroughbred General Trainer licence. Any licensing matter must be dealt with separately under the applicable licensing powers and procedures.

HUMAN RIGHTS CONSIDERATIONS

90. In considering this decision, proper consideration is required of Mr Costa's human rights, and the necessity to act compatibly with human rights in accordance with the *Human Rights Act 2019* (Qld) ('HRA'). The rights conferred by the HRA are not absolute. Section 13(1) of the HRA provides that 'a human right may be subject under law only to reasonable limits that can be demonstrably justified…' Section 13(2) uses the words 'reasonable and justifiable' when listing those factors which may be relevant to the issue of whether a limitation on rights can be effective.

91. AR 261 establishes a scheme for the recognition and application within Australia of penalties imposed by an Overseas Racing Authority. The Panel acknowledges that the decision under AR 261(11)(a) not to waive compliance with the provisions of AR 261(8)(b), may significantly affect a person's human rights, including the right to own property, as well as rights relating to reputation, and equality before the law. The Panel recognises that refusing waiver has a practical consequence of significance. Because Mr Costa did not satisfy AR 261(8)(b), the refusal means that there is no valid application capable of substantive determination under AR 261(12), and the ordinary operation of AR 261(5) remains unaffected. That consequence may restrict Mr Costa's professional opportunities in Queensland and may prolong the financial and reputational effects of the ERA decision.

92. The purpose of the limitation on the rights identified above is to preserve the efficacy and integrity of disciplinary action taken by overseas racing authorities, and to give effect to the principle of finality. The exercise of the application of the discretion to not waive compliance with the provisions of AR 261(8)(b) is conductive to achieving the purpose of the scheme for recognition.

93. In the circumstances of this case, the Panel is satisfied that there is no less restrictive course reasonable available. The Panel considered whether a less restrictive course was reasonably available, including waiver or partial non-recognition. For the reasons given, waiver would undermine the exhaustion requirement in circumstances where an available appeal was consciously not pursued, and exceptional circumstances were not established. Therefore, on balance, the Panel is satisfied that the limitation on Mr Costa's human rights is reasonable and demonstrably justifiable.