



## INTERNAL REVIEW DECISION

(Internal Review Decision Notice in response to an Application for Internal Review)

PART 1: Details of Internal Review	
Internal Review Number:	Internal Review 0083-18
Applicant's Name:	Ronald Finch
PART 2: Decision History	
Original Decision:	Breach of Rule 178 of the Australian Rules of Racing
Original Decision Makers:	I Brown, P Lane, B Farrell
Date of Original Decision:	17 August 2018
Internal Review Decision:	Original decision confirmed - 2 x nine (9) month disqualification to be served concurrently
Internal Adjudicator:	Mr Kane Ashby, Queensland Racing Integrity Commission
Date of Internal Review Decision:	14 September 2018
PART 3: Summary of Internal Review Application	
<p>The Applicant, Mr Ronald Finch, trainer of DUNNY'S STAR and TRY BEFORE DUBAI which were presented to race at the Charters Towers Race Club on 21 October 2017, was charged under Australian Rule of Racing 178 and subsequently pleaded guilty to two charges at a stewards' inquiry conducted on 17 August 2018 when a urine sample taken from DUNNY'S STAR and TRY BEFORE DUBAI was found to contain a prohibited substance, namely Cobalt in excess of the permissible threshold as prescribed under Australian Rule of Racing 178C(1)(l).</p> <p>Australian Rule of Racing 178 states:</p> <p><i>"Subject to AR178G, when any horse that has been brought to a racecourse for the purpose of engaging in a race and a prohibited substance is detected in any sample taken from it prior to or following its running in any race, the trainer and any other person who was in charge of such horse at any relevant time may be penalised."</i></p> <p>The specifics of the first charge being that the Applicant, as the trainer of DUNNY'S STAR, did present that horse to race in Race 1 at the Charters Towers Race Club on 21 October 2017 when a urine sample taken from DUNNY'S STAR was found, upon analysis, to contain a prohibited substance, namely Cobalt above the permissible threshold as prescribed under Australian Rule of Racing 178C(1)(l). The Applicant pleaded guilty to the charge.</p> <p>The specifics of the second charge being that the Applicant, as the trainer of TRY BEFORE DUBAI, did present that horse to race in Race 4 at the Charters Towers Race Club on 21 October 2017 when a urine sample taken from TRY BEFORE DUBAI was found, upon analysis, to contain a prohibited substance, namely Cobalt above the permissible threshold as prescribed under Australian Rule of Racing 178C(1)(l). The Applicant pleaded guilty to the charge.</p>	



When determining penalty, the stewards took into account the Applicant's guilty plea and his disciplinary history. However, the stewards were also mindful of similar penalty precedents, the negative impact such breaches have on the image of racing and the need for a penalty to serve as an appropriate deterrent to ensure racing is conducted free of prohibited substances.

Stewards subsequently disqualified the Applicant for a period of nine (9) months for each charge effective immediately. The stewards further ordered that the penalties be served concurrently pursuant to Australian Rule of Racing 196(3).

The Applicant sought a review on charge and penalty and provided the following submissions in support of his Application:

*"I am applying for a review as I would like to put forward the reasons that my horses 'may' have gone a high reading.*

*I did not get to put a case forward when interviewed by stewards, I have 10 horses in work and ready to race, this is my livelihood and first offence.*

*We did not needle any horses or treat in any way 24 hours prior to racing. We followed directions on administration of Vam and Vit B prior to the 24 hours of racing.*

*I would like to state that I did not administer my horses within the withholding period (48 hours) nor with a substance not intended for horses. I believe that my horses elevated readings were due to build up from natural vitamins, their horse feeds bought from produce store (Mitavite XLR8) and Beetroot Juice (which I have supporting evidence attached as to why I supplement).*

*I would also like for you to take into consideration of how the 'urine chain process' is dealt with in this instance. Samples must be kept refrigerated at 4 degrees celsius. My horses samples were not placed on ice and Charters Towers weather states that day was 31 degrees.*

*Upon studies regarding Cobalt, there is supportive evidence that Cobalt is a natural occurring mineral that is found within most environments that we live in. I have sent samples of ground and water from my yards to the CSIRO and will have results within a week. I have done this as I have been informed that Cobalt is formed as a by product from nickel refining and my stables are less than 2 kilometres from Yabulu Nickel Refinery. I fully believe that the elevated reading is from a combination of foo, over the counter vitamins and environment (Yabulu Nickel Refinery) and Cobalt is widely known to build up over a long time. Also I would like to address that Cobalt is not a drug nor a performance enhancer.*

*I find your penalty against me is unjust as other trainers with multiple prior offences were given fines only and no suspension for the same ruling of 178. Therefore I would ask this Commission that I be fined and not suspended.*

*My racing stables are my families life and source of income and I would never jeopardise this by administering a prohibited substance to any of my horses.*

*I am seeking a lesser penalty. It was my first offence, we honestly thought we would receive a lesser penalty such as a fine."*

The outcome sought by the Applicant was for the penalty to be reduced.



#### PART 4: Reasons for Internal Review Decision

The Applicant, Mr Ronald Finch, was the trainer of DUNNY'S STAR and TRY BEFORE DUBAI which were presented to race at the Charters Towers Race Club meeting on Saturday 21 October 2017. A post-race urine sample collected from the aforementioned horses was subsequently analysed by the Racing Science Centre and Racing Analytical Services Limited which reported each sample was shown to contain Cobalt in excess of the regulatory threshold pursuant to Australian Rule of Racing 178C(1)(l) at 100 micrograms per litre in urine. The aforementioned NATA Accredited Racing Laboratories reported DUNNY'S STAR's sample contained Cobalt at 114mcg/L and 118mcg/L and TRY BEFORE DUBAI's at 174mcg/L and 175mcg/L respectively.<sup>1</sup> The Cobalt threshold was reduced from 200mcg/L to 100mcg/L in September 2016 as per Rule 178C(1)(l) of the Australian Rules of Racing.

DUNNY'S STAR and TRY BEFORE DUBAI were each placed first in their respective races. The betting data on DUNNY'S STAR's race demonstrated the horse started at \$5.00. The betting data on TRY BEFORE DUBAI's race demonstrated the horse started at \$5.00.

During the stewards' inquiry conducted on 17 August 2018, the Applicant was asked to provide an explanation for the analyst findings in the aforementioned urine samples. The Applicant, in evidence, stated *"Mate if I could, I would. As is say, we're dumbfounded. I wasn't in town. Lisa is my wife, she's a strapper."* The chairman of the inquiry questioned *"And how long had you been absent from the stables from?"* to which the Applicant replied *"Probably four days."* The Applicant stated his wife, Mrs Lisa Finch, was in charge of the horses in his absence. The Applicant stated there had been no change to his feeding and supplementation regime, stating *"No. None at all."* The Applicant stated his feeding regime mainly consisted of Mitavite, Oats, Chaff, Corn, Tick bean, Lucerne hay, Formula 3 or XLR8.<sup>2</sup>

The Applicant stated his supplement regime consisted of Salkavite, vegetable oil, blended beetroot and celery which is mixed into the feeds. The Applicant stated *"And beetroot's full of cobalt, so we found out. We've stopped doing that."* The chairman of the inquiry questioned *"So how long would you have given the beetroot for?"* to which the Applicant replied *"Oh, well, Lisa used to - every - well, every night. Ever since I've been training horses. I don't know. It's just a herbal thing that she Googled and - yeah, I don't know much about it. I don't like beetroot, so I wouldn't eat it."*

The Applicant stated *"We used to inject them with VAM and, what was it, Tripart or B12, twice a week after a hard work, like, galloping."* The chairman of the inquiry questioned *"So VAM - so what would your dosage be for each?"* to which the Applicant replied *"Well, normal, like. It's - I think it's 10 ml or something."* The Applicant added the last administration was on the Wednesday or Thursday prior to racing on the Saturday stating *"I think it was on the Thursday morning - Thursday morning or Wednesday afternoon. Because we do it at 48 hours, like, after they gallop, and I usually give them a sprint-up on Thursday morning if they're racing Saturday."*<sup>3</sup>

The stewards of the Queensland Racing Integrity Commission conducted a stable inspection of the Applicant's licensed premises on 8 November 2017 for the purposes of informing the Applicant of the irregularities in the aforementioned urine samples. The stable inspection report, in part, stated:

<sup>1</sup> Exhibit 3, 7, 15 and 19

<sup>2</sup> Transcript of Stewards' Inquiry dated 17 August 2018, page 12, 13, 14 and 15

<sup>3</sup> Transcript of Stewards' Inquiry dated 17 August 2018, page 15, 16 and 17



*"Blended feed. Formula 3 Racing, XLR8. Supplements - Feramo with Chromium and Salkavite. Therapeutics - Buscopan, (inaudible), Diurex, VAM, Ferrocyl, Dexapent, Folic B12, Cophos B, vitamin C, Tripart, folic acid, vitamin B12, Flu-Nix. Trainer advised all horses are given Cophos B and VAM 48 hours prior to racing. Requested to compile a historical record of treatments to illustrate cumulative dosage of these two products to each horse in stable."*<sup>4</sup>

The Applicant's treatment records particular to DUNNY'S STAR and TRY BEFORE DUBAI state "Dubai Vam 15ml" on 16 October 2017, "Dunny, Dubai, Vam, Cophos B" on 19 October 2017, and "Dunny, Dubai, 7pm Vam - work" on 21 October 2017 (being the day of the race).<sup>5</sup> The chairman of the inquiry questioned "21 October was the race day. So, on the day of the race you've got 7 pm VAM for Dunny" to which the Applicant replied "No, that isn't right, is it? Yeah, VAM. Yeah, they get it when - after they race. Yeah, that's probably written there wrong."<sup>6</sup>

The inquiry heard the Applicant failed to provide the stewards with his treatment records during the stable inspection. The chairman of the inquiry questioned "Did you provide them with a copy of this then?" to which the Applicant replied "We showed you that, didn't we, Pete? We didn't - or you asked for it." Mr Peter Lane, Stipendiary Steward of the Queensland Racing Integrity Commission, in evidence stated "No, this is the first I've seen it. The first I've seen this. But what I - what I believed at the time was you didn't - you weren't keeping a treatment book. I do remember that I had a conversation with you at Cooktown. Because we did suggest to you that if you could go back through your records - and maybe compile something, that you'd be able to do that. But I distinctly remember saying to you as well that it could not be viewed as a treatment book because you couldn't provide it at the time of the stable inspection; do you recall that?" to which the Applicant replied "No, because you ask me and Mr Gillard asked me to get one up-to-date and bring it to Cooktown. And I took it to Cooktown and I told Mr Gillard about it and he - I was supposed to give it to him at Cooktown and I said to him when youse come - Mr Gillard come to me and asked - told me that Dunnys Star and Try Before Dubai had to be swabbed before that race or after that race - again. And he was - Dunnys Star - there was a bit of a deal where that horse got killed, or died, broke its leg. And I told him I had the treatment book there and I never actually got it to give to him. That's the book there. And that was at Cooktown."

The chairman of the inquiry questioned "All right. So you weren't able to produce this at the time of the stable inspection?" to which the Applicant replied "It was upstairs, yeah. I could have. It's exactly the same." Mr Lane disputed such statement stating "But we asked you if you had it at the time of the stable inspection. And I believe you - my recollection is that you said you weren't aware that you had to keep one, Mr Woolaston (Stipendiary Steward) had told you didn't have to keep one" to which the Applicant replied "Yeah. He kept us - Mr Woolaston told us - told me as a trainer that we did not have to keep a treatment book, only if it was not - like B12s and that. If it wasn't - no, I did say that, yes, I did." Mr Lane questioned "Right. But you're saying now that you were maintaining this at the time?" to which the Applicant replied "That was there, yeah. That was there. Exactly what - exactly written right there. Lisa writes everything in the book." The chairman of the inquiry questioned "I'm a little bit confused because on one hand you're saying Mr Woolaston told you that you didn't need to keep a treatment book. Which I find hard to believe. But at the same time you're saying that you did keep a treatment book?" to which the Applicant replied "Well, it's not.

<sup>4</sup> Exhibit 28

<sup>5</sup> Exhibit 29

<sup>6</sup> Transcript of Stewards' Inquiry dated 17 August 2018, page 17 and 18



*Lisa writes everything down, mate. I can show you - I can go and get my diaries. She gets a diary every year. I'll show you - I can get the ones from two years ago if you want to see them.*<sup>7</sup>

Australian Rule of Racing 178F(1) places a responsibility on trainers, in this instance the Applicant, to maintain and record any treatment administered to horses in their care by midnight on the day of such administration. Sub-section 4 of the aforementioned Rule states *"When requested, a trainer must make available to the Stewards the record of any administration of a treatment and/or medication required by sub-rule (1)."* The reviewer acknowledges the importance of a) the responsibility of the trainer to maintain and produce treatment records on request and b) the examination of live time records of treatments during an unannounced stable inspection to ensure the authenticity of such records.

TRY BEFORE DUBAI's sample history demonstrates a previous post-race blood sample collected on 8 April 2017 at Julia Creek that returned a Cobalt reading of 7.2mcg/L. DUNNY'S STAR's sample history demonstrates a post-race blood sample collected on 11 November 2017 at Cooktown that returned a Cobalt reading of 7.5mcg/L. The chairman of the inquiry stated *"The advice I have is that readings of 7.2 and 7.5 micrograms per litre in plasma - is quite low. It's relative to a very standard and normal feeding and - cobalt supplementation regime. So it would equate to single digits in a urine sample. Effectively. So those samples don't indicate that there was an issue with cobalt in your stable - even though similar feeding and supplementation regimes were going on."* The chairman of the inquiry questioned *"So is there any reason why the samples on 21 October 2017 would be significantly different"* to which the Applicant replied *"No. I've got no - I have got no answer to that whatsoever. And if you state - you know, like, if you're saying that we've injected it, no. No way in the world."* The chairman of the inquiry further questioned *"Is it possible that Try Before Dubai or Dunny's Star were administered a VAM or a B12 or a B complex on race day?"* to which the Applicant replied *"No. Definitely not. My - and honestly, why I say that, my Lisa wouldn't - she isn't game to do anything to them horses."*<sup>8</sup>

The Applicant's complete submissions in defence of the charge are outlined in Part 3 of this decision.

The Applicant submitted *"I would like to state that I did not administer my horses within the withholding period (48 hours) nor with a substance not intended for horses. I believe that my horses elevated readings were due to build up from natural vitamins, their horse feeds bought from produce store (Mitavite XLRB) and Beetroot Juice (which I have supporting evidence attached as to why I supplement). I have been informed that Cobalt is formed as a by product from Nickel refining and my stables are less than 2 kilometres from Yabulu Nickel refinery. I fully believe that the elevated reading is from a combination of food, over the counter vitamins and environment (Yabulu Nickel Refinery) and Cobalt is widely known to build up over a long time."*<sup>9</sup>

The reviewer acknowledges the evidence in Internal Review Decision 0098-17 in which expert evidence was provided by Dr Derrick Major (for the Applicant) and Professor Paul Mills (for the Respondent) which in part related to the accumulation 'build-up' of Cobalt and the effects of native Cobalt in pre-mixed feeds. Dr Major's evidence, in brief, stated *"I've done quite a lot of work on Cobalt myself. I've had some - I've done some administration trials here and I am concerned that some of these low-level Cobalt excesses we're seeing in urine may - there may be legitimate reasons for it in terms of dietary and medication. I think that the issues that I would put out there I don't think were adequately explored by the Ho paper in 2014. Ho and co-workers gave around about a milligram of Cobalt every day for three days"*

<sup>7</sup> Transcript of Stewards' Inquiry dated 17 August 2018, page 19, 20, 21 and 22

<sup>8</sup> Transcript of Stewards' Inquiry dated 17 August 2018, page 25, 26 and 27

<sup>9</sup> Applicant's additional submissions dated 27 August 2018



*to what you might call native horses, horses that had no previous known exposure to Cobalt, and so there was no consideration of accumulated stores of Cobalt in the body.”*

*Dr Major further stated “Racing New South Wales publicised the feed (Ron Quinton) was using was found to contain significantly more Cobalt than anybody had anticipated, and I don’t think necessarily the feed manufacturer has done anything wrong there because they’ve made no undertakings, they’ve only said they have added half a milligram more whatever per kilogram of Cobalt, but they make no allowance for what’s called the native Cobalt which might be in the feed and might be quite variable. So I think that’s something that I’m considering as well.” Dr Major added “And the third thing that I think we need to consider is the effect of urinary specific gravity. I’ve certainly got a number of cases - and I’d say I’ve got five or six hundred samplings now of consecutive blood and urine samples and I’ve got situations where, say, two horses, where you correct their Cobalt for their urinary dilution, end up the same but their raw urine samples are four or five times different. You know, in other words, one horse might have a urinary level of - a raw urinary level of 20 and another might be 110, and that’s simply because the second horse has very concentrated urine.”*

*Professor Mills, in brief, replied “I think there’s a few issues raised by Dr Major. Yes, if you give oral Cobalt, you will get transient increases in the urine, and that was shown by Ho et al. The thing is that’s quite transient and usually within four or five hours and it’s gone. The underlying facts beneath all this, obviously, you don’t need to supplement Cobalt in the horse, there’s enough in normal diet as in, you know, (inaudible) water, that’s - for the Cobalt requirements of a horse. So there’s no need to give any more. And that becomes part of the crux of the matter. But when we start talking about movement of Cobalt and whether it’s got concentrated urine or not, if you are going to concentrate the urine, you are going to concentrate the glomerular filtration rate, as Dr Major said, that also then stops excretion of anything, including Cobalt, into the urine. The big thing is, though, that the Racing Science Centre did a very big survey of about 7000 horses, and these were taken pre and post-race, and 99 percent of the horses have no Cobalt levels or anything back - what I should say, have a normal Cobalt level of about 9 micrograms per litre. And so these are horses on a racing diet, normal situations with withholding water or not, there’s no high level of Cobalt. So when we sort of put all this together, you sort of look at then why do we have this threshold of Cobalt, which was originally 200 and now it’s 100 microgram per litre. Brynn Hibbert’s work did a lot of analysis of horses in Australia and his calculation was that the probability of a horse exceeding 100 nanogram per ml, or 100 micrograms per litre, is one in 100,000. So what it means is that a normal population of horses coming to the race, and a normal diet without Cobalt supplementation, the chances of exceeding the threshold are minimal. So when you come down to it, Cobalt’s been given to a horse that exceeds the threshold. How much Cobalt depends on - sorry, how much they exceed the threshold depends how much Cobalt has been given and how close to racing.” Professor Mills added “I have been seeing with, again, access to some of the racing labs is that people that have had horses that have exceeded the threshold, a subsequent sample a week, a few days later or whatever have gone well under the threshold. So they’ve been above 100 and then come down to five or 10. So there’s something going on to make these animals go up and then obviously all this has changed when these animals have gone down. So we’ve got something that’s happening, and the only thing I can suggest is that there’s Cobalt been given to these animals, and Cobalt that is not required. And even if you think back to the accumulation argument, well, again, these horses that I’ve been talking about that came down after being high, it blows the argument out of the water that accumulation can be occurring. These horses have gone positive, but subsequent tests a few days later, a week later is well below the threshold. So what’s happening is that these horses have been given Cobalt. However often and when is uncertain, but they’ve definitely been given Cobalt to attribute to the high levels.”*



The reviewer accepts the evidence of Professor Mills and finds it is supportive of the fact that a previous post-race blood sample collected from TRY BEFORE DUBAI at Julia Creek on 8 April 2017 returned a Cobalt reading of 7.2mcg/L (within the normal population race day range) despite being on the same feeding and supplement regime as evidenced by the Applicant.

The Applicant submitted "*Also I would like to address that Cobalt is not a drug nor a performance enhancer.*"<sup>10</sup> The reviewer acknowledges that irrespective of the argument as to Cobalt being performance enhancing or not as submitted by the Applicant, Cobalt is deemed to be a prohibited substance when levels exceed the regulatory threshold under the Australian Rules of Racing. In this instance, the Applicant has presented two horses to race with a prohibited substance present in their system, namely Cobalt at a level above the prescribe threshold pursuant to Australian Rule of Racing 178C(1).

The Applicant submitted "*I would also like far you to take in consideration of how the "urine chain process" is dealt with in this instance. Samples must be kept refrigerated at 4 degrees Celsius. My horses samples were not placed on ice and Charters Towers weather states that day was 31 degrees.*" The reviewer sought advice from Dr Karen Caldwell particular to the standards and storage of the sample as submitted by the Applicant. Dr Caldwell stated "*There is no Australian Racing standard for the collection of samples. He (the Applicant) may be referring to the Australian Standard for collecting urine samples in people. This is of absolutely no relevance for the following reasons:*

*The primary indication for measuring cobalt levels in human samples is to assess inadvertent occupational or other environmental exposure. The magnitude of the concentration of interest in these circumstances is very low (<2µg being the cited reference value). It is because the magnitude of the concentration of interest for samples taken in this context is so low that the sample collection protocols employed for this purpose must necessarily eliminate any possibility of the collection materials or surrounding environment contributing even minute amounts of cobalt.*

*The very small variations in concentration that are important in assessing human trace-level exposure are, in the vast majority of cases, of no relevance whatsoever in enforcing the regulatory threshold adopted by racing authorities. Protocols for collecting urine samples in racing are designed to be practical and fit for the purpose of regulating the misuse of cobalt in racing animals. These protocols are not readily comparable to human testing protocols and such comparisons are inapt and can be misleading. Storage in high ambient temperatures cannot possibly account for a significant elevation in cobalt concentration.*"

The reviewer acknowledges the subject samples' 'chain of custody' is a documented process that is accounted for from the time of sample collection, inclusive of the collection process in accordance with the 'Sample Security Document For Taking A Sample For Analysis' through to the Certificate of Analysis being issued by the aforementioned NATA Accredited Racing Laboratories. The reviewer finds no direct evidence to determine the integrity of the sample was compromised to any extent that would adversely affect the integrity or analysis of the sample.

The Racing Science Centre, in previous Cobalt review decisions, collated a spreadsheet of data following its analysis of testing Cobalt in equine race day urine samples. The data demonstrates 13,485.00 samples, including outliers, were tested between 26 May 2015 and 17 January 2018 which showed a mean of 8.57mcg/L and a median of 4.69mcg/L.

<sup>10</sup> Applicant's additional submissions dated 27 August 2018



This data is inclusive of all the variables associated to the horse, including dehydration and weather conditions, and further indicates horses being fed registered commercial supplements containing Cobalt in accordance with manufacturers' guidelines are highly unlikely to exceed the Cobalt threshold. This is further supported by the thoroughbred and harness racing codes' decision to amend the Cobalt threshold from 200mcg/L to 100mcg/L in September and November 2016 respectively.

Racing Queensland issued a notice to industry participants in September 2013, advising it is accepted Cobalt is a substance detectable in most, if not all, horses due to dietary intake. Cobalt, in a variety of forms including Cobalt Chloride, is present in a variety of pre-mixed feeds and supplements, however if used according to the manufacturers guidelines, it will not typically elevate to a level which could be deemed a breach of the Australian Rules of Racing. A further industry notice was issued in October 2016 advising of the aforementioned reduction in the Cobalt threshold and further warned trainers, amongst others warnings, to only administer nutritional supplements that are manufactured and marketed by reputable companies and avoid the use of inadequately labelled and unregistered products. Trainers were advised they should consult with their veterinarian to ensure that their feeding and supplementation practices are sufficient to meet the nutritional requirements of horses under their care and that their supplementation practices, particularly with products containing Cobalt and/or vitamin B12, are not excessive in light of those requirements.

The reviewer finds ignorance to the fact that supplements containing Cobalt and Vitamin B12 administered close to race time may elevate Cobalt to unacceptable levels under the Australian Rules of Racing is not a form of defence, especially in light of the many published cases in recent years and industry notices pre-warning participants of such dangers. The Applicant is responsible to familiarise himself with the active constituents of all feed and supplements administered to horses in his care, in particular products that contain Cobalt and Vitamin B12, to ensure horses are presented to race free of prohibited substances.

The reviewer accepts the Australian Rules of Racing places a strict obligation and responsibility on trainers, in this instance the Applicant, to present their horses to race free of any prohibited substances.

Australian Rule of Racing 178C(1) in part reads:

*"The following prohibited substances when present at or below the concentrations respectively set out are excepted from the provisions of AR.178B and AR.178H."*

Sub-section (l) states:

*"Cobalt at a mass concentration of 100 micrograms per litre in urine or 25 micrograms per litre in plasma."*

The reviewer accepts the aforementioned NATA Accredited Racing Laboratories reported DUNNY'S STAR's and TRY BEFORE DUBAI's samples were shown to contain Cobalt in excess of the regulatory threshold pursuant to Australian Rule of Racing 178C(1)(l) at 100 micrograms per litre in urine. The aforementioned Racing Laboratories reported DUNNY'S STAR's sample contained Cobalt at 114mcg/L and 118mcg/L and TRY BEFORE DUBAI's at 174mcg/L and 175mcg/L. The Applicant failed to provide any plausible explanation for the aforementioned samples exceeding the regulatory threshold for Cobalt. The Applicant's feeding and supplementation regime was consistent with all horses in the stable, which is noteworthy considering TRY BEFORE DUBAI's previous post-race blood sample collected at Julia Creek on 8 April 2017 returned a Cobalt reading within the aforementioned population study of 7.2mcg/L.



The reviewer is not satisfied the explanation provided by the Applicant is the sole reason for the analysts findings and therefore accepts the Applicant presented DUNNY'S STAR and TRY BEFORE DUBAI for racing when a prohibited substance was present and accordingly finds the charges proven.

The Applicant has been a licensed trainer for approximately five (5) years. The Applicant's disciplinary history during such period is clear of any prior offence pursuant to Australian Rule of Racing 178.

The Applicant's submissions on penalty, in part, state *"I am seeking a lesser penalty. It was my first offence, we honestly thought we would receive a lesser penalty such as a fine."* The Applicant filed further submissions on penalty stating *"I find your penalty against me is unjust as other trainers with multiple prior offences were given fines only and no suspension for the same ruling of 178. Therefore I would ask this commission that I be fined and not suspended."*

The precedents for a 'presentation' offence involving Cobalt within the Queensland racing industry previously incurred a minimum penalty of a twelve (12) month disqualification. Notwithstanding, in some recent matters penalties of a nine (9) month disqualification have been imposed, taking into account the relevant circumstances of individual cases and that of Queensland Civil Administration Tribunal decisions, with specific consideration to a guilty plea and unblemished disciplinary history on extended training careers.

The reviewer notes the stewards imposed a period of nine (9) months disqualification on each charge pursuant to Australian Rule of Racing 178 to be served concurrently, totaling a period of a nine (9) month disqualification.

In weighing up the matter of penalty, consideration was provided to the Applicant's submissions, character reference from the Applicant's wife, guilty pleas, disciplinary history, totality of penalty precedents and the level of Cobalt detected in the aforementioned samples the subject of review. The reviewer finds Cobalt is a prohibited substance that provides participants with an unlevelled playing field and such matters have a detrimental effect on the integrity of the thoroughbred racing industry. A penalty not only needs to be fair and evidence based, it must also serve as a deterrent to any likeminded persons. The reviewer, in considering the totality of evidence and taking into account the Applicant presented two (2) horses to race with Cobalt in excess of the regulatory threshold and that such penalties were ordered to be served concurrently as opposed to cumulatively, finds the original penalty imposed is at the lower end of the penalty scale and therefore is not satisfied a further reduction in penalty is proven and accordingly confirms the original decision on charge and penalty.

#### **PART 5: Review Rights following Internal Review Decision**

In accordance with section 246 of the *Racing Integrity Act 2016*, as the applicant for an internal review of the original decision, you are able to apply to the Queensland Civil and Administrative Tribunal (QCAT) for an external review of the internal review decision.

An external review is commenced by lodging the appropriate forms with QCAT. In accordance with section 33 of the *Queensland Civil and Administrative Tribunal Act 2009*, an application for an external review of an internal review decision is to be made within 28 days from the day this internal review decision notice is provided to the applicant.

For further information regarding the processes for an external review of the decision, please contact QCAT:

**Queensland Civil and Administrative Tribunal**



**QUEENSLAND RACING  
INTEGRITY COMMISSION**

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