

DECISION

Racing Integrity Act 2016, sections 252AH, 252BM

Review application number	RAP-150	
Name	Bronwyn Nicole Hanrahan	
Panel	Mr K J O'Brien AM (Chairperson) Mr J McCoy OAM (Panel Member) Ms L Hicks (Panel Member)	
Code	Harness	
Rule	AHR 190(1) <i>A horse shall be presented for a race free of prohibited substances</i>	
Penalty Notice number	PN-011959	
Appearances & Representation	Applicant	Self-Represented
	Respondent	A Turner – Queensland Racing Integrity Commission
Hearing Date	18 June 2025	
Decision Date	26 June 2025	
Decision	Pursuant to 252AH(1)(a) the Racing Decision is Confirmed	
Case References	<i>Day v Harness Racing NSW [2014] NSWSC 1042</i> <i>Racing Victoria Limited v Kavanagh [2017] VSCA 334 at [43]</i> <i>Hooper v Queensland Racing Integrity Commission [2017] QCAT 236</i> <i>Doughty v Queensland Racing [2012] QCAT 678</i> <i>Wallace v Queensland Racing [2017] QDC 168</i> <i>McDonough v Harness Racing Victoria [2008] VRAT 6</i>	

- [1] This is an application by licensed harness racing trainer Ms Bronwyn Hanrahan for a review of racing decisions made by Stewards on 26 May 2025 when the Applicant was found guilty of three presentation offences contrary to Australian Harness Racing Rule 191(1).
- [2] Each of the three offences, committed respectively on 19 November 2024, 1 December 2024 and 8 December 2024, involved the substance cobalt at a level in excess of the regulatory threshold. For charge one, the penalty imposed was a \$6000 fine. For each of charges two and three, a fine of \$6000 and a suspension of licence for a period of 12 months was imposed. The penalties imposed for charges two and three were suspended for a period of two years, conditional upon the Applicant not being found in breach of any matters relating to a prohibited substance during that time¹.
- [3] The Applicant seeks a review in relation to both the findings of guilt and the penalty imposed. She maintains that the evidence does not establish the presence of "cobalt salts above the legal threshold which is why the rule was brought in"², but merely the presence of a byproduct of vitamin B12.
- [4] Her application sets out that as she "has not breached the rules, subsequently the penalty is excessive"³.
- [5] The Applicant was charged under AHR 190 which provides, as relevant:-
- 190 (1) A horse shall be presented for a race free of prohibited substances.*
- (2) If a horse is presented for a race otherwise than in accordance with sub-rule (1) the trainer of the horse is guilty of an offence...*
- (4) An offence under sub-rule (2) ...is committed regardless of the circumstances in which the prohibited substance came to be present in or on the horse.*
- [6] The prohibited substance involved in each case was cobalt. AHR 188(1)(k) provides, relevantly, that cobalt at a concentration of 100 micrograms per litre in urine is a prohibited substance under the Rules.
- [7] The offence created by AHR 190 is an offence of strict or absolute liability⁴. If a horse is presented to race other than free of prohibited substances, the offence is committed without more. The trainer's intention is irrelevant to establish whether the offence is committed, although it may be a factor of relevance in determining penalty⁵.
- [8] AHR 191 provides for evidentiary certificates of testing results. Under AHR 191(1), a certificate from a person or drug testing laboratory approved by the Controlling Body, which certifies the presence of a prohibited substance in a horse at, or approximately at, a particular time in a urine sample or other sample, is prima facie evidence of the matters certified.
- [9] Under AHR 191(2), if another approved person or drug testing laboratory analyses a portion of the sample referred to an AHR 191(1) and certifies the presence of a prohibited substance in the sample, that certification, together with the AHR 191(1) certification, is conclusive evidence of a prohibited substance. The combined effect of AHR 191(3) and 191(4) is that where certificates exist under both

¹ Respondent's Index of Documents Document #52

² Application for Review Respondents Index to Documents, Document #1

³ Application for review 29 May 2025

⁴ See *Day v Harness Racing NSW* [2014] NSWSC 1042 at [185-190], *Racing Victoria Limited v Kavanagh* [2017] VSCA 334 at [43]

⁵ *Hooper v Queensland Racing Integrity Commission* [2017] QCAT 236 at [7], *Doughty v Queensland Racing* [2012] QCAT 678 at [8]

AHR191(1) and 191(2), then the certificates are conclusive evidence that the horse was presented for a race not free of the prohibited substance, and that the prohibited substance was present in the horse at the time the relevant sample was taken from the horse.

- [10] The evidentiary value of these certificates is displaced where it is proved that the certification procedure, or any act or omission forming part of, or relevant to the process resulting in the issue of the certificate was materially flawed⁶.

Background

- [11] On 19 November 2024, the horse Crossed Legs was presented to race and competed in Race 2 at the Marburg Harness Racing Club when a pre-race urine sample was collected from the horse. On 5 December 2024 the Racing Science Centre detected the presence of cobalt at a level in excess of the regulatory threshold of 100 micrograms per litre, as prescribed in the Australian Harness Racing Rules⁷. Specifically, the presence of the prohibited substance was detected at a level of 159 micrograms per litre with a certificate of analysis confirming the presence of the prohibited substance
- [12] On 18 December 2024 the Racing Analytical Service Laboratory confirmed the presence of cobalt at a level above the regulatory threshold, specifically, 157 micrograms per litre in the sample and issued a certificate of analysis⁸.
- [13] On 1 December 2024, the horse Crossed Legs was presented to race and competed in race 2 at the Marburg Harness Racing Club, where a pre-race urine sample was collected from the horse. On 16 December 2024, the Racing Science Centre detected the presence of cobalt at a level in excess of the regulatory threshold of 100 micrograms per litre as prescribed in the Australian Harness Racing rules⁹. Specifically, 134 micrograms per litre was the level detected in the sample, with a certificate of analysis confirming the presence of the prohibited substance.
- [14] On 3 January 2025 the Racing Analytical Services Laboratory confirmed the presence of cobalt at a level above the regulatory threshold, specifically, 143 milligrams per litre in the sample and issued a certificate of analysis¹⁰.
- [15] On 8 December 2024, the horse Crossed Legs was presented to race and competed in Race 7 at the Marburg Harness Racing Club when a pre-race urine sample was collected from the horse. On 17 December 2024, the Racing Science Centre detected the presence of cobalt at a level in excess of the regulated threshold of 100 micrograms per litre as prescribed in the Australian Harness Racing rules¹¹. Specifically, 114 micrograms per litre was the level detected in the sample, with a certificate of analysis confirming the presence of the prohibited substance.
- [16] On 3 January 2025, the Racing Analytical Services Laboratory confirmed the presence of Cobalt at a level above the regulatory threshold, specifically 119 micrograms per litre in the sample, and issued a certificate of analysis¹².

⁶ AHR 191(7)

⁷ Respondent's Index of Documents. Document #5 Certificate of Analysis RSC

⁸ Respondent's Index of Documents. Document #11 Certificate of Analysis RASL

⁹ Respondent's Index of Documents. Document #17 Certificate of Analysis RSC

¹⁰ Respondent's Index of Documents. Document #22 Certificate of Analysis RASL

¹¹ Respondent's Index of Documents. Document #27 Certificate of Analysis RSC

¹² Respondent's Index of Documents. Document #33 Certificate of Analysis RASL

[17] On 31 January 2025, following scientific confirmation that the samples contained, in each case, cobalt at a level above the regulatory threshold, the Applicant was charged with the three offences which give rise to this application¹³.

[18] The Applicant responded on 5 February 2025¹⁴ indicating a plea of not guilty to all charges. In subsequent correspondence of 17 April 2025¹⁵ the Applicant made a number of submissions in support of her pleas of not guilty. These submissions are fairly and adequately set out in the Respondent's Outline of Submissions¹⁶ as follows:

The Applicant pleaded her innocence in respect of all three (3) charges and submitted:

(a) the cobalt prohibited substance rule was brought in to target excessive cobalt salts administration, of which the Applicant has not and does not use outside of those present in pre-mixed race feeds;

(b) she had been denied the opportunity to prove 'Crossed Legs' had not been presented to race with cobalt above the threshold by not allowing independent testing of the samples or testing by the laboratories that conducted the initial testing to compare the level of Vitamin B12 to the level of cobalt salts;

(c) injectable Vitamin B12 is not a prohibited substance in the multivitamin format which the Applicant administers;

(d) it is generally accepted that Vitamin B12 can, and will, give false cobalt readings;

(e) at worst the Applicant has been ignorant to the administration of multiple products containing Vitamin B12;

(f) the offence resulting from the sample collected on 1 December 2024 should be dismissed due to the evidence of Dr Derek Major that cobalt salts cannot drop from a level of 139 to less than 10 within 2 hours; and

(g) the Stewards recognise that there had been 'no cobalt doping or misuse.'

[19] The Stewards ultimately rejected the explanations advanced by the Applicant, noting that she had "not raised any concerns with the integrity or processes regarding the six certificates identifying the finding of cobalt" and reiterating previous emails that cobalt at the levels disclosed "is deemed a prohibited substance" with the circumstances of those levels being "the responsibility of the trainer"¹⁷.

The Rule

[20] As indicated above the offence under AHR 190 is an offence of strict liability. If a horse is presented to race other than free of a prohibited substance, the offence is committed without more.

¹³ See Respondent's Index of Documents. Document #46

¹⁴ Respondent's Index of Documents. Document #50

¹⁵ Respondent's Index of Documents. Document #47

¹⁶ Respondent's Outline of Submissions paragraph 11

¹⁷ Respondent's Index of Documents. Document #49

- [21] It is not an administration offence, and it is not necessary to prove any administration or intention on the part of the trainer to enhance the performance of the horse in order to establish liability. The purpose of the Rule is found in public policy considerations of ensuring that the horse is presented to a race unaffected by prohibited substances, thereby ensuring the integrity of the industry¹⁸.
- [22] The certificates provided under AHR 191 provide in this case conclusive evidence that the horse was on each of the three occasions alleged presented for a race not free of the prohibited substance cobalt beyond the regulatory threshold, and further that the prohibited substance was present in the horse at the time of the samples were taken. The responsibility of disproving the evidentiary force of those certificates lies with the Applicant and the standard of proof required of her should be, as in most cases where there is a reversal of onus, according to the balance of probabilities.
- [23] The only way in which the Applicant might do this is by proving that the certification procedure or any act or omission forming part of or relevant to the process resulting in the issue of the certificates was materially flawed. The focus of AHR 191(7) is clearly on the testing and certification of the testing. Moreover, as Member Olding observed in *Hooper v Queensland Racing Integrity Commission*¹⁹, the flaw that requires proof must be material, that is, material to testing and certification.

The Applicant's Case

- [24] The principal argument advanced by the Applicant is that she did not administer or cause to be administered any cobalt salts to her horse. Any cobalt present in the urine samples could only be the result of the use of vitamin B12 which may contain organically based cobalt which, in the Applicant's argument is not performance enhancing and is not prohibited under the Rules²⁰The essence of her argument lies in the assertion that it is only cobalt salts that are captured by the Rule and that the finding of guilt in her case is founded on the "incorrect assumption" that cobalt salts, as distinct from organic cobalt, have been the cause of the elevated cobalt readings. As the Rule is only concerned with cobalt salts, there needs to be specific testing in that regard for the certificates to have evidentiary weight. In relation to charge 2 she advances a specific argument that the pre and post racing are such as to render the findings so unreliable as to incapable of supporting a finding of guilt.
- [25] In advancing her arguments the Applicant has relied on the evidence of Dr Derek Major, a veterinary scientist with past involvement with cobalt matters. Dr. Major has prepared a Report²¹and has given oral evidence at this hearing. In brief summary, Dr Major opines that urine is not an appropriate test medium for total exposure to cobalt as cobalt levels may vary on the basis of concentration alone. Dr Major also questions whether cobalt levels, even when present in horses at "extreme levels", have any bearing on performance. Vitamin B12, he opines, may give what he terms "a false positive" for the presence of cobalt salts. In relation to the pre and post-race tests results for charge 2, he considers the results to be "arithmetically and biologically" highly unlikely.

The Respondent's Case

- [26] The principal argument for the Respondent is that whatever Dr Major's view might be on the effects of cobalt, the presentation Rule is clear in referring to the concentration of cobalt without reference to cobalt salts and without distinction between its organic and inorganic form. The offence created by

¹⁸ See *Wallace v Queensland Racing* [2017] QDC 168 and *Racing Victoria v Riley* [2016] VSCA 230

¹⁹ *Hooper v Queensland Racing Integrity Commission* [2017] QCAT 236 at [29]

²⁰ Applicant's Index to Documents Document #3

²¹ Applicant's index of Documents Document #6S

AHR 190(1) is a presentation offence as distinct from an administration offence and it is not necessary to establish any administration or intention on the part of the Applicant to enhance the performance of the horse. It is an offence of absolute liability, although an explanation for the presence of cobalt may be a factor of relevance in determining penalty. The Applicant has not challenged the integrity or the accuracy of the sampling process or the analytical process and the evidence is clear that, on each occasion, the horse was presented with to race with cobalt levels in excess of the regulatory threshold.

[27] Because it is “a ubiquitous substance in nature”²² cobalt is regulated by way of a threshold limit and the offence provision is only triggered when that limit is exceeded. The Respondent submits that the regulatory threshold has been accepted as being “generous”²³ and “extremely conservative”²⁴ in allowing for environmental factors or normal feeding practices.

[28] The Respondent relies on the evidence of Doctor Shawn Stanley. Dr Stanley holds a doctorate in pharmaceutical chemistry and has vast experience in the area of laboratory testing. His evidence includes the following²⁵:

10. Harness Racing Australia, the relevant controlling Body, determined that cobalt is a prohibited substance under subsection 188A (1)(k), and is only excepted from the provisions of this rule and Rule 190AA when it is at, or below, a concentration of 100 micrograms per litre in urine or 25 micrograms per litre in plasma.

11. Thresholds for prohibited substances are based on data obtained from samples collected from a broad population located over a wide geographic area and encompasses coming feeding patterns, the intake of water from various sources, effects of dehydration, travel, heat and various other factors to ensure that the calculated risk of a false-positive result is adequate for the purpose of maintaining public confidence in integrity and keeping a level playing field for industry participants.

12. Since the total cobalt threshold has been established using a wide variety of conditions, it includes an allowance for dehydration and, therefore, it does not require the raw data to be manipulated by a correction factor to compensate for this.

13. To put this threshold into perspective, over the last 12 months the cobalt concentration is reported to be under 10µg/l in approximately 90% of samples tested by the Racing Science Centre and only 0.3% exceeded 50 microgram per litre (*i.e.*, 99.7% are less than ½ the threshold).

Report from Derek Major Consulting Pty Ltd

14. I have not addressed Derek Major’s opinions, contained in the *Hanrahan report* (dated 4th April 2025), on how the Controlling Body should have written the Rules of Racing covering the prohibited substance cobalt. I assume that the Australian Harness Racing is fully aware of Major’s views, which were first published in July 2015, but have not found a convincing reason to revise their rule.

²² Respondent’s Outline of Submissions Para [36]

²³ *Day v Harness Racing NSW* [2014] NSWSC 1402 at [34]

²⁴ *In the Matter of Ken Rattray* unreported, Tasmanian Racing Appeal Board Appeal No.22 30 August 2018 at [17]

²⁵ See Affidavit of Dr Shawn Mark Ross Stanley deposed 17 June 2025

15. Rule AHRR 188A(1)(k) is based on total cobalt concentration and does not have separate thresholds for the various inorganic and organic forms of cobalt that could be present in an animal sample.

16. Major concludes *1. The combination of test results in CROSSED LEGS is arithmetically and biologically highly unlikely* but does not provide any evidence that there is an issue with the arithmetic used to determine the cobalt concentration through Inductively Coupled Plasma Mass Spectrometry (ICPMS).

17. Major's second conclusion that *There is no possibility that this horse was subjected to "cobalt doping", or that its performance was in any way affected by cobalt* is unsupported by any statistical information in his report to prove that it is a zero-probability event.

18. The third conclusion that *Varying urine concentrations pre- and post-race would undoubtedly go some way to explaining the anomalous urine cobalt concentrations reported* is contradictory because finding a decrease in cobalt concentration, in a post-race sample collected after the pre-race sample, is not anomalous. It is expected.

19. Major's last conclusion is that *Vitamin B12 will yield a "false positive" for cobalt salts (notably cobalt chloride) – the target of testing*. The standard definition of a "false positive" is when, for example, the "true" concentration of cobalt is <100µg/l, but the method incorrectly calculates a result that is >100µg/l. The National Association of Testing Authorities (NATA) has accredited the ICPMS method used by the RSC as a fit-for-purpose way to measure the total cobalt concentration in urine in accordance with AHRR 188(1)(k).

20. The administration of products containing cyanocobalamin, a synthetic form of vitamin B12, will exceed the cobalt threshold of 100µg/l when the urinary concentration of this substance is at, or above, a concentration of 2.3 mg/l (milligram=1,000 x microgram). This is a "positive" because it exceeds the cobalt threshold stated in the Rules.

Explanation proffered by Applicant

21. I have been informed by QRIC that the Applicant has considered the administration of multiple formulations that contain Vitamin B12/Cyanocobalamin to be the cause of the elevated cobalt readings.

22. The documents provided to me by QRIC included photographs of three pages with dates and lists of various products. This is of limited use in assessing the Applicant's explanation because:

- a. In some cases, it is missing vital information on:
 - i. the amount of each product administered is not noted for every entry.
 - ii. The route of administration, which not indicated for any of the entries.
- b. Furthermore, it is unclear whether the list compiled under each date was the number of products given to a single horse or a summary of all treatments administered in the stable yard that day.

23. The products Tripart, Foliphos, Racing Syrup, Volcate paste and "B Complex" (assuming that is Vitamin B Complex produced by Ceva) all contain cobalt and thus administration of one or all the products has the potential to elevate the urine concentration above the threshold for a few hours, with return to base levels within 8 hours.

24. Australian Harness Racing Rules state:

- a. AHRR 193(3) A person shall not administer or allow or cause to be administered any medication to a horse on race day prior to such horse running in a race.
- b. AHRR 193(7) For the purposes of this rule, medication means any treatment with drugs or other substances.

25. If any of the commercial cobalt containing products, listed above, was used singly or a combination of with other products in accordance with the "one clear day" rule, it is improbable that the cobalt threshold would have been exceeded in the three samples.

Discussion

- [29] The Applicant in presenting her case places reliance on a Statement issued by Harness Racing New South Wales under the Australian Harness Racing logo dated 17 March 2025 which recognises that certain products apparently contain injectable Vitamin B12 do not contain cobalt salts, and their use is not prohibited. The Applicant's argument is that this document indicates that the Regulatory Authority is concerned only with cobalt salts, not with other forms of cobalt that may be present, for example, in vitamin B12. The difficulty with this argument is that the Statement relied on by the Applicant is plainly directed expressly to compliance with AHR 194B and AHR 196E. Those Rules are expressly concerned, respectively, with the offences of possession and administration, or attempted administration, of cobalt salts. The Notice was not directed to the presentation offence, an offence which makes no reference to cobalt salts, only to cobalt concentration levels.
- [30] As indicated above AHR 190(1) is an offence of absolute liability, not dependent upon any issue of intention, which requires that a horse be presented to race "free of prohibited substances". Cobalt, when present in urine at a concentration above the regulatory level is such a substance. Unlike the offences provided for in AHR194B and 196E, AHR190, read with AHR188A(1)(k), does not distinguish between cobalt salts or other forms of cobalt- it is concerned only with the total concentration in the sample.
- [31] This interpretation is confirmed by reference to the Industry Notice²⁶ issued in 2016 when the regulatory threshold for the presence of cobalt for the purposes of AHR 188A(1)(k) was reduced from 200 micrograms per litre in urine to 100 micrograms per litre. The Notice reminded trainers that cobalt is present in the structure of vitamin B12 (cobalamin) and expressly advised trainers that the administration of certain vitamin supplements close to racing may result in a cobalt level in urine in excess of the threshold and that the administration of such products close to racing should be avoided. Trainers were advised to avoid the simultaneous use of multiple supplements containing cobalt and/or vitamin B12 and to not administer nutritional supplements in excess of the recommended dosage.
- [32] In his evidence before the Panel Dr Major observed that the subject of cobalt regulation "has always been cobalt salts and notably cobalt chloride" The cobalt in vitamin B12 (cobalamin) and cobalt salts are different chemical substances, and Dr Major seems of the view that it is only the level of cobalt salts that matters for the purpose of the Rules. This may be so for the possession and administration offences, but the relevant presentation offence refers only to the concentration of cobalt, not to cobalt salts alone. Had it been the Regulators intention to so restrict the Rule and limit its application to cobalt

²⁶ See Exhibit B

salts as with AHR 194B or 196E, then it would have been a simple matter to have done do. As Dr Stanley said in his evidence- *“The Rule states that (the reading) cannot be above 100 for cobalt as a complete total. It’s made up of cobalt in vitamin B12, or the various salts in it, in addition to the cobalt chloride that Dr Major mentioned. There are quite a number of other preparations out there, so the Rule doesn’t actually differentiate, it doesn’t actually instruct me when I read it that there’s any need to separate it...I interpret the Rule simply in that they want me to measure for the total concentration of cobalt that’s present, and I do it in a way that’s valid, that gives a valid result”*

[33] We consider that the evidence given by Dr Stanley is to be preferred to that given by Dr Major. Dr Stanley in our view displayed a greater familiarity and understanding of the Rule than did Dr Major. We have set out Dr Stanley’s evidence in some detail above. He addresses the several criticisms made by Dr Major and identifies the reasons for the existence of the threshold level as being based upon a wide variety of factors including common feeding patterns. He correctly observes that AHR 188(1)(k) is based on total cobalt concentration and does not contain separate thresholds for inorganic and organic forms of cobalt. His evidence that of all samples tested by the Science Centre in the past twelve months, only 0.3% exceeded a cobalt concentration of 50 micrograms per litre, meaning that 99.7% are less than one half the threshold, is telling given the readings recorded in this case. Dr Stanley considers it “improbable” that the readings recorded in the subject samples are explicable in the manner suggested by the Applicant if the “one clear day” rule is applied.

[34] Reference should be made to charge 2, where Dr Major considered the test results to be “highly unlikely” Dr Stanley rejects this conclusion, saying that the decrease in cobalt concentrations post-race is not anomalous, but is to be expected. In his oral evidence Dr Stanley was asked whether such a large variance was to be expected. He replied- *“Oh, absolutely...when you give extremely large doses you overwhelm the system. It becomes completely saturated and for a brief period of time you see the enormous concentration appearing in the urine because it is not capable of being recaptured because the kidney is not able to do that at that stage,,,Given there’s a couple of hours in between (when) the animal arrives on course , it’s sampled, the level is high and then a couple of hours there its low. Not only is this a biologic sense, but also, I’ve actually seen this a few times...To me this seems to be completely logical”*

[35] We accept this explanation from Dr Stanley founded as it is in practical knowledge and experience.

[36] The Applicant has also placed reliance on a number of articles or extracts from other articles that she has placed before the panel. One such article, of which Dr Major is a co-author is entitled ‘Determination of Vitamin B₁₂ in Equine Urine by Liquid Chromatography’²⁷. The article notes that it has been postulated that cobalt may enhance athletic performance by indirectly upregulating the synthesis of erythropoietin (EPO). It concludes that, as only the inorganic form of cobalt has been shown to influence EPO production, the measurement of total urinary cobalt concentration is potentially inadequate when screening for cobalt misuse. Presumptive positive findings could be investigated further to eliminate vitamin B12 supplements as a cause. There has been no real attempt to relate the conclusions expressed to the circumstances of this particular case. At best, the article suggests that the measurement of total urinary cobalt “is potentially” inadequate when screening for cobalt misuse. That may be a finding of interest to the Industry Regulators, but it does not bear upon the interpretation of AHR 188A(1)(k).

²⁷ Applicants Index of Documents. Document #5 Determination of Vitamin B12 in Equine Urine by Liquid Chromatography – Journal of Trace Elements in Medicine and Biology 2010.

[37] In the view of the Panel the Applicant has failed to discharge the responsibility of proof that is imposed upon her by AHR 191(7), and the conclusive evidentiary worth of the certificates has not been displaced. As a consequence, the Panel is satisfied that the charges are established and the findings of guilt in respect of each charge is confirmed.

Penalty

[38] The penalty guidelines indicate the importance of deterrence, both general and specific, to the imposition of penalty under the Rules. The guidelines indicate that the imposition of penalty includes a balance between the severity of the offence, the need for deterrence, and a consideration of any mitigating factors. Factors of relevance may include the circumstances of the offence, the degree of culpability, the entry of an early guilty plea, the frequency of participation in the sport, the offence record of the offender and, where appropriate, the status of the particular race.

[39] It is submitted by the Applicant that the source of the elevated cobalt readings here was a result of the administration of various products containing vitamin B12. Therefore, it follows that the elevated cobalt readings could have been prevented. There is a positive onus, as the Respondent submits, on trainers to take all necessary precautions to avoid the risk of horses presented to race from exceeding regulatory thresholds through the administration of everyday products. This requires that trainers implement husbandry practices in their training facilities to avoid such risks.

[40] Some attempt has been made in the cases to grade the personal or moral blameworthiness of a person accused of a breach of the presentation Rule. In *McDonagh v Harness Racing Victoria*²⁸ Judge Williams, in delivering the Tribunal's decision adopted the view previously expressed in New South Wales that culpability in presentation cases will generally, and he emphasised the word generally, fall into one of three categories. The first category is that in which, whether through investigation, admission or other direct evidence, it is possible to establish a positive culpability on the part of the trainer or other person involved. This may be constituted by deliberate wrongdoing, or it may be through negligence or carelessness. The second and most commonly occurring category, involves those cases in which the relevant tribunal is left with no real explanation as to how the horse acquired the prohibited substance. An explanation may be rejected, or there may simply be no provable explanation available - the administration may have occurred accidentally or mistakenly. The third category of case is that in which the trainer or other relevant person is able to provide an explanation which the tribunal accepts, and which demonstrates no personal culpability at all on the trainer's part²⁹.

[41] While categorization of presentation offences does provide some guidance, the distinction between categories is not always a matter of clear determination, and there may be some circumstances which sit between the second and third categories in particular. In the circumstances of this case the only conclusion which the Panel is able to reach is that the applicant was careless and failed to take reasonable care in her administration of various products containing vitamin B12 to Crossed Legs.

[42] She has taken responsibility for the administration of those various products containing B12 to the horse and therefore must accept responsibility in that regard. As noted above³⁰, this issue involving

²⁸ *McDonagh v Harness Racing Victoria* [2008] VRAT 6 24 June 2008

²⁹ This tripartite distinction was accepted and applied by Judge Garde in *Kavanagh v Racing Victoria Limited (No 2)* [2018] VCAT 291. See also *Wallace v Queensland Racing* 2007 QDC 168 at [69]

³⁰ See Para [31]

cobalt and the presentation Rule has previously been the subject of Industry warnings, and the Applicant does have prior offences for breaches of that Rule involving cobalt³¹In *Doughty v Racing Queensland Limited*³² the Queensland Civil and Administrative Tribunal noted as follows:

It is the function of the trainer to ensure that the horse does not present with a prohibited substance and the function of (the rule) is to penalise a trainer when, through act or omission, this has occurred. If Mrs Doughty runs a stable where contamination is allowed to occur, she cannot be said to be without blame...

[43] It is to be noted that in 2017 the Applicant was found guilty of three presentation offences involving cobalt, for which she received a suspension of nine months.

[44] As the Respondent submits, cobalt offences, like all prohibited substance offences, are considered serious. The presence of a prohibited substance in a racehorse always has the effect of bringing racing into disrepute and it is a matter which should attract a penalty of appropriate severity. In *Hooper*³³ Member Olding made reference to the reasoning of Thomas J, sitting in his capacity as President of the Tribunal in *Queensland Racing Integrity Commission v Gilroy*³⁴, a case involving a greyhound trainer convicting a presenting two greyhounds with prohibited levels of a cobalt. He said:

“Thomas J noted that ‘A key consideration is to maintain the integrity of the industry as a whole and to demonstrate to participants in the industry and the public, that behaviour which breaches the rules will not be tolerated.’ This is consistent with the objects of the Act, which include to maintain public confidence in racing, ensure the integrity of all persons involved with racing, and safeguard the welfare of animals involving in racing. Specifically in relation to cobalt, the Appeals Tribunal in Gilroy also endorsed comments in David Crawford v Stewards of Greyhound Racing Victoria in relation to general deterrence that: ‘a message needs to be sent to the trainers that the cobalt threshold must not be breached as it is not satisfactory that performance enhancing substances are used especially those which may impact on the welfare of greyhounds.’”

[45] The schedule of penalties to which the Panel has been referred³⁵ indicates that the penalty imposed on the Applicant here are ones which fall into the appropriate range.

Conclusion

[46] It follows for these reasons that the Panel consider the penalties imposed to be an appropriate and it follows also that, in accordance with section 252AH(1)(a) of the *Racing Integrity Act 2016*, the racing decisions the subject of this Application is confirmed.

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³¹ See Para [43] below

³² *Doughty v Racing Queensland Limited* [2012] QCAT 678

³³ *Hooper v Queensland Racing Integrity Commission* [2017] QCAT 236 at [92]

³⁴ *Queensland Racing Integrity Commission v Gilroy* [2016] QCATA 146

³⁵ Respondent's Index of Documents. Document #58 Harness Racing Register