



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 0038-18
Applicant's Name:	Clinton Garland
PART 2: Decision History	
Original Decision:	Breach of Rule 178 of the Australian Rules of Racing
Original Decision Makers:	L Collins, D Aurisch
Date of Original Decision:	19 April 2018
Internal Review Decision:	Original decision confirmed - Eighteen (18) month disqualification
Internal Adjudicator:	Mr Kane Ashby, Queensland Racing Integrity Commission
Date of Internal Review Decision:	22 May 2018
PART 3: Summary of Internal Review Application	
<p>The Applicant, Mr Clinton Garland, trainer of BONINO which presented to race at the Rockhampton Jockey Club on 10 June 2017, was charged under Australian Rule of Racing 178 and was subsequently found guilty of the charge at a stewards' inquiry concluded on 19 April 2018 when a post-race urine sample taken from BONINO 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 charge being that the Applicant, as the trainer of BONINO, did present that horse to race in the Benchmark 55 Handicap over 1050 metres at the Rockhampton Jockey Club on 10 June 2017 when a post-race urine sample taken from BONINO was found, upon analysis, to contain a prohibited substance, namely Cobalt above the permissible threshold as prescribed under the Australian Rules of Racing.</p> <p>The stewards subsequently found the Applicant guilty of the charge.</p> <p>When considering penalty, the stewards took into account the following:</p> <ul style="list-style-type: none">(i) the Applicant's plea of not guilty to the charge;	



- (ii) the personal particulars of the Applicant;
- (iii) that the Applicant did not provide any explanation or reason as to how Cobalt came to be present in the sample taken from BONINO;
- (iv) the level of cobalt in the sample;
- (v) that the Applicant has been a trainer for approximately 16 years;
- (vi) that the Applicant would usually have 15 horses in training;
- (vii) that the Applicant employs track work riders and stable staff as required;
- (viii) the effect a period of disqualification would have on the Applicant and the ability of the Applicant to return to the racing industry;
- (ix) the detrimental effect that breaches of the Australian Rules of Racing have on the integrity of the racing industry;
- (x) that Cobalt is a significant welfare issue for racehorses;
- (xi) that the present charge is the Applicant's sixth (6th) offence pursuant to Australian Rule of Racing 178;
- (xii) Queensland penalty precedents for the presentation of a horse with Cobalt; and
- (xiii) New South Wales Appeal Panel penalty precedents for the presentation of a horse with Cobalt.

Stewards subsequently disqualified the Applicant's licence for a period of eighteen (18) months to commence on 26 April 2018.

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

"1. The decision of Stewards to find me guilty of the charge under AR178 namely that on Saturday the 10th of June 2017, I brought a horse to the Callaghan Park Racecourse and having engaged in a race, namely the Benchmark 55 Handicap over 1050 metres, and a post-race urine sample taken from BON1NO was found upon analysis to contain Cobalt above the permissible threshold was unreasonable.

2. Attached hereto and marked "CJG-1" is a copy of the submissions that were prepared and lodged on my behalf on 6 December 2017 and 12 January 2018 in relation to the charge of which I adopt and rely upon and on the basis that I do not believe that I should be found guilty of the charge.

3. Attached hereto and marked "CJG-2" is a copy of the submissions that were made on my behalf on 26 March 2018 in relation to penalty.

4. The Stewards have imposed a penalty upon me which is excessive having regard to all of the circumstances.

5. The penalty of 18 months disqualification is not in line with any reasonable penalty regime and absolutely fails to take into account my circumstances and the fact that this is an occupation that I have pursued for many years and seems to have no regard whatsoever to other comparable penalties.



6. *The penalty is such that the Stewards have stated that this is my 6th offence under AR178. It should be noted that on all other occasions I have received a fine even though in March 2015 I was initially given a disqualification which was reduced to \$3,000 on appeal by the Racing Disciplinary Board.*

7. *As appears in the Judgment which is attached hereto and marked "CJG-3", the Stewards appear to have placed heavy reliance on my previous history however, they have failed to take into account that I have not previously been disqualified and to impose a disqualification of 18 months is excessive as stated."*

The outcome sought by the Applicant is that the conviction be overturned as the Applicant ought to have been found not guilty on all the evidence or, in the event that the conviction is not overturned, the penalty that is imposed is excessive and ought to be reduced to one of a suspension as identified in the submissions submitted on 12 January 2018.

PART 4: Reasons for Internal Review Decision

The Applicant, Mr Clinton Garland, was the trainer of BONINO when he presented the horse to race at the Rockhampton Jockey Club on 10 June 2017. A post-race urine sample collected from BONINO was subsequently analysed by the Racing Science Centre (RSC) and Racing Analytical Services Limited (RASL) which reported the 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 (mcg/L). The aforementioned Accredited Racing Laboratories each reported Cobalt in excess of 200mcg/L respectively.¹ 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.

BONINO was placed first in the aforementioned race. The betting data on the race noted BONINO started at \$26.00.

During the stewards' inquiry conducted on 21 August 2017, the Applicant was unable to provide any explanation for the analyst's findings. The Applicant stated *"I have no idea. No one in their right mind would use cobalt."* The chairman questioned *"Cobalt itself or any cobalt containing substances?"* to which the Applicant replied *"No, I don't use cobalt."* The Chairman further questioned *"Not cobalt itself, but I mean are there substances that you use that contain cobalt - the B12s and Vams and those types of things"* to which the Applicant replied *"Yes"*. The chairman went on *"So just ordinary preparations you would use on the horses?"* to which the Applicant replied *"Just normal day-to-day that I have been using for years, yes. All within the rules."*²

During the stewards' inquiry, the Applicant's legal representative submitted that the Sample Security Document For Taking A Sample For Analysis (Protocol A) came from the Racing Animal Welfare Integrity Board which was abolished under Section 210 of the Racing Act 2002 (current as at 2 July 2017). The Applicant's legal representative stated *"The real issue then is that that protocol and all those protocols - for Protocol A, Protocol B - they have never been published as a policy of RQ, and it seems to me under the Act that the policies need to be published so that people can understand the policy or the procedures that they are about to go through. Secondly, that they have the ability to know why certain things are done."*³

¹ Exhibit 5 and 13

² Transcript of Stewards' Inquiry dated 21 August 2017, page 27 and 28

³ Transcript of Stewards' Inquiry dated 21 August 2017, page 3 and 4



The document the Applicant's legal representative was referring to was the Standard Operating Procedure (SOP) for the Collection of Sample and Things that was effective as of 1 June 2012.

The Applicant's legal representative referred to the following sections of the Racing Act:

"102 (1) A control body may make a policy for a code of racing because -

(a) the policy is required under this Act or a Ministerial direction; or

(b) the control body believes it is good management to have the policy.

(2) The control body must make a policy for a licensing scheme for its code of racing.

(3) A regulation may prescribe that a control body must make a policy for a particular matter and the provisions to be included in the policy for the matter.

...

104 (1) A control body must ensure that its policies are publicly available.

(2) Without limiting subsection (1), for each of its policies, the control body must -

(a) give a copy of the policy to the chief executive within 14 days after it makes the policy; and

(b) make the policy available for inspection, free of charge, at its business address during its ordinary office hours and on its website; and

(c) give a copy of the policy to a person if the person asks for a copy.

(3) If a control body charges for copies of its policies, the control body is not required under subsection (2)(c) to give a person a copy of the policy without charging the person."

The reviewer notes the SOP for the Collection of Sample and Things was provided to the Applicant and his legal representative during the stewards' inquiry.

The stewards' inquiry was subsequently adjourned to enable stewards to seek legal advice on the submissions put forward by the Applicant's legal representative in relation to what is a policy or procedure, who is the control body and whether in fact such procedure or policy is required to be published.

The Applicant's legal representative subsequently provided written correspondence to QRIC's Chief Stipendiary Steward on 23 August 2017 requesting the following:

- 1. On what date it (the SOP) was approved?*
- 2. Are there minutes showing its approval?*
- 3. If so, please provide us with a copy of the minutes in relation to its approval.*
- 4. Could you please advise whether this procedure has been published anywhere as it is not on the Racing Queensland website and not on QRIC's website.*

The correspondence stated *"It is obviously an extremely important document as Section 2 refers to it as follows:*



“The collection of samples and things for analysis is a cornerstone of the wider responsibility to ensure public confidence in standards of integrity and animal welfare in the racing industry. Accordingly, in view of the seriousness of the above paragraph, we inquire as to how those procedures have been made public.”⁴

QRIC responded to the Applicant’s legal representative’s correspondence of 23 August 2017 stating *“The Commission’s Standard Operating Procedure was provided to you in error and is an internal procedure of the Commission. The Standard Operating Procedure is intended for internal use only by the Commission and is not to be distributed externally or reproduced for external distribution in any form without express written permission. Further, as the Standard Operating Procedure is an internal procedure it is not required to be published.”⁵*

The Applicant’s legal representative responded to QRIC’s correspondence of 14 November 2017 stating *“With respect, we disagree with the position adopted by QRIC in relation to the Standard Operating Procedure.”* The Applicant’s legal representative referred to several matters including, but not limited to, the following:

1. *The Racing Queensland website had published the following:*

“Information previously related to Stewarding and Integrity such as Vet Guidelines, the Racing Disciplinary Board, banned substances, stewards reports, first level appeals, horse movement, sample collection, betting, and approved racing gear, etc, can be found on the QRIC website.”

Clearly a review of QRIC website does not make those policies available to the public but more importantly to Licensees. Licensees must have complete access to these procedures so that they can be clear about these procedures.

The Applicant’s legal representative referred to Sections 100 to 104 of the Act, particularly noting that the control body must ensure that its policies are publicly available. The Applicant’s legal representative stated *“To suggest that the Standard Operating Procedures are intended for internal use only shows quite clearly that the Policies and Procedures and in particular the Standard Operating Procedures are being kept secretive by QRIC. That is a complete contradiction of the Act.”* The Applicant’s legal representative referred to sections of the SOP in particular stating *“We hope that our reference to the above document makes it abundantly clear that the Policy and Procedures should be available and freely available to those who are subjected to the procedure and it should be available on the website and freely available to anyone who asks for copies.”⁶*

QRIC responded to the Applicant’s legal representative’s correspondence of 6 December 2017 stating *“I note in your correspondence that you are relying upon the Racing Act (Qld), in particular Section 100 to Section 104, whereby you assert certain policies and procedures should be made publicly available. I have considered your submissions and I am of the opinion that your interpretation of the Racing Act 2002 (Qld) and its application to the Commissions internal policies and procedures is wrong at law. The Commission is not the control body as referred to in the Racing Act and therefore these sections have no application to the Commission.”⁷*

⁴ Letter from Butler McDermott Lawyers to QRIC dated 23 August 2017

⁵ Email from QRIC to Butler McDermott Lawyers dated 14 November 2017

⁶ Letter from Butler McDermott Lawyers to QRIC dated 6 December 2017

⁷ Email from QRIC to Butler McDermott Lawyers dated 7 December 2017



The reviewer accepts the evidence of QRIC. Notwithstanding, the reviewer finds there is no evidence to support the sample collection process was not in total compliance with the preferred process outlined within the SOP. The reviewer accepts the Applicant's employee Ms Renee Welburn signed the 'Sample Security Document For Taking A Sample For Analysis' acknowledging she witnessed the whole process in collecting BONINO post-race urine sample (419807), placing it in one or more containers and sealing the containers at the Rockhampton Jockey Club on 10 June 2017. There is no evidence that Ms Welburn or the Applicant had any concerns at the relevant time with the collection procedures.

In *Currie v QRIC*⁸ it was noted Queensland Racing's 'Collection of Sample and Things' SOP version 4.1 was superseded on 1 July 2016. This version was replaced with the 'Collection of Sample and Things' SOP Version 1. The current version, in part, states "*The purpose of this procedure is to describe the preferred process for collection of samples from registered/licensed racing animals and for the taking of other things for analysis.*" There is no evidence before the reviewer to determine that the collection process was not in total compliance with the preferred process outlined within the SOP.

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

The Applicant submitted "*He does not feed or use Cobalt. He understands that it can be in some of the feed supplements. He does not use B12 or any of those supplements at least three days out from starting his horses and since this positive has emerged he does not use any supplements that contain Cobalt whatsoever.*"⁹

Professor Paul Mills submitted a report in a recent Cobalt Internal Review Decision in relation to Cobalt stating "*It is unlikely that vitamin B12 contributed substantially to the cobalt levels reported since Cyanocobalamin (vitamin B12) contains negligible cobalt (0.00434 mg cobalt per mg of cyanocobalamin) and can practically be ignored for significantly contributing to cobalt concentrations in the urine. What cannot be over-stated is that horses do not require additional cobalt. There is sufficient cobalt in the feed and from most pastures, so there is no medical or nutritional requirements for additional cobalt in the healthy horse. It can therefore only be assumed that additional cobalt was administered to affect performance. Brynn Hibbert's final report from Australian horses did statistical analysis and found probability of a regular horse exceeding 200 pg/L - 1 in 8 million, while exceeding 100 pg/L is - 1 in 100 000. Importantly, on-going surveillance by the RSC from 6751 equine urine samples between 26th June 2015 and 8th March 2017 showed that the mean (average) concentration of cobalt in these samples was 9.2 pg/L. Note that this included pre-race and post-race samples. To summarise, we have a LOT of horses that were tested on raceday, both pre- and post-race, with average urinary cobalt concentrations of < 10 pg/L, so horses exceeding the current threshold could only have done so if cobalt was administered close to or on raceday.*"¹⁰

The reviewer notes in previous reviews decisions relating to Cobalt the RSC 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.

⁸ Internal Review Decision 0056-16 and Internal Review Decision 0003-17

⁹ Application for an Internal Review dated 20 April 2018

¹⁰ Internal Review Decision 0026-18



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 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 Applicant's legal representative submitted "*So far as the documents are concerned there is no evidence of the consignment said to be provided to TNT on 12 June, 2017. There is no evidence of what occurred with the sample between 12 June, 2017 at 12.35pm and 13 June, 2017 at 10:30am when it is said to have been received by Racing Science Centre. Evidence ought to be produced as to the method of transport and how the sample was kept and/or dealt with by any consignment by TNT. The same comment applies as to how it was stored while it was allegedly in the possession of TNT, however, to date there has been no evidence produced in respect of the consignment of how the sample was dealt with.*"¹¹

The reviewer accepts samples are regularly couriered from regional destinations to the RSC by reputable courier companies. Section 6 of the RSC V36 'Record of Sample Custody and Dispatch Protocol A' document clearly demonstrates that all seals were intact and consistent on receipt of the samples from the aforementioned race meeting at the RSC. The RSC V36 document demonstrates a thorough documented process related to the custody of the sample, in particular, Sections 1 to 6 that demonstrates the sample was logged and signed by authorised officers at all relevant times.¹²

¹¹ Application for an Internal Review dated 20 April 2018

¹² Exhibit 3



The reviewer acknowledges Dr Karen Caldwell, Acting Manager of Veterinary Services RSC, noted in previous internal review decisions that an intact sample has three (3) layers of tamper-evident security. This consists of a tamper-evident security seal over the top of the bottles, a tamper-evident security seal across the top of the three (3) pocket security pouch containing the samples and the Blue Zipper Seal Tag (BZST). The reviewer acknowledges the Applicants sample is the only sample from the subject meeting not free of prohibited substances.

The reviewer acknowledges the samples' 'chain of custody' is a documented process that is accounted for from the time of sample collection through to the Certificate of Analysis being issued by the aforementioned Official Accredited Racing Laboratories. There is no evidence before the reviewer to determine the integrity of the sample was compromised to any extent that would adversely affect the integrity or analysis of the sample.

BONINO sample history demonstrates three previous samples with all three samples being clear of any 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) states:

"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 (I) states:

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

The reviewer finds the Applicant provided no plausible explanation for the analysts' findings. The Applicant submitted *"He does not feed or use Cobalt. He understands that it can be in some of the feed supplements. He does not use B12 or any of those supplements at least three days out from starting his horses and since this positive has emerged he does not use any supplements that contain Cobalt whatsoever."* The reviewer finds, considering the level of Cobalt detected was in excess of 200mcg/L and based on the scientific and veterinary evidence, it would be reasonable to conclude that such explanation provided was not the sole reason for the analysts' findings. The reviewer therefore accepts the Applicant presented BONINO for racing when a prohibited substance was present and accordingly finds the charge proven.

The Applicant has been a licensed trainer for approximately 16 years. The Applicants disciplinary history during such period demonstrates five (5) prior offences pursuant to Rule 178, the most recent in 2015 whereby the Applicant received a six (6) month disqualification which was subsequently reduced on appeal by the Racing Appeal and Disciplinary Board to a \$3,000.00 penalty.

The Applicant's legal representative submitted *"In addition to our client's personal circumstances which are also known to Stewards it is submitted that so far as penalty is concerned that Stewards could properly give consideration to a suspension of our clients licence as against a disqualification."* The Applicant's legal representative referred to previous Cobalt decisions in Angela Forster, Peter Moody, Mark Kavanagh and Danny O'Brien.



The reviewer acknowledges the aforementioned decisions and further accepts the importance that each case is treated on its merits and set of circumstances. The reviewer finds there are significant differences in the aforementioned matters and that of the subject review.

The reviewer finds the Applicant provided no plausible explanation for the analyst's findings and of particular importance is the Applicant's prior disciplinary history noting this is his sixth (6th) offence pursuant to Rule 178.

The Cobalt precedents for a 'presentation' offence 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.

In weighing up the matter of penalty, consideration was provided to the Applicant's submissions, the level of Cobalt detected being in excess of 200mcg/L, the Applicant's personal circumstances, not-guilty plea, totality of penalty precedents and in particular the Applicant's disciplinary history which demonstrates this is the Applicant's sixth (6th) offence pursuant to Rule 178. The reviewer, in considering the aforementioned factors, finds it would be inappropriate and inconsistent with previous Cobalt related penalties to replace the penalty with a period of suspension as submitted by the Applicant's legal representative. 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 and, considering all factors relevant to penalty, in particular the Applicant's prior disciplinary history, the reviewer is not satisfied a reduction in penalty is proven in the circumstances and therefore 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

Registry Location: Level 9, 259 Queen Street, BRISBANE QLD 4001
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