QUEENSLAND RACING INTEGRITY COMMISSION

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 0082-18
Applicant's Name:	Gareth Horner
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 - Nine (9) month disqualification
Internal Adjudicator:	Mr Kane Ashby, Queensland Racing Integrity Commission
Date of Internal Review Decision:	13 September 2018

PART 3: Summary of Internal Review Application

The Applicant, Mr Gareth Horner, trainer of BACKTOSPEC which presented to race in Race 4 at the Atherton Turf Club on 2 June 2018, was charged under Australian Rule of Racing 178 and was subsequently found guilty of the charge at a stewards' inquiry conducted on 17 August 2018 when a urine sample taken from BACKTOSPEC 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).

Australian Rule of Racing 178 states:

"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."

The specifics of the charge being that the Applicant, as the trainer of BACKTOSPEC, did present that horse to race in Race 4 at the Atherton Turf Club on 2 June 2018 when a urine sample taken from BACKTOSPEC 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.

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 effective immediately.

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

"I believe that the ruling of 9 months suspension is too harsh. The reading of Cobalt was 145micrograms per litre. I understand that this is over the 100 micrograms per litre limit, however as this was NOT intentional I believe that a fine is more appropriate rather than affecting my livelihood for 9 months. I have never had any offences prior to this, I have had all my horses tested to ensure nothing like this will occur again.

The horse in question (Backtospec) was given 5ml of B complex IV injection on the mornings of 29/5, 30/5 and 31/5 and also a 5ml IV injection Hemoplex was given on the morning of 31/5. The horse raced on 02/06/18 at 3:30pm. My vet has advised that the combination of B complex, Hemoplex and new feed (which is higher in B vitamins) as well as possible dehydration (as shown on his last blood test) would have caused the elevated Cobalt reading. All injections and feed are purchased from TGT Mareeba. The reason the horse was given B complex and Hemoplex was that the horse was extremely flat and if no improvement was seen then I was to scratch him from the race on 02/06/18. This horse was swabbed a couple of months prior after winning at Atherton Turf Club, all tests were clear.

The reason I changed feed was due to moving to Mareeba from Tolga as conditions are hotter I was finding that 1 in 3 bags of Formula 3 were going mouldy. I complained to TGT and they advised me to change to Mustar as this is a fresh cut mix, I have not had any further problems since. TGT advised that a lot of the premix feed goes mouldy due to the heat.

I cannot express how ashamed I am of this reading and assure you that whenever a horse is given a supplement such as B complex, the horse will have its blood taken before raceday. I can assure you that this result was not intentional as my record will show I have never had any ruling against me.

My vet Ethan from Kuranda/Mareeba Vet clinic is providing me a written letter stating the already mentioned causes for the Cobalt reading. I will forward this to you as soon as I receive this from him.

A large local trainer has been found guilty 3x already this year for various offences yet the trainer is issued a fine and let to continue to train. Also a larger stable in Rockhampton was found guilty of Cobalt and received a fine.

I am seeking a fine to be issued not a suspension. As this is my first offence and also a low reading. I understand and accept even though no illegal substance was given to the horse that the over 100 micrograms per litre Cobalt rule has been breached. I ask to take into consideration the level of the reading and the fact that this was due to an honest mistake. A fine would allow me to continue providing my family an income, where a suspension will affect mine and my families livelihood."

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

PART 4: Reasons for Internal Review Decision

The Applicant, Mr Gareth Horner, was the trainer of BACKTOSPEC which presented to race at Atherton Turf Club on 2 June 2018. A post-race urine sample collected from BACKTOSPEC was subsequently analysed by the Racing Science Centre and Racing Analytical Services Limited 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.

The aforementioned NATA Accredited Racing Laboratories reported Cobalt at 147mcg/L and 145mcg/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.

BACKTOSPEC was placed first in the aforementioned race. The betting data on the race noted BACKTOSPEC started at $13.00.

During the stewards' inquiry conducted on 17 August 2018, the Applicant in evidence stated *"I apologise to youse all for the inconvenience of having to deal with this matter. And I can swear on the Holy Bible that none of this was intentional. I got stressed out when I first saw it because the racing for me and my family, it's a bit of fun. I'm an equine dentist, I'm out to help horses, not drug them up and, you know, and do the wrong thing. I'm not a gambler. Yeah. I spoke to the vet and that horse has won before, a couple of starts before that last one, and he got swabbed and obviously that was all sweet, as all - and I spoke to the vet in a panic, Ethan Maloney, and he said to me, "Righto", he said, "Well, has there been a change of feed", which there had been. Because since I moved to Mareeba, I've always fed my horses Formula 3. But then I started getting it from TGT in Mareeba and I was getting mouldy bags. So I was advised, because of the heat in Mareeba, when bags - and, um, they advised me, look - we had just started making up our own feed - and, um, they talked me through it and all that and it looked beautiful, just a mix for a hard-working horse, sort of thing, you know. And at the same time, too, it was $10 a bag cheaper and I was thinking, oh, well, all right, that looks all good - so I got onto that."*[2]

The Applicant stated *"And also as well before the horse ran, he was off-colour. So I treated him with B complex, which was bought again from TGT, which is a natural vitamin for the horse, as you would know."* The chairman of the inquiry questioned *"So when did you treat him with the B complex?"* to which the Applicant replied *"I've got it all in a calendar - um, written in my medical book. Which I've rarely used because I very rarely do that sort of stuff. And he was done Monday, Tuesday, Wednesday leading into the race. The race was on the Saturday, so I was well within my time, you know."* The chairman then questioned *"And what were the dosage rates?"* to which the Applicant replied *"5 ml. So, Monday, Tuesday, Wednesday he had 5 ml. Plus then on the Wednesday he had 10 ml of Hemoplex, which is again just a natural multivitamin. So that was all that horse had. Plus the feed. And then when that came back, then I spoke to the vet and - because I said to the vet, "As well I've got a few runners - oh, I've got next week" - I spoke to him, what, about a couple of weeks ago. I said, "I need you to come and test my horses, because obviously something is not right." So I worked right through what I feed and all that and I sent him - I got the sheet from TGT with everything it's got in it."* The Applicant added *"And you can speak to him about this. He'll confirm all of this what I say. He read through that and he did actually say that that specific feed is a feed called Muster. It does have a higher cobalt in it than most other feeds, which I was - yeah."* The chairman of the inquiry further questioned *"So how was he able to identify that?"* to which the Applicant replied *"From the - ingredients, the piece of paper they give me with everything that I got from the TGT that they put in it. And then he took bloods, and he done it on all my runners for next week, and he actually said that all three of them were dehydrated, but mainly Backtospec."*[3]

[1] Exhibit 3 and 7
[2] Transcript of Stewards' Inquiry dated 17 August 2018, page 6 and 7
[3] Transcript of Stewards' Inquiry dated 17 August 2018, page 7 and 8

The Applicant stated *"But, yeah, he just said it's - it's up to youse to decide what goes on now. He said he can't - he said, yeah, the dehydration's going to raise them up, the change of feed, he said, and the B complex, he said "You did give that at the" - because I was advised to give that from my father, who trains in Melbourne. I told him the horse has been off-colour. Because he was working beautifully, I had nominated him for Atherton, working beautiful but then just went a bit off-colour and I thought, "Oh", and my old man said, "Give them 5 ml of B complex in your timeframe and that should lift him up. And if that doesn't lift him up, then you're best off scratching - which I would have done, anyway. So, righto, okay, I'll give that a go. And, yeah, perfect. Yeah, it lifted his game right up."* The chairman of the inquiry questioned *"And nothing on race day?"* to which the Applicant replied *"No. Hand on the heart."*[4] The Applicant added *"Now, one thing I did forget to tell you, since I've got those results and I spoke to the vet and he told me about the Muster being quite high in cobalt, blahdy, blahdy, blah, I then got onto Workhorse. But mixed it with the Muster. Now, Workhorse and Muster are pretty much the same feed. But TGT make them themselves and just add a few different things in themselves. So I've just gone 50-50 with it. Because I don't like mixing pre-mixes, but these are pretty much the same. And, yeah, I've had bloods done since by the vet and the vet says he can't - the vet said the only thing he can't read is the cobalt level, but everything else is perfect."*[5]

The inquiry heard all horses in the stable inclusive of BACKTOSPEC received the same feed and supplements regime with the exemption of a change in diet from Formula 3 to Muster pre-mix feed subsequent to the Applicant relocating to Mareeba some months prior to the subject race. The Applicant stated BACKTOSPEC received four scoops of Muster pre-mix feed morning and night.[6] The inquiry heard the Applicant had two other horses in work at the relevant time OUR SINGLE DOUBT and CHASING FELIX (recently retired) which received Muster pre-mix feed. OUR SINGLE DOUBT was pre-race blood tested at Townsville on 19 April 2018 and returned negative results to any prohibited substance.

During the course of the stewards' inquiry, the stewards emailed 'Muster Feed Products' to determine the dosages of each active ingredient contained in the pre-mix feed. Subsequent to the conclusion of the inquiry 'Muster Feed Products' General Manager replied by email stating *"I acknowledge receipt of your email below. Muster Feed is a blend designed for working horses and not for racehorses. The best I can supply you with is the feed analysis label which is attached to all bags when sold. Please find attached. Otherwise if there is a particular element which is the subject of your enquiry, we would be happy to confirm whether our feed contains this element or otherwise. I hope this helps.*[7]

The feed label analysis on the Muster pre-mix feed states:

MUSTER

An excellent muesli diet specifically designed for hard working horses of Nth QLD

Analysis

Natural Crude Protein …….. 15.00%

Crude protein …….. 0.0%

[4] Transcript of Stewards' Inquiry dated 17 August 2018, page 10 and 11
[5] Transcript of Stewards' Inquiry dated 17 August 2018, page 25
[6] Transcript of Stewards' Inquiry dated 17 August 2018, page 9 and 12
[7] Email exchange between Mr Ian Brown QRIC and Mr Sheldon Mulla dated 17 August 2018

Total protein …….. 15.00%

ME Mj/kg …… 1339.3%

Drymatter …… 100%

Fat …… 10.1%

Starch …….. 22.4%

Sugar ……... 10.5%

NDF …….. 18.1%

RECOMMENDED FEEDING RATE: 3 to 4 kg/head/day. This product can be fed with limited grazing but fresh water must be available. If unsure, seek advice from the manufacturer. This product may contain some or all of the following ingredients: cereal grain, vegetable protein meals, vegetable oils, limestone, DCP, salt, vitamins and minerals.

CONDITIONS OF SALE: The use of this product is beyond the control of the manufacturer. Therefore no warranty is given nor shall be implied for its suitability for any purpose. The manufacturer accepts no responsibility for any consequences arising from the abovementioned product.

STORAGE: Keep this product in a cool dry place.

STORE: Store away from chemicals and other contaminents.

This product contains NO RESTRICTED ANIMAL MATERIAL

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

The Applicant submitted '*Urine is the wrong test medium. Cobalt is one of a group of elements classified as "heavy metals". This group includes iron, copper, zinc, arsenic, selenium and lead, among others. Some of these are essential to life, in varying quantities - cobalt being one of them. Characteristic of heavy metals is the tendency to accumulate in a number of body tissues. High levels can lead to signs of toxicity. Cobalt intoxication has been reported in humans and lead poisoning is recognised in many species. When a horse is exposed to a continued low level of cobalt, levels in the blood plasma and numbers of red cells rise. Most of the cobalt in blood is bound to plasma protein, and ultimately is incorporated into the red blood cells, where it remains for the life of the cell – around 120 days. This may account for 90% of the cobalt in blood, and is NOT measured in urine tests. Urine testing simply measures the free ionised cobalt "spilling over" into the urine. Urine testing measures what "was" in the animal" not what "is" in the animal. Indeed, such simple factors as water intake and concentration of the urine can have a profound effect on urine cobalt levels. As a starting point, it is essential to correct measured levels against urine creatinine or specific gravity. A more appropriate test needs to be adopted: a blood test."*[8]

[8] Applicant's additional submissions dated 27 August 2018

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 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, in considering the evidence, prefers the evidence of Professor Mills.

The reviewer acknowledges the evidence in Internal Review Decision 0019-18 in which evidence was provided by Dr Karen Caldwell, Acting Manager of Veterinary Services at the Racing Science Centre, Ms Samantha Nelis, Acting Manager of Analytical Services at the Racing Science Centre and Mr Matthew Tutt, solicitor assisting the Applicant, specifically related to Urine Specific Gravity measurements. Mr Tutt questioned Dr Caldwell stating "*Why is it that the RSC don't employ methods that provide for an accurate reading having regard to USG,"* to which Dr Caldwell replied *"Well, it's not the practice of any racing laboratory."* Mr Tutt questioned *"Now, do you accept that having regard to the USG factor that that might very well provide a more accurate reading, especially in a urine sample, which is what we are talking about today,"* to which Dr Caldwell replied *"Well, that is not a statement that can be answered that simply. I don't accept it in those terms. As you would be aware, the majority of substances regulated in racing are presence of, so concentration amount doesn't come into it. So we're talking about a subset where there is a threshold. And an amount in a volume of urine. The amount in a sample is what is relevant. So all of those thresholds are based on population data, and that population data involves many thousands of samples, as we are all aware, and those variations are taken into account in establishing those thresholds. So to answer your question, no, I don't believe it is necessary to measure urine specific gravity to adequately enforce those rules because of the way in which thresholds are established."* Dr Caldwell further stated "*And what we do know is that equine urine is very different to human urine. It is very different to dog urine. Because of the components it has in it. So what we do know certainly is that any measurement taken by a refractometer or another instrument measuring specific gravity has this other layer of variability as a result of the components of equine urine that doesn't exist when you take a similar measurement in human urine or canine urine and use that as an assessment of hydration status. Yes, it can be extremely misleading. There is no proof that it can deliver an accurate result."* Mr Tutt then questioned *"But do you accept that if a horse is dehydrated - it's a hot day, water withheld and the horse is dehydrated - that if the USG component was taken into account in a reading that that could skew the result downwards?"* to which Dr Caldwell replied *"No one is disputing that concentrated urine is going to marginally increase the concentration of everything in urine, but that doesn't extrapolate to importing human measurements of variation and standardisation to those same readings. That's the point."* Mr Tutt further questioned *"But could not the same scientific theory be used for both mammals," to which* Dr Caldwell replied *"Well, for the reasons we have talked about - about equine urine and the composition of it, it is not a practice you can pick up from interpreting human results and superimpose it on interpreting equine results and expect to have any results of equal validity or equal assistance."*

Ms Nelis added *"There is not really an instrument that has proven to be manufactured for horse urine. There is a whole heap of issues with horse urine that make the - equating it to human urine completely invalid. Carbon, (inaudible) carbonate crystals. There could be proteins. There is a whole range of different things. Nobody knows the effect of those things on the reading, and the instruments aren't - they are proprietary calibrated to some strange thing. It's not something that we can calibrate and control. It is just a reading on an optical instrument. So it is not - and they are designed for human urine with human."* Ms Nelis further stated *"The circumstances that are being put forward as being relevant for this particular sample are circumstances that repeat themselves over and over again in horses that race in Queensland, that travel and run on hot days and have water withheld, and that is the reason for the breadth of the population study that establishes the threshold. That is the very reason for it - is to statistically arrive at a defensible number that takes into account all of those variables, and it has to be based on race day samples; one, because that's the pool that we are ultimately going to apply them to, but, two, you need that to get the necessary breadth of all the factors that you want to look at. There aren't experimental herds in those sufficient numbers over the geographical distance, over the time differences, over the gender differences that we want for the threshold."*

The reviewer acknowledges that in Internal Review Decision 0019-18 it was accepted there was no study that dealt with urine specific gravity in horses and it was not the practice of any Official Racing Laboratory to measure urine specific gravity, nor was it a requirement under the Australian Rules of Racing. The reviewer therefore accepts the evidence of Dr Caldwell and Ms Nelis particular to USG considering there is no NATA accredited methodology available in Australia to measure specific gravity in equine urine.

The Applicant submitted *"Cobalt is not performance enhancing."*[9] The reviewer acknowledges that irrespective of the argument as to Cobalt being performance enhancing or not as submitted by the Applicant, Cobalt is deemed a prohibited substance when levels exceed the regulatory threshold under the Australian Rules of Racing. In this instance, the Applicant has presented a horse 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 to contest the issue of how my horse's urine sample was kept after it was taken. According to Australian Racing standards, in such circumstances where there is a delay in test processing or lengthy transport is anticipated, urine samples MUST be kept refrigerated at 4°C or less. My sample WAS NOT even placed on ice but kept in a hot tin shed. I have been able to 100% confirm this fact with the person who undertook the urine sampling on the day at the Atherton Turf Club. The rule should have been applied and should be applied to ANY and all racing venues in North QLD due to both heat and length of transport."* 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 may be referring to the Australian Standard for collecting urine samples <u>in people</u>. 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.

[9] Applicant's additional submissions dated 27 August 2018

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 subject sample was the only sample to test positive to a prohibited substance at Atherton Turf Club on Saturday 2 June 2018.

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 accepts the evidence of Dr Caldwell and 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 Applicant submitted "*The horse urine level was set on the basis of statistical analysis of an uncontrolled population study. Without reliable knowledge of the total cobalt exposure of each individual in the study, the "normal" range cannot be defined. Total exposure includes "native" cobalt in the feed, water and environment, as well as legitimate vitamin and mineral supplements, in addition to any illicit administration."*[10]

The Applicant's submissions included a report from Dr Derek Major dated 27 August 2018, a veterinary report from Dr Ethan Maloney dated 8 August 2018 and a client formulation sheet from Topstock Muster dated 22 February 2018 under the client name of Robert Oliver.

Dr Major's report, in part, stated *"I was contacted by Mr Gareth Horner for advice with regard to a notification of a cobalt level over the regulatory threshold, from a horse named "BACKTOSPEC" collected when he raced Atherton Turf Club on 2 June 2018. The urine sample was found to have "cobalt, above the excepted threshold." A level of 147 micrograms per litre was reported. From records made available to me it appears that this horse was receiving a projected intake of around 5.5 milligrams of cobalt orally per day. This is more that the generally quoted recommended intake of 0.5 milligrams per day but is not a dangerous or excessive level. It would however be sufficient to occasionally induce a urinary cobalt level of over 100 micrograms per litre in a concentrated urine sample. It is not reasonable for a trainer to assess or comprehend the impact of this nutritional information on the Rules of Racing."* Dr Major added *"The most likely explanation for this horse's urinary cobalt level on 2 June 2018 is a combination of:*

o Exposure to a cobalt containing substances in feed, including supplements, vitamin B12 injections or feedstuffs, close to the time of testing.

o The horse's hydration status on race day.

Dr Maloney's report, in part, stated:

Feed Analysis:

[10] Applicant's additional submissions dated 27 August 2018

The trainer provided a feed analysis of what the horse has been currently receiving. Feed Name: Muster (Working Horse Museli). Please see feed analysis provided by trainer. On analysis the feed was found to contain a Cobalt reading of 1.3ppm (1.3mg/kg) or the level 5.3mg/hd/day. When examining the food analysis of other commercially racehorse premixed feeds the following Cobalt levels where found:

• *Prydes Performance Feeds: several performance feed types contain cobalt ranging from 0.4mg/kg-0.6mglkg (as stated on website)*

• *Hygain Feed: No cobalt reading was stated on the feed analysis provided by the company on their website.*

(The analysis provided for the above feed examples are provided to the public on the internet).

The reviewer sought advice from Dr Caldwell as to the likely contribution of the Applicant's feeding and supplementation regimen and reports provided by Derek Major and Dr Maloney.

Dr Caldwell stated:

- *Dr Major's contention that urine is not an appropriate medium for the regulation of cobalt has been, and continues to be, vigorously defended by racing authorities, supported by the opinion of a number of experts;*
- *there is no requirement to demonstrate erythropoiesis, HIF-factor stabilisation or toxicity in individual animals under the rules and such a proposition is incompatible with text and intention of the rules;*
- *the provision of 5.5mg of cobalt daily is far in excess of the nutritional requirements of a horse (daily dietary cobalt requirement is reported to be about 0.5mg/day);*
- *in the absence of evidence of a vitamin B12 deficiency condition, it is difficult to justify repeated daily doses of injectable B12;*
- *there is no nutritional or welfare basis on which to justify the administration of injectable products containing cobalt (in the form of Hemoplex); and*
- *trainers have been warned that supplementation with multiple cobalt or B12 containing products, particularly when in excess of manufacturer recommendations, is unjustified and risks breaching the regulatory threshold*.

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. 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 acknowledges the aforementioned Topstock Muster client formulation sheet is dated 22 February 2018, which represents information on the products active constituents that was provided to the Applicant several months prior to commencing its use.

The reviewer accepts the Australian Rules of Racing place 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, provides:

"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 aforementioned NATA Accredited Racing Laboratories reported that the subject sample contained Cobalt at 147mcg/L and 145mcg/L respectively. The reviewer accepts the aforementioned evidence of Dr Caldwell and Professor Mills particular to the accumulation argument. The reviewer accepts the Applicant failed to enquire or identify the active constituents contained in the Muster pre-mix feed at the relevant time prior to its use, nor did the Applicant conduct any analysis of the feed subsequent to being notified of the Cobalt irregularity. The reviewer acknowledges other horses in the Applicants stable received Muster pre-mix feed at the relevant time, in particular OUR SINGLE DOUBT which returned a negative result to any prohibited substance at Townsville on 19 April 2018. The reviewer, in considering the totality of evidence and aforementioned factors, is not satisfied the explanation provided by the Applicant is the sole reason for the analyst findings. The reviewer accepts the Applicant presented BACKTOSPEC for racing when a prohibited substance was present and accordingly finds the charge proven.

The Applicant has been a licensed trainer for approximately nine (9) 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 believe that the ruling of 9 months suspension is too harsh. The reading of Cobalt was 145 micro grams p/ltr. I understand that this is over the 100 micro grams p/ltr limit, However as this was NOT intentional I believe that a fine is more appropriate rather than affecting my livelihood for 9 months. I have never had any offences prior to this, I have had all my horse tested to ensure nothing like this will occur again"* The Applicant further submitted *"I believe that I have been unfairly punished because I am not a prominent trainer as others who have been recently charged who were merely fined and not banned."* The Applicant lists the names of several trainers that received monetary fines for an offence particular to Australian Rule of Racing 178. The reviewer finds the aforementioned trainers listed in the Applicant's submissions are not Cobalt related offences.

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.

Australian Rule of Racing 178 places a strict obligation and responsibility on trainers, in this instance the Applicant, to present their horses to race free of any prohibited substances. Notwithstanding, the reviewer accepts in the event the Applicant's actions were proven to be intentional, the Applicant would be subjected to a more serious offence of administration pursuant to Australian Rule of Racing 175(h) which attracts a more significant penalty as opposed to a presentation offence the subject of review.

The reviewer is not satisfied a fine, as submitted by the Applicant, is reasonable in the circumstances when considering the totality of penalty precedents for a Cobalt presentation offence demonstrates a period of disqualification. The Applicant's main source of income is equine dentistry. The reviewer acknowledges Australian Rule of Racing 182 lists all the impositions of a disqualified person. The stewards pursuant to the aforementioned Rule imposed a condition on such disqualification to permit the Applicant to attend licensed stable premises during his period of disqualification to maintain his equine dentist business.

In weighing up the matter of penalty, consideration was provided to the Applicant's submissions, guilty plea, disciplinary history, cooperation, totality of penalty precedents and the level of Cobalt at 147mcg/L and 145mcg/L. The reviewer finds Cobalt is a prohibited substance that provides participants with an unleveled 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 the evidence and taking into account the aforementioned factors relevant to penalty, finds the original penalty imposed is at the lower end of the penalty scale for a Cobalt presentation offence 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.

QUEENSLAND RACING INTEGRITY COMMISSION

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
Postal Address:	GPO Box 1639, BRISBANE QLD 4001
Phone:	1300 753 228
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