

5. On 3 February 2020, the Stewards convened a hearing as part of the ongoing inquiry. Oral evidence was taken from a number of witnesses. The Stewards then charged the Appellant with an offence against Rule 83(2)(a) of the Rules of Greyhound Racing. The particulars of the charge were expressed in the following terms (T 43):

“The particulars of the charge today Mr Gummow are that you, as the Trainer a registered person with RWWA presented GLOBAL EVENT to compete in Race 12 at Cannington on the 28th September 2019 not free of the prohibited substance cobalt evidenced by a concentration level in excess of 100 ng/m1 in a post-race urine sample taken from the greyhound.”

6. Rule 83(2) is in the following terms:

“(2) The owner, trainer or person in charge of a greyhound-

(a) nominated to compete in an Event;

(b) presented for a satisfactory, weight or whelping trial or such other trial as provided for pursuant to these Rules; or

(c) presented for any test or examination for the purpose of a period of incapacitation or prohibition being varied or revoked

shall present the greyhound free of any prohibited substance.”

7. The Appellant pleaded not guilty. He said, amongst other things “...Well, I wasn't aware it was in there, so...” (T 44).
8. The Stewards heard further from the Appellant, and then adjourned to deliberate on their decision. They returned with a finding of *guilty* and gave reasons for that finding. The Stewards went on to hear from the Appellant on the matter of penalty, and then adjourned.
9. The Stewards imposed a penalty of disqualification for 9 months. The decision and reasons were conveyed to the Appellant by letter dated 5 February 2020. The Appellant now appeals against the penalty. The Appellant says in his appeal notice:

“I would like to appeal my disqualification cause (sic) I think it's to (sic) excessive more than other state's (sic) and this is my first ever disqualification and other people have got the same penalty as me and it was there (sic) second offence”

10. The appeal is against the length of the disqualification. The Appellant does not say that the penalty should have been of a different type. Rather he says that the penalty is manifestly excessive in that it is outside the range of penalties commonly imposed on first offenders for offences of this type.

The Steward's reasons on penalty

11. The Stewards said at paragraph 13 onwards of their reasons:

"13. A review of cobalt cases nationally over a number of years, generally speaking, reveals a wide range of penalties. There is little to no uniformity in penalties across different codes and jurisdictions of racing. It is difficult to know the full details of individual cases and rarely will two cases align perfectly. In our view each case must be determined on its own specific circumstances and merits and that of the offender.

14. Even where there is a high degree of face-value commonality the approach taken by different Controlling Bodies and appellant tribunals has varied greatly. When considering decisions of other authorities we note in GW O'Donnell (Appeals 263 and 264) it was observed

"Despite the uniformity in the Rules of racing Australia wide there are different individual considerations which appear to be relevant to each state or territory from a racing industry perspective. These considerations which may justify or explain the fact that different attitudes have been adopted in relation to the imposition of drug penalties. Each of the more populated States, which presumably support larger racing industries, in general have adopted less (sic) harsh approach to sentencing than the other States and the Northern Territory. It should also be noted that the appellate processes and the jurisdiction of the appeal tribunals in each state and territory are not identical. Whether this fact in any way influences the different approaches to the penalties applied to drug offences in the face of the uniform rules I cannot comment.

While it appears in every jurisdiction that the Tribunals and Stewards place the utmost importance on the health and integrity of the Racing Industry and all agree that drug use in (sic) not acceptable in any form, there clearly is no universal application of the penalties that are available. The variations, which are significant must stem from the individual perceptions that each Tribunal has in relation to what is appropriate in its own jurisdiction in order to keep the industry free from drugs.

Each case involving drugs should only be determined after a careful analysis of all of the relevant facts and circumstances. Usually little reliance can be placed on previous decisions without knowing all of the relevant surrounds facts and circumstances"

15. These principles have been referred to in several decided matters before RPAT including G Slater (Appeal 750) and even S Beard (Appeal 536) where in his written determination member P Hogan commented:

"Whilst I accept that consistency in penalty Australia wide might be a desirable object, I am not persuaded that it is necessarily so. Further, even if it were, I am of the opinion that nothing has been demonstrated to indicate that the Western Australian approach is not the one to be followed"

12. The Stewards went on to consider the range of penalties commonly imposed for cobalt presentation offences in Western Australia in all codes. The range identified, including first offenders, was 9 to 12 months. The Appellant had forwarded a submission by email to the Stewards before the imposition of the penalty. He referred to cases from South Australia and New South Wales where penalties significantly less than 9 months had been imposed. In their reasons, the Stewards expressly declined to adopt the penalties in other states as part of the range for determining a penalty. The Stewards said at paragraph 19: “...some Controlling Bodies apply far lower levels of penalty than has been the case in Western Australia for this substance. Respectfully, we find such penalties to be manifestly inadequate and completely inconsistent with the local approach.”
13. The Stewards referred to a number of other cobalt presentation offences in Western Australia where penalties of 9 months were imposed at first instance. This Tribunal, in the context of Harness Racing, has in recent times considered the issue of penalty in relation to a cobalt presentation. In the matter of *Prentice (Appeal no. 816)*, a penalty of 12 months disqualification imposed by the Stewards was varied to 9 months. In the matter of *Elson (Appeal no. 821)*, a determination of the Tribunal dated 29 January 2019, it was said at [86]:

“The range of penalties imposed by the Stewards in cases of this type was recently reviewed and considered by this Tribunal in the case of Prentice. It is not necessary to go through the various decisions referred to in that case again. It is sufficient to say that for a breach of Rule 190 involving an elevated level of cobalt in excess of the threshold level, a nine (9) months disqualification for a trainer who has a good record and who has fully cooperated with the Stewards is entirely consistent with past decisions...”
14. The Appellant has not pointed to any particular factor or circumstance in this case that would justify a departure from the established range of penalties that apply in Western Australia for offences of this kind.
15. In my opinion, it would be wrong in principle to take into account penalties imposed in other states in deciding what is an appropriate range of penalties in Western Australia for a breach of the Rules, particularly where the issue of penalties for cobalt presentation offences has already been the subject of a considerable body of decision making by both the Stewards and this Tribunal in this State.
16. The decision of the Stewards is entirely consistent with the range of penalties imposed in Western Australia for offences of this type.
17. Accordingly, no error has been demonstrated with the length of the penalty imposed on the Appellant by the Stewards.
18. For these reasons, I joined in the dismissing of the appeal.



PATRICK HOGAN, PRESIDING MEMBER



