

TASMANIAN RACING APPEAL BOARD

Appeal No 02 of 2021-22

Panel:	Kate Cuthbertson (Chair) Patrick O'Halloran (Deputy Chair) Suzanne Martin (Member)	Appellant:	Matthew Cooper
Appearances:	Steven Shinn (on behalf of the Stewards) Anthony O'Connell (on behalf of the Appellant)	Rules:	-AHRR 190(1)(2)(4) (appealing penalty only) -AHRR 190(1)(2)(4) (appealing penalty only) -AHRR 190(1)(2)(4) (appealing penalty only) -AHRR 190 AA(4)
Heard at:	Office of Racing Integrity 171 Westbury Road PROSPECT TAS	Penalty:	-12 months disqualification of licence -12 months disqualification of licence (to be served concurrently) -A fine of \$2,000 -Disqualification of <i>Call Me Hector</i> from races
Date:	25 November 2021	Result:	-12 months disqualification of licence - Dismissed -12 months disqualification of licence (to be served concurrently) - Dismissed -A fine of \$2,000 - Dismissed -Disqualification of <i>Call Me Hector</i> from races - quashed in relation to races conducted on 25/01/2021, 14/02/2021 and 28/02/2021

REASONS FOR DECISION

1. The appellant, Mr Matthew Cooper, is the trainer of a harness racing horse *Call Me Hector*. This appeal concerns penalties imposed and ancillary orders made following the detection of prohibited substances in samples taken from *Call Me Hector* when he was presented to race at two race meetings.
2. *Call Me Hector* was presented to race in the Devonport Cup at the Devonport Harness Racing Club meeting on 17 January 2021. A pre-race blood sample was collected from the horse before he competed in the race. Subsequent analysis by Racing Analytical Services Limited (RASL) detected the prohibited substances Stanozolol and GW501516 in the sample. Confirmatory testing conducted by the Racing Science Centre (RSC) confirmed the presence of both of those substances in the sample.
3. *Call Me Hector* was also presented to race at the Tasmanian Trotting Club meeting on 21 February 2021. A post-race urine sample was taken from the horse after it won race 6, the Max Pulford Memorial FFA Pace on that date. Subsequent analysis by RASL detected the prohibited substance o-desmethyltramadol (which is the main active metabolite of tramadol) in the urine sample. Confirmatory testing conducted by the Racing Science Centre (RSC) confirmed the presence of that substance in the sample.
4. An inquiry was conducted in respect of these matters on 21 July and 17 August 2021. During the course of the inquiry, Stewards issued charges to the appellant pursuant to AHRR190, which relevantly provides as follows:
 - (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) or sub rule (3) is committed regardless of the circumstances in which the prohibited substance came to be present in or on the horse.*
5. In letters dated 7 and 8 April 2021, the Racing Integrity regulatory veterinarian, Dr Adam Richardson, provided the following information in respect of the substances detected in *Call Me Hector's* blood sample taken on 17 January 2021:

“Stanozolol is an androgenic and anabolic steroid (AAS). Androgenic refers to increased male sexual characteristics. Anabolic refers to growth and building, particularly in regard to muscles. Stanozolol is a prohibited substance in racing animals.

Stanozolol is an agonist of the androgen receptor, thus acting similarly to testosterone. It is synthetically produced and due to its chemical structure, the effects exhibit a greater ratio of anabolic to androgenic activity compared to testosterone. Stanozolol is one of the more commonly used AAS performance enhancing drugs in both human and animal competition. It can

be administered by mouth or intramuscular injection. The effects in mammals are primarily on the musculo-skeletal system by increasing muscle size and strength as well as improving endurance and reducing body fat. Multiple other organ systems are also affected to a less apparent extent, for example, the Central Nervous System where a feeling of euphoria can be seen or the reproductive, cardiovascular, hepatic, renal systems etc."

"GW501516 (the drug), and its metabolites GW501516 Sulphone and GW501516 Sulphoxide are PPAR δ (Peroxisome Proliferator-Activated Receptor-delta) receptor agonists. The drug is classified as a hormone and metabolic modulator. It is a prohibited substance in racing animals.

The drug was developed and researched in the early 1990's with a view to treat obesity, diabetes and cardiovascular disease in humans. This was ceased in the late 1990's because of its propensity to cause the rapid development of cancer in several organs in laboratory animals. Development was discontinued and it never advanced to a therapeutic product or registered substance for use in humans or animals. Multiple further dangers were subsequently identified such as potential for liver disease, increased risk of brain damage and complications with the reproductive system.

The drug upregulates the expression of proteins involved in energy expenditure. Consequently it is associated with changes in the body's metabolism including fat burning, increased glucose uptake in skeletal muscle and muscle building with the resultant increased energy and stamina. The drug is associated with a reduction of lipids (fats) in the blood, hence the initial interest in human research. In mice, the development of muscle fibres following administration resulted in increased physical performance and significantly improved endurance. Many mammalian systems are affected with the most dramatic effects on the musculo-skeletal system given the high numbers of PPAR δ receptors in muscle.

The drug has been promoted and marketed on various websites for performance enhancement. It is popular amongst body builders and athletes, for example cyclists, walkers and boxers. It is available online through the black market as products such as Cardarine and Endurobol. These promotions tend to downplay the negative side effects. It has no approved or regulated use. In addition to the performance enhancing effects, toxicity demonstrated represents a welfare issue."

6. In a letter dated 20 April 2021, Dr Richardson explained the following in respect of Tramadol:

"Tramadol is a synthetic drug primarily used to treat moderate to severe pain in humans. Not registered for use in animals, however, it has recently gained popularity as an analgesic in dogs and cats. Tramadol is a prohibited substance in racing animals.

Tramadol and its metabolites have multiple mechanisms of action, the primary ones being:

1. *Opioid receptor agonist. Particularly the u-opioid receptor (MOR), thus it reduces pain perceptions similarly to opioids such as morphine.*
2. *Serotonin reuptake inhibitor. Serotonin is a neurotransmitter (chemical messengers transmitting signals between nerves or other cells), mostly located in the Central Nervous System (CNS) and gastro-intestinal tract (GIT). The functions are complex and multiple, for example, modulating mood, cognition, reward, learning, memory etc. in the CNS, or closely involved with bodily functions such as vomiting in the GIT. By reducing the reuptake of these chemicals, concentrations increase resulting in prolonged neurotransmission.*
3. *Noradrenaline reuptake inhibitor. This action reduces the resorption of adrenaline and noradrenaline which are more neurotransmitters commonly associated with psychostimulant effects.*

This, along with several other less potent actions, acts synergistically to induce analgesia. Metabolites of Tramadol such as O-desmetramadol have a similar mechanism of action but may be more potent in their effect.

The primary effect of Tramadol in mammals is on the nervous system, both central and peripheral."

7. Based on the above information which was not challenged during the inquiry or the appeal, for the purposes of AHRR190:
 - a. Stanozolol is a prohibited substance pursuant to AHRR 188A(1)(a) due to its effect on the nervous, cardiovascular, musculo-skeletal and reproductive mammalian body systems and AHRR 188A(1)(b) as it is an anabolic agent;
 - b. GW501516 is a prohibited substance pursuant to AHRR 188A(1)(a) due to its effect on the musculo-skeletal mammalian body system and AHRR 188A(1)(b) as it is a hormone; and
 - c. O-desmethyltramadol (or Tramadol) is a prohibited substance pursuant to AHRR 188A(1)(a) due to its effect on the nervous mammalian body system and AHRR 188A(1)(b) as it is an analgesic.
8. The particulars of the charges were provided to the appellant in writing on 12 August 2021. They are as follows:

CHARGE 3 - AHRR190(1)(2)(4)

Mr. Matthew Cooper is, and was at all relevant times, a trainer licenced by the Office of Racing Integrity Tasmania and are (sic.) a person bound by the Australian Harness Racing Rules (AHRR). Mr Cooper is, and was at all relevant times, the trainer of the standardbred CALL ME HECTOR. CALL ME HECTOR was presented to; and did compete in; race 7 the HARDINGS HOT MIX DEVONPORT CUP at the Devonport Harness Racing Club on the 17th January 2021 placing 6th. (The Event). On 17th

January 2021 CALL ME HECTOR was presented to compete at the Event when not free of a prohibited substance; A pre-race blood sample was taken from CALL ME HECTOR at the Event (The Sample). Stanozolol was detected in the Sample. As evidenced by certificate of analysis Rs21/006649-B and RS21/006649-B this being prima facie and conclusive evidence under AHRR 191(1)(2)(3). Stanozolol is a prohibited substance under AHRR 188A(1) The following are prohibited substances (a) Substances capable at any time of causing either directly or indirectly an action or effect, or both an action and effect, within one or more of the following mammalian body systems:-the musculo-skeletal system (b) Substances falling within, but not limited to, the following categories:-anabolic agents.

CHARGE 5 - AHRR190(1)(2)(4):

Mr. Matthew Cooper is, and was at all relevant times, a trainer licenced by the Office of Racing Integrity Tasmania and are (sic.) a person bound by the Australian Harness Racing Rules (AHRR). Mr Cooper is, and was at all relevant times, the trainer of the standardbred CALL ME HECTOR. CALL ME HECTOR was nominated to; and did compete in; the HARDINGS HOT MIX DEVONPORT CUP at the Devonport Harness Racing Club on the 17th January 2021 placing 6th . (The Event). On 17th January 2021 you presented CALL ME HECTOR to compete at the Event when not free of a prohibited substance; A pre-race blood sample was taken from CALL ME HECTOR at the Event (The Sample). GW501516 was detected in the Sample. As evidenced by certificate of analysis Rs21/006649-B and RS21/006649-B this being prima facie and conclusive evidence under AHRR 191(1)(2)(3). GW501516 is an metabolic modulator and is an unregistered substance in Australia GW501516 prohibited substance under AHRR 188A(1) The following are prohibited substances (a)Substances capable at any time of causing either directly or indirectly an action or effect, or both an action and effect, within one or more of the following mammalian body systems:- the musculo-skeletal system.

CHARGE 6 - AHRR190(1)(2)(4):

Mr. Matthew Cooper is, and was at all relevant times, a trainer licenced by the Office of Racing Integrity Tasmania and are (sic.) a person bound by the Australian Harness Racing Rules (AHRR). Mr Cooper is, and was at all relevant times, the trainer of the standardbred CALL ME HECTOR. CALL ME HECTOR was nominated to; and did compete in; the MAX PULFORD MEMORIAL FFA PACE at the Tasmanian Trotting Club meeting on the 21st February 2021 placing 1st. (The Event). On 21st February 2021 you presented CALL ME HECTOR to compete at the Event when not free of a prohibited substance. A post-race urine sample was taken from 'CALL ME HECTOR at the Event (The Sample). odesmetyltramadol was detected in the Sample as evidenced certificate of analysis RS21/02309-B and RS21/02309-14, this being prima facie and conclusive evidence under AHRR 191(1)(2)(3). o-desmetyltramadol is a prohibited substance under AHRR 188A(1) The following are prohibited substances (a) Substances capable at any time of causing either directly or indirectly an action or effect, or both an action and effect, within one or more of the following mammalian body systems:- In that it affects the nervous system, And also under 188A(1)(b) in that it is a narcotic analgesic.

9. The appellant pleaded guilty to charges 3 and 5. He pleaded not guilty to charge 6. The transcript reveals that the appellant's not guilty plea to the Tramadol charge was based on his assertion that the prohibited substance was not in the horse's system at the time of the race. His explanation for the positive result was that he had taken some Tramadol himself that day having injured his arm when loading his horses into the float prior to transporting them to the racetrack. He explained that his wife crushed up the tablet for him before he scooped it into a glass and took it in the crushed form. He explained that he understood the drug would take effect more quickly in that form. Against that background, the appellant explained that he finished loading *Call Me Hector* and another horse in the float and drove to the racetrack. When he arrived he prepared a bucket of water and molasses for his horses to drink and used his hand to mix the liquid. He believes the residue of the Tramadol must have remained on his hand and been transferred into the bucket. Further, he asserted that *Call Me Hector* only drank from the bucket after his race. On this basis, the appellant submitted that *Call Me Hector* could only have ingested the Tramadol after the race and was, therefore, not presented to race with the substance in his system. The appellant presented statutory declarations from himself, his wife and Chantelle Pearce to the effect that *Call Me Hector* does not drink before a race.
10. Stewards found the appellant guilty of the Tramadol charge.
11. Following submissions from the appellant as to penalty on the three charges, Stewards ordered that *Call Me Hector* be disqualified from the Hardings Hot Mix Devonport Cup at the Devonport Harness Racing Club on 17 January 2021 and the placings amended accordingly. They also ordered that *Call Me Hector* be disqualified from race 6, the Max Pulford Memorial FFA Pace at the Tasmanian Trotting Club on 21 February 2021 and the places amended accordingly. Those orders were made pursuant to AHRR195. There is no dispute in respect of those orders.
12. In respect of charge 3 (Stanozolol), Stewards imposed a 12 month disqualification of the appellant's licence to commence on 20 August 2021. In respect of charge 5 (GW501516), a 12 month disqualification of the appellant's licence commencing on 20 August 2021 was also imposed. That disqualification was ordered to be served concurrently with the penalty imposed on charge 3. On charge 6 (Tramadol), Stewards imposed a fine of \$2,000.00 upon the appellant.
13. When determining penalty, Stewards took into account the following matters:
 - the appellant's guilty pleas in relation to the Stanozolol and GW501516 charges;
 - the appellant's not guilty plea in relation to the Tramadol charge;
 - the appellant's conduct throughout the inquiry;

- the appellant's prior offence record with no prior prohibited substance offences recorded;
 - the appellant's personal circumstances;
 - the appellant's lengthy involvement in the racing industry;
 - the appellant's submissions in relation to negligent contamination in relation to the Tramadol;
 - the serious nature of an anabolic androgenic steroid, Stanozolol, being detected in a sample;
 - the seriousness of the substance GW501516, a substance not registered for use in Australia, that was detected in the sample;
 - the need to impose a penalty that reflected the seriousness of such offences, to act as a deterrent both specifically to the appellant and as a general deterrent to others within the industry;
 - the relevant precedents in relation to breaches under prohibited substance rules throughout Tasmania and Australia; and
 - all evidence presented throughout the inquiry.
14. Pursuant to AHRR190AA(4), Stewards also ordered that *Call Me Hector* be stood down from racing for a period of 12 months commencing on 17 January 2021. At the end of the 12 month period, an anabolic and androgenic steroid clearing certificate is required to be obtained. There is no dispute in respect of this order.
15. Finally, purportedly acting under the provisions of AHRR190AA(4), Stewards disqualified *Call Me Hector* from the following additional races with the placings and stake money to be adjusted accordingly for each case:
- 25 January 2021 at the Tasmanian Trotting Club Meeting, race 3, the Toreace Flying Mile;
 - 14 February 2021 at the Tasmanian Trotting Club Meeting, race 6, the Crown Lager Pace;
 - 21 February 2021 at the Tasmanian Trotting Club Meeting, race 6, the Max Pulford Memorial FFA Pace;
 - 28 February 2021 at the Tasmanian Trotting Club Meeting, race 5, the Ladbrokes Tasmania Cup Heat 1.
16. The appellant initially appealed his conviction on the Tramadol charge on the basis that Stewards did not properly take into account what was described as the "overwhelming and time consistent evidence given that *Call Me Hector* was presented and raced free of any prohibited substance". That conviction appeal was abandoned at the hearing of the appeals.

17. The appellant otherwise appealed against the penalty imposed in respect of all the charges on the basis that they were manifestly excessive due to the level of the appellant's culpability or blameworthiness in respect of the presentation of the horse to each of the two relevant races. The appellant also appealed the disqualification pursuant to AHRR190AA(4) of *Call Me Hector* from the races on 25 January 2021, 14 February 2021, 21 February 2021 and 28 February 2021 on the basis that the rules precluded the Stewards from imposing a retrospective disqualification in the circumstances.

Some Relevant Background

18. *Call Me Hector* finished 6th in the Devonport Cup on 17 January 2021. The appellant was advised by the Office of Racing Integrity that a pre-race blood sample taken from the horse was positive to Stanozolol and GW501516 by letter dated 2 March 2021. The notification letter was provided to the appellant during the course of a stable inspection conducted that same day. When the appellant was provided the notification letter and test results, he stated to Stewards "I don't even know what they are", referring to the listed substances. The appellant told Stewards he had no idea how the substances were found in the horse. His treatment book was provided and the stables inspected. No products were located containing any of the named substances during the course of that inspection. A further urine sample was taken from *Call Me Hector* on that day, together with a hair sample and blood sample. No reports have been produced in respect of the analysis of those samples as no prohibited substances were detected.
19. *Call Me Hector* finished first in race 6 on 21 February 2021. The appellant was advised by the office of Racing Integrity that a urine sample taken from the horse following the race was positive to o-desmethyltramadol by letter dated 9 April 2021. That notification was again provided to the appellant during the course of a stable inspection on 9 April 2021. During the course of that inspection, the appellant was advised that the substance detected was the pain killer Tramadol. The appellant told Stewards that he takes Tramadol. He was asked how often he takes it and stated the following:

"I haven't taken it in ... I don't know if I was taking it at that stage or not because I'd had a hip replacement and was on Tramadol for 2 years twice a day. Then I had an elbow injury and the doctor prescribed me Tramadol for that. Might have been about that time".

He further explained that he had been on Tramadol but did not know whether he was on it at that stage on that race date, but he definitely had been on it. He told Stewards he did not have a current script and that he did have an x-ray on his elbow and it might have been around the time of the relevant race. He also told Stewards that he could not see how it could have gotten in the horse because he took Tramadol in pill form.

20. Later during the course of that inspection, the appellant was again asked if there was anything that he thought Stewards needed to know. He told Stewards that with the Tramadol he was probably taking around that time, he did not think that there could be any transfer. He told Stewards he used

to take the Tramadol two times daily in tablet form, first thing in the morning and last thing at night. He stated it was not the first time he had been on Tramadol and he had actually been human swabbed while on the drug in the past and disclosed that with the sample and the horses racing then as well.

21. Again, no substance or products containing substances of concern were located during the course of that stable inspection. No further samples were taken from the horse, with the appellant referring to the samples taken during the course of the earlier stable inspection.

Penalty Appeal in Respect of Devonport Cup Blood Sample

22. During the course of the inquiry and this appeal, the appellant consistently denied being responsible for the administration of either Stanozolol or GW501516 to *Call Me Hector*.
23. Dr Richardson was called during the course of the inquiry and gave the following evidence in relation to Stanozolol:
 - the product is registered for use in veterinary science;
 - a usual prescription would be to provide 5ml intramuscularly weekly for a course. It may also be provided orally. A normal course is approximately 4 weeks;
 - one dose will have some performance enhancing effect on a horse;
 - it is a water-based anabolic androgenic steroid and has a reduced duration of action compared with oil-based anabolic steroids. Its preparation is designed to be absorbed more rapidly.
24. In respect of GW501516, Dr Richardson was unable to provide any evidence as to a recommended dose or course given that the drug is not a registered product for equine or veterinary use and, although researched, had never progressed as a therapeutic substance.
25. During the course of the inquiry, Dr Batty (RASL) also gave evidence. He indicated that the levels of Stanozolol detected in the plasma sample would indicate that the sample was taken around the 24 hour mark after administration. He explained that it would not be unusual for a subsequent plasma sample to be negative, particularly if the administration had been a one-off. He also indicated that one would tend to need repeated administration with anabolic steroids to see consistent results in hair samples. The fact the substance was detected in plasma would indicate administration close to the time that the sample was taken. Such substances are usually detected in urine. The detection of GW501516 and its two metabolites was again unusual given it was detected in the plasma. The fact that those substances were detected in plasma also suggested relatively recent administration. The levels of both substances in the plasma were low, but this was not unusual for both substances.

26. During the course of the inquiry, the appellant again confirmed that he did not know how either the Stanazolol or the GW501516 came to be in the horse. He told Stewards that his first thought was that it had been given to *Call Me Hector* on the same day. He denied administering it himself, but thought that it was possible it had been given to the horse by someone else at the track. He stated that he is not liked in the industry because of comments he has made and actions he has engaged in. He referred to having been threatened on previous occasions. He stated that all the people who had previously threatened him were at the Devonport Cup race meeting and they knew his horse was being swabbed given an earlier indication provided by the Office of Racing Integrity that blood samples were going to be taken for TCO² testing purposes. The appellant explained that he left the horse for 20 minutes to get something to eat. He also advised there were times when he went and watched races and left his horse unsupervised. He acknowledged that leaving his horses unattended while at the racetrack was contrary to the rules. He referred to the absence of cameras in the stable areas at the Devonport track. He explained that as a matter of common sense he knew he was going to get swabbed and as a consequence would not give a substance to his horse when he knew that was going to occur. He denied ever using any body building substances himself.
27. In support of his submission that the 12 month disqualification imposed in respect of the Stanazolol and GW501516 charges was manifestly excessive, it was argued that the appellant had limited culpability as Stewards had failed to establish how the substance came to be in the horse's system. The appellant argued he had provided direct evidence that he was not responsible for its administration. No products were located at his stables, house, car or float that may have contained such substances. No motive was ascertainable, particularly given the circumstances including that the appellant knew that *Call Me Hector* was going to have a blood sample taken at some time during the course of the race meeting. The appellant also referred to out of competition testing and subsequent testing not detecting the substances. This, it was submitted, suggested that any administration was not a sustained course and would therefore have less performance enhancing effect. There was no sudden change in the horse's form. On the other hand, the appellant referred to there being brief unplanned moments where the horse was left unattended at the Devonport racetrack. Criticism was levelled at Stewards for failing to explore the significant windows of opportunity that were available for another person to administer the substances to the horse. On this basis, it was asserted that the appellant's culpability was at a mid-level as the appellant could provide no specific explanation, nor could Stewards prove actual administration by the appellant.
28. On that basis, it was argued that a penalty in the form of disqualification was extremely harsh and that a suspension would be more appropriate. It was acknowledged that *Call Me Hector* could not race for 12 months as a result of the operation of AHRR190AA(4), but a suspension would allow the appellant to have other horses on his property and continue to reside there. The consequences of disqualification set out in Part 16 of AHRR meant that

his horses had to be transferred to others and that he could no longer reside at his property or associate and meet with friends or talk to anyone about racing or engage in breeding activities.

29. The appellant explained that his mental health had not been good. Although it was acknowledged that general and specific deterrence were important factors when determining penalty, it was submitted that disqualification was not a fair and just result.
30. Stewards argued that the disqualification was an appropriate penalty given the nature of the substances involved. It was noted that anabolic steroids had been banned for some time for good reason. It was well known that such substances had performance enhancing effects. The GW501516 charge was particularly concerning given it is not registered for equine use and has no place for use in any animal. The welfare considerations were extremely serious. The absence of explanation was not something that was particularly unusual, given most trainers say they do not know why their horses return positive results.
31. In relation to the theory that someone else had nobbled the horse by administering the substances, it was suggested by Stewards that this was an unlikely explanation. It was noted that there were other horses in the stables and that enemies would likely have utilised a much more certain means of achieving the outcome of a positive prohibited substance detection. Administering two separate substances in small amounts seemed an unlikely way to achieve such an outcome. In terms of motive, it was noted that while *Call Me Hector* was a 'lovely' horse, he had not had any wins in his recent starts. The Devonport Cup was noted to be a big race and the horse's form had not been terrific in the lead up.

Determination

32. When determining penalties in respect of such matters, it is useful to have regard to the decision of Senior Member Nixon in *Mifsud v Harness Racing Victoria Racing Appeals and Disciplinary Board* [2012] VCAT 1438 who endorsed at [14] that the purpose of the prohibited substance rules was to:

“(i) to ensure that the integrity of harness racing was protected.

(ii) to ensure that harness racing was conducted on a level playing field.

(iii) to ensure that harness racing was conducted without the assistance of drugs.

(iv) to ensure that harness racing was conducted safely – safely with respect to the horse itself and also with respect to other drivers and horses involved.

(v) to conduct harness racing fairly from the perspective of the betting public so that a horse's performance will not vary from start to start depending on whether or not a particular substance/medication has been administered to it.”

33. The Senior Member went on to further observe at [16]:

The integrity of the racing industry is an important consideration and public confidence in the industry is critical. Any loss of public confidence in the honesty and integrity of the industry has the potential to imperil the very lifeblood of the industry due to negative publicity throughout the media associated with the detection of any of the prohibited substances in this rule.

34. In respect of these two charges, the following matters are of particular importance:

(i) Anabolic steroids are the subject of rules providing for specific consequences when detected in a horse. AHRR190AA(4) provides:

When a sample taken at any time from a horse has detected in it an anabolic androgenic steroid the horse is not permitted to start in any race or be used for the purposes of breeding:

(a) for a minimum period of 12 months from the date of the collection of the sample in which an anabolic androgenic steroid was detected; and

(b) only after an Anabolic Androgenic Steroid Clearing Certificate is provided in respect of a sample taken from the horse, such sample having been taken at a date determined by the Stewards.

The fact such substances are singled out for particular treatment highlights the seriousness with which their detection is viewed in the industry. Further, these consequences flow regardless of whether the sample taken relates to a particular race. Out of competition testing is also captured;

(ii) Anabolic steroids are well known to be performance enhancing substances. GW501516 also has such characteristics. Their use in racing animals strikes at the heart of the integrity of racing. The presentation of a horse with such substances in its system raises questions as to whether horses are competing in a level playing field;

(iii) The principle of general deterrence assumes particular importance in such cases given the performance enhancing characteristics of such substances and, in the context GW501516, the very real welfare concerns.

35. The Board agrees that the appellant's explanation for how the substances came to be in the horse's sample is very unlikely. No evidence was before either this appeal or the inquiry to suggest that the substances are found in a single product. The notion that an unknown person would go to the trouble of administering small quantities of two different prohibited substances to a horse to achieve that outcome seems very unlikely, regardless of any opportunity. This leaves the Board in a situation where it is simply faced with no adequate explanation as to how the substance came to be in the

horse's system. It further raises question about the appellant's animal husbandry and supervision of his horses.

36. Given the nature of the substances involved, and in circumstances where the appellant's culpability could not be said to be at the low level given that no adequate explanation has been provided as to how the substances were found in the horse's system, the Board is satisfied that the penalty imposed by stewards in the circumstances was correct. Disqualification is the ultimate penalty able to be imposed and is appropriate to mark the seriousness with which such offences are to be regarded. Any dilution of the force of such a penalty sends entirely the wrong message to the industry in light of the significance of the substances involved. Such substances have no place in the racing industry. There is little by way of direct precedent that can be relied upon by the appellant given that the presentation of horses with such substances in their system is, fortunately, very rare. The significant consequences that now flow as a result of the detection of anabolic androgenic steroids in horses plays a significant role in ensuring that that is the case. Use of deterrent penalties are also important to ensure such cases remain rare.

Penalty appeal in respect of Tasmanian Trotting Club sample

37. Drs Richardson and Batty also gave evidence during the course of the inquiry in respect of the presence of Tramadol in *Call Me Hector's* post-race urine sample.
38. Dr Richardson's evidence was consistent with his letter referred to in paragraph [6] above. He also confirmed that Tramadol is a performance altering drug in that it may have some sedentary affect or stimulatory affect. It was difficult to say which would have occurred in this case but in either scenario, the drug alters performance. He also stated that the lack of recognition of pain will have a performance enhancing effect in an animal.
39. Dr Richardson also stated that he was not aware of any scientific based trials that had been conducted to determine the effect of Tramadol on horses. It was put to him that Tramadol was very rapidly gluconated and excreted in the urine and was therefore essentially ineffective in horses. Dr Richardson accepted that the drug is rapidly metabolised but stated that if the substance is in the urine "*it's in the horse's system*"; that it metabolised very rapidly does not mean that there is no effect.
40. Dr Batty gave evidence that Tramadol was detected in the sample at fairly low levels, probably only 1 or 2 nanograms per ml. He declined to describe the presence of the drug at those levels as a "trace". He stated that with "*these particular types of analgesics you're not expecting to get large levels, you're only expecting to see low levels and ... I don't know if I'd call it a trace. It's the sort of levels we would expect to see. But below I would agree for these particular drugs and how they would be used.*" When asked why one would only expect low levels of this type of drug, Dr Batty stated that they are quite powerful drugs so the doses would not have been particularly high. He also noted that you would expect reasonably high levels shortly after administration but that the

drugs tend to excrete relatively quickly. The studies he has seen indicate that Tramadol may be detected in urine in excess of 24 hours after administration, in which case it is getting down to fairly low levels such as were detected in this case.

41. When Mr Cooper's contamination explanation was put to Dr Batty, that is, that the horse accidentally ingested a very small amount of it from some other source like a bucket, he stated he thought it was fairly unlikely because if a horse is going to take that dose of Tramadol from water in a bucket the actual concentration of it would be fairly low. Ultimately, he formed the view that it was an unlikely explanation for the detection of the substance in the horse's system.
42. Against this background, the appellant submitted that his explanation of contamination was essentially unchallenged. He suggested that the low levels were explicable on the basis that the horse had ingested a very small quantity of Tramadol shortly before the sample was taken. The race occurred at 8.42pm and the sample was obtained at 9.55pm. The appellant gave evidence that *Call Me Hector* had a significant drink after the race. It was submitted that his explanation was plausible and amounted to negligent conduct at best. On that basis, it was submitted that the penalty imposed was excessive. Reference was made to other decisions where inadvertent administration and/or contamination occurred where actual fines had not been imposed. One example referred to was the Stewards' decision in the matter of *Heenan* on 28 August 2019. In that case, small amounts of metabolites of cocaine were detected in a post-race sample. The decision refers to studies which have shown that trace levels of metabolites of cocaine can be spread by casual contact due to the ready absorption of the substance through human skin. Those studies suggest that if a handler of a horse is exposed to cocaine they may inadvertently expose the horse to small amounts that readily yield a detectable level in a horse's urine. A suspended fine was imposed in that case in circumstances where Ms Heenan had no prior convictions relating to the prohibited substance rule.
43. Stewards submitted that the fine imposed was appropriate in the circumstances. Even on the appellant's version, they argued that his conduct was negligent. Stewards, however, formed the view it was most unlikely that the horse was exposed to Tramadol after the race. Even accepting an explanation consistent with contamination, it was submitted it was more likely that Tramadol was transferred to the horse by handling it before the race. In any event, the appellant failed to exercise due diligence. At the very least, the appellant's explanation suggests he did not wash his hands for some considerable period of time after taking the Tramadol in the manner described.
44. Further, the appellant pleaded not guilty to the charge and therefore was not able to avail himself of the benefit of a plea of guilty which had been the case in respect of the precedents referred to by the appellant.

45. The Board was satisfied that the penalty imposed by Stewards on this occasion was appropriate. The evidence suggested that a period of time elapsed between the appellant taking Tramadol and preparing the water bucket for his horses at the racetrack. In between that period of time, he was driving a car and engaging in a number of other activities that would inevitably involve the use of his hands. This rather suggests there was very little Tramadol remaining on his hands at the time he prepared the horses' water bucket and fails to explain its presence in the horse's urine. Alternatively, it suggests that contamination occurred during the course of handling the horse, including prior to the race.
46. The Board also notes that no part of the explanation given by the appellant at the time of the stable inspection referred to taking Tramadol in any form other than a tablet at particular times of the day. There was no mention made of crushing tablets and using his hand to scoop crushed tablets into a glass. The appellant's explanation is unlikely in all the circumstances.
47. Even if one accepts that contamination was a possible explanation, it points to a gross lack of care in the handling of his animals. Utilising a narcotic analgesic in the circumstances as described by Mr Cooper and then failing to wash his hands or make any attempt to ensure that there were no traces of it remaining speaks of a concerning lack of attention to detail.
48. On that basis, the appeal in respect of the penalties imposed on all charges is dismissed.

Appeal in respect of orders made purportedly pursuant to AHRR190AA(4)

49. It is to be noted that there is no explicit reference in AHRR190AA(4) (see [34(i)] above) to a power to disqualify horses in respect of races that have occurred in between the time at which a sample is taken and an anabolic androgenic steroid is detected in that sample. Stewards relied on decisions in other jurisdictions when ordering the disqualification of *Call Me Hector* in the additional races. Those decisions rely on a use of AHRR65 in combination with AHRR190AA(4). AHRR65 provides as follows:

"If the Stewards find that a horse or trainer or a driver was ineligible to compete in a race they may disqualify the horse from the race or declare such horse a non starter and make any consequent changes to the placing."

50. The Stewards argued that the effect of AHRR190AA(4) was such that *Call Me Hector* was ineligible to race in the races that occurred between the date of the taking of the sample and its detection. That being the case, it was the Stewards' view that AHRR65 enabled them to make a finding that *Call Me Hector* was ineligible to compete in those races and gave them the discretion to disqualify the horse and make any consequent changes to the placings. An example referred to by Stewards where such orders have been made was the decision of Stewards at Racing and Wagering Western Australia in the matter of *Mr Terry Ferguson (Chumani)*, dated 4 May 2020.

51. The Board is not satisfied that Stewards had the power to make the decision that it did. AHRR190AA(4) does not operate retrospectively. It operates *prospectively* once a substance has been detected. The 12 month period from the date the sample was taken defines the minimum period of time *into the future* during which the horse is not permitted to start in any race or be used for the purposes of breeding. The rule has nothing to say about the eligibility of a horse to race in the period after the taking of the sample and before the detection of the substance.
52. For those reasons, the Board upholds the appeal against the decision to disqualify *Call Me Hector* and adjust the placings and stake money in relation to the races set out in paragraph 15 above with the exception of the race which occurred on 21 February 2021. *Call Me Hector* is already the subject of a disqualification order in respect of that race as a result of the operation of AHRR195.

Summary

53. Each of the appeals against the penalties imposed upon the appellant in respect of the charges pursuant to AHRR190 are affirmed. The decision to disqualify *Call Me Hector* from races on 25 January 2021, 14 February 2021 and 28 February 2021 and to amend the placings accordingly is quashed.
54. The appellant has been partially successful in respect of his appeal. As a consequence, for the purposes of section 34(1A) and (4A), the decision will be treated as varied. The appellant, therefore, is required to forfeit 25% of his prescribed deposit to the Secretary of the Department pursuant to section 34(2)(d) and pay 25% of the cost of the preparation of the transcript pursuant to section 34(4B).

DATED: 1February 2022.