

**NEW SOUTH WALES  
HARNESS RACING  
APPEAL PANEL**

**APPEAL PANEL MEMBERS  
Hon W Haylen KC  
Mr B Skinner  
Ms J Moore**

**Reserved Decision**

**12 FEBRUARY 2024**

**APPELLANT ANTHONY SCHEMBRI**

**RESPONDENT HRNSW**

**SEVERITY APPEAL**

**AUSTRALIAN HARNESS RACING RULES  
190(1), (2) & (4)**

**DECISION**

- 1. The decision of the Appeal Panel is that the Appeal be upheld, that the disqualification of 7 months be set aside, and that Mr Schembri be fined \$12,500.**

1. Mr Anthony Schembri is an A Grade Trainer located in Broken Hill. He has been a Trainer since the 2000/2001 season. In that year he had 5 starters with 2 placings thereby receiving \$300 in stakes. Between the 2000/2001 season and the 04/05 season he had 47 runners with 3 winners and 13 placings, yielding \$4,460 in stakes. He did not train from the 2006-7 season until the beginning of the 2013/14 season. Between the 2013/14 season and the 2023/2023 season (apparently missing a season or two) he had 50 starters, 11 winners and prizemoney of \$35,392.
2. Between 29 January 2022 and 26 March 2022, two horses trained by Mr Schembri contested races at Broken Hill. The horse On Wheels contested race 1 on 29 January and race 9 on the same day was contested and won by Keayang Balboa. On 5 February Keayang Balboa won race 1 and again won race 1 on 26 March 2022. In relation to these 4 races, a pre-race blood sample was taken from On Wheels, two post-race blood samples were taken from Keayang Balboa and in the 4<sup>th</sup> race a post-race urine sample was taken from Keayang Balboa. Each sample detected the presence of the prohibited substance dobesilate.
3. In October 2023 HRNSW Stewards commenced an Inquiry into the results of the analytical tests conducted by two drug testing laboratories. Mr Schembri was present at this Inquiry and was represented by Counsel and instructing solicitor. HRNSW Regulatory Veterinarian, Dr Martin Wainscott, provided evidence that dobesilate was a synthetic substance and that there were no substances containing dobesilate for use in Australia in either human or veterinary fields. Asked whether dobesilate could have an effect on a horse's performance in a race, Dr Wainscott said that there was very little information on the effect of that substance on a horse, however it could act indirectly, as it were, as an antithrombotic agent under AHRR188 (1)(b) and could directly or indirectly effect the cardiovascular system under AHRR 188(1)(a). There was one study that showed that it could have a therapeutic effect of improving lameness in a horse exhibiting navicular pain but that was just a pilot study that did not have any control horses.
4. When Dr Wainscott was asked by Stewards, under HRNSW penalty guidelines, what classification of a prohibited substance would dobesilate fit within, he replied that it could not be fitted within class 3 or class 1 substances and so it would fit into a class 2 substance. Under the provisions of a class 2 substance, the guidelines provided no less than 2 years disqualification. In cross examination by Counsel for Mr Schembri, Dr Wainscott accepted that the only real effect that this substance might possibly have been to ameliorate a negative aspect of navicular disease. This horse had not been examined for that purpose. Attention was then drawn to a 2011 pilot study conducted by Dr Curl, the Regulatory vet for Racing NSW, to assess whether calcium dobesilate had a therapeutic effect for navicular disease in horses. Dr Curl had agreed that the scientific research and evidence fell well short of allowing any conclusion to be drawn, even on the balance of probabilities, that calcium dobesilate had any therapeutic benefit to horses. Dr Wainscott agreed that the evidence was not strong enough to be certain about the effect of dobesilate on horses.
5. The Stewards canvassed a number of matters with Mr Schembri during their inquiry. A photograph of 4 medical products had been sent to them by the legal representatives for Mr Schembri. Two packages were prescribed medications for Mr Schembri and the others were identified as Anusol haemorrhoidal ointment and Doxiproct ointment. The packaging for the Doxiproct identified Calcium dobesilate monohydrate as an ingredient in this ointment. Mr Schembri told Stewards that his wife had bought the Doxiproct from the Broken Hill markets, paying cash and that it was to be used by him as a haemorrhoid cream. Mr Schembri threw these products and packages into the garbage following his appeal to the Racing Appeals Tribunal on 25 November 2022. This appeal was against the suspension of his licence pursuant

to AHRR 183, allowing the Stewards to direct a driver not to drive pending the outcome of an inquiry. During these proceedings the Panel was informed that Stewards withdrew this direction during the course of the Appeal following the Tribunal indicating that the offence was only worthy of a fine.

6. Mr Schembri was also questioned by the Stewards as to how he administered the Doxiproct. He stated that he applied the ointment with his finger but could not remember whether he washed his hands after using it, saying 'I can't remember. I probably did or probably didn't. It all depends where I was.'
7. Mr Schembri's medical records showed that he had first sought treatment for his haemorrhoids in late June 2016 but had not attended his Doctor again for this treatment until 31 October 2022, a week after he had been informed of the positive samples taken from his horses.
8. In addition to the above matters of treatment, Mr Schembri said that he used a portaloos on his training property for 7 or 8 years and it had been positioned in the same place for the past 3 or 4 years. Photographs of this positioning had been provided by solicitors acting in Mr Schembri's appeal. He said that the only time the portaloos had been moved from this location was when it had a flat tyre a few years ago and he had moved it five feet away from the tree that was positioned closely to the yards where his horses were kept. Mr Schembri also said that he would empty the tank of the portaloos through a grey hose onto a grassed area adjacent to the yards where his horses were housed. He would allow Keayang Balboa and On Wheels to pick at that grass after being washed following training. Those horses were housed in the yard closest to this grassed area and Keayang Balboa would put its head through the fence railing and eat the grass.
9. The Stewards noted that a video taken during a site inspection by Stewards on 24 October 2022 showed that the portaloos was clearly located some distance from the tree and in a different location to that described by Mr Schembri when he gave evidence that the portaloos had been in the same position for 3 or 4 years. The Stewards concluded that after the stable visit on 24 October 2022 the portaloos was moved to the position next to the tree and Mr Schembri had taken photos of the portaloos closer to the horses' yards.
10. Three Industry Notices were tendered in the Inquiry by the Stewards, relating to prohibited substances involving human prescription medications and the transfer of those substances through septic sewer systems. Trainers were warned that horses should not be exposed to water from septic sewer systems and that horses should be prevented from grazing in areas where water irrigation or overflow was provided from septic sewer systems. The ingestion by horses of grass and/or plants exposed to water from septic sewer systems may lead to the detection of prohibited substances in raceday samples. Further, trainers and stable employees were warned that appropriate steps must be taken to ensure that horses are not contaminated with human prescription medications by any means including during the feeding and handling of horses or through human excretion within the stable environment. Those Notices had been made available to participants in June and September 2018.
11. Mr Schembri told Stewards that that he was not aware of those Industry Notices. He said that he could not read or write properly and that he did not keep abreast of information published by HRNSW as he was not aware of that requirement. Harness Racing was just a hobby, as it was with his father, and he did not make money out of the sport. However, he did have people to assist him with his earthmoving business in Broken Hill. Submissions in support of Mr Schembri referred to his status as a successful businessman in the area and his contribution to charitable causes and the harness racing industry.
12. At the conclusion of their investigations, Stewards issued 4 charges against Mr Schembri pursuant to the provisions of AHRR 190 (1), (2) and (4), namely: (1) A horse shall be presented

for a race free of prohibited substances. (2) If a horse is presented for a race otherwise than in accordance with sub-rule (1) the trainer of the horse is guilty of an offence. (4) An offence under sub-rule (2) ... is committed regardless of the circumstances in which the prohibited substance came to be present in or on the horse. The particulars referred to the 4 races in which the two horses competed when not free of a prohibited substance. Mr Schembri immediately entered pleas of guilty to those charges.

13. The Stewards then addressed the issue of penalty. They stated that they could not rule out that dobesilate detected in the 4 samples resulted from contamination caused by Mr Schembri handling his horses after applying Doxiproct and/or by him using a portaloos within the stable environment and then emptying the contents of the portaloos tank onto the grass area where his horses would eat the grass. However, the Stewards had serious concerns about Mr Schembri's use of the portaloos, especially the location of it when the stable inspection took place on 24 October 2022 when compared with photographs taken by him showing the portaloos located next to a tree and in close proximity to the horse yards. Despite this evidence the Stewards noted that exposure to dobesilate through Mr Schembri's use of the product Doxiproct and handling the horses after applying that product and/or through using the portaloos within the stable environment and emptying the contents on grassed areas where the horses would pick, presented significant concerns about his husbandry practices despite the warnings given through Industry Notices issued by HRNSW. It was noted that the NSW Racing Appeals Tribunal had repeatedly drawn attention to the failure of husbandry practices in connection with prohibited substance offence, including in the Appeal of Muscat in 2015, where the Tribunal stated: '...it seems to the Tribunal that any responsible trainer in this day and age, having regard to the frequency with which the stewards and the industry and, indeed, this Tribunal has to deal with contamination caused by means other than improper administration, that husbandry practices must be acutely in the mind of any trainer.'
14. The Stewards then considered a number of specific cases covering Harness Racing and Thoroughbred Racing. Some cases were first offences of this kind and other were repeat offences. The penalties ranged from \$400 and \$500 to \$1500. Presentation offences involving disqualification ranged from 19 weeks in a Racing case to 6 months in a Harness Racing case where there had been a prior prohibited substance offence.
15. Ultimately, the Stewards expressed the view that the case of Mr Nathan Townsend was 'very similar' to Mr Schembri's case. In April 2023, the NSW Racing Appeals Tribunal disqualified Mr Turnbull for 8 months where he had obtained a medication via the internet, that he consumed before he urinated in the stable environment in an area where he allowed the horse to pick grass. Mr Townsend had made no enquiries regarding the medication and any risk associated with him handling horses. He was the person in charge of the horse at the time it was presented to race. In Mr Schembri's case his wife had bought a product at a market although it was not approved and registered in Australia. Mr Schembri "probably did or probably did not" clean his hands after applying the substance and before involving himself with his horses. Thus, he failed to identify the risk associated with potential transfer of the product from his hands and further failed to identify the risk associated with use of the portaloos and the potential transfer of the product Doxiproct from the portaloos tank to the grassed area where he allowed his horses to pick the grass. He exposed his horses to significant risk as detailed in the HRNSW notices.
16. The Stewards returned to the fact that Mr Schembri could not read or write properly, in fact he admitted to being illiterate as was his father. Nevertheless, he had taken no steps to ensure that he stayed abreast of important harness racing industry information. It was suggested that had he done so, these proceedings could have been avoided.

17. In setting the penalty, the Stewards stated that they adopted the evidence of Dr Wainscott that dobesilate was a Class 2 prohibited substance under HRNSW Penalty Guidelines, a decision he made through a process of elimination, that is, not being a Class 1 or Class 3 prohibited substance. It was also noted that Mr Schembri had no previous prohibited substance matters recorded against him. The Stewards then stated that the appropriate penalty was disqualification but did not believe a disqualification for a period no less than two years was appropriate. After considering Mr Schembri's guilty pleas and personal subjectives it was determined that an appropriate starting point was disqualification for 12 months. A 25% reduction was given for his guilty plea. Subjective matters and the relatively small numbers of starters led to a reduction of 2 months, amounting to a total reduction of 5 months. Those reductions left a final penalty of disqualification for a period of 7 months.
18. The first 17 paragraphs of this decision encapsulate the course of a thorough investigation by the Stewards. On Appeal before this panel all of those matters were revisited in detail and numerous submissions were made that over various matters Mr Schembri was not a witness of truth and/or his evidence could not be accepted. This approach gave little or no recognition to his guilty plea given immediately after he was charged by the Stewards. In the view of this Panel Mr Schembri was not the best witness and his memory from time to time was not clear. However, his illiteracy affected what he said from time to time. He was speaking to events that may well have had no significance at the time of happening. Where the portaloos were at the time of the site inspection and later when moved does not assist in establishing where it was at the time the horses were swabbed in 2022. Similarly, the fact that in 2016 he told his doctor that he was suffering from haemorrhoids and was told only to change his diet does not lead to a finding that until recently he was not suffering from haemorrhoids. Unlike other treatments requiring prescriptions, he was able to purchase haemorrhoid treatment over the counter. The fact that he threw away his haemorrhoid creams after succeeding on Appeal to the Racing Appeal Panel, may seem strange or odd but he regarded the issue as being over and that his case would end with a penalty, as indicated by the Tribunal. In relation to these matters the submissions for the Stewards did not rise above possible inferences and suspicion. The Stewards were entitled to consider these matters but ultimately, they could not form the basis of proved facts relevant to the charges brought against Mr Schembri. In passing it might be said that after the first swabs Mr Schembri would have been foolish in the extreme to continue racing Keyang Balboa twice more knowing that the horse had been treated by him with a substance containing dobesilate, a substance itself little known in Australia.
19. The case against Mr Schembri is properly considered to be a contamination case. That finding does not necessarily lead to a low-level disqualification or fine. Although illiterate, Mr Schembri is a successful businessman in Broken Hill and active in his community on a number of levels, as the references confirm. He had the financial means to engage a suitable person to assist him with the operation of the Rules of Harness Racing, a step he had taken in his own business. He chose to run his Harness Racing interests as a hobby that was not deserving of obtaining detailed information about his responsibilities in that enterprise. He ignored the fact that he had serious obligations as a Trainer under the rules of Harness Racing. His failure to keep abreast of industry matters is highlighted by the fact that he was unaware of Industry Notifications, especially those dealing with contaminations and how they may be handled.
20. Against that background it is appropriate to give consideration to the way in which the Stewards decided the penalty. The Stewards decision commences with a consideration of the Penalty Guidelines and their view that Dr Wainscott had determined that Mr Schembri's offence fitted into a class 2 substance offence and that it could not be included in class 1 or class 3 substance offences. Under the class 2 provisions a first offence laid down a disqualification for no less than two years. In considering Mr Schembri's case, the Stewards

adopted the well-known approach that the provisions were guidelines not tramlines, that is, in appropriate cases the provisions of the guidelines could be departed from when seen to be appropriate. In this case the Stewards adopted a starting point of a twelve-month disqualification. It is well settled that the Guidelines are just that and are not part of the legislative provisions, including the rules of Harness Racing. In adopting this approach, the Stewards seem to have overlooked an aspect of the cross examination of Dr Wainscott by Counsel for Mr Schembri. In that exchange Dr Wainscott accepted that his logic was that this case did not fall within category 1 or 3 of the Guidelines, so therefore it fell within category 2, as a process of elimination. Class 2 includes substances that pose a risk to the welfare of a horse or a risk to the integrity of the harness racing industry. Dr Wainscott agreed that a substance that could only have a remedial effect on a condition was not going to pose a risk to the welfare of the horse. That exchange took place in the context that dobesilate may have beneficial effects where a horse had navicular disease, being a degenerative disease. However, a 2011 pilot study concluded that while there were encouraging signs to that effect it was impossible for the experts conducting the trial to be certain that dobesilate would have that therapeutic effect. Dr Wainscott later agreed that if a conclusion could not be drawn to any standard of a therapeutic benefit to the horse, such a conclusion underpins any suggested conclusion of a risk to the integrity of harness racing and that was based on the information now available. Earlier in cross examination Dr Wainscott agreed to the proposition that a substance that could only have a remedial effect on a condition was not going to pose a risk to the welfare of the horse. In relation to posing a risk to the harness racing industry, Dr Wainscott said that other studies found lameness improvement such as to be worthy of further investigation. If lameness did improve it could affect the integrity of the racing industry by allowing a horse that would otherwise not be racing, to race without lameness. No evidence was given that those studies had been able to reach that view. In the light of that evidence the Panel is unable to accept that this case fell within the provisions of Class 2 offences.

21. Counsel for Mr Schembri accepted that if this was not a Class 2 offence, nevertheless this was a case involving a prohibited substance and penalties were available. The Panel accepts that submission. It seems likely that the haemorrhoid cream used by Mr Schembri was the source of the contamination and was passed onto the horses either by Mr Schembri touching the horses when the cream had not been washed from his hands and/or the substance passed through the contents of the portaloos frequently used by Mr Schembri and when its contents were emptied on the grass where the horses would pick.
22. In the application for a stay of these proceedings submissions for Mr Schembri noted that he had been a trainer for approximately 25 years with only one entry on his record for which he received a caution. As a licenced trainer had had never been fined, suspended, or disqualified for any offence, a record that was described as truly remarkable. As earlier mentioned, references from the Broken Hill community spoke highly of his work across a number of areas and he had been active in the Broken Hill Harness Racing Club. In addition, he had entered a guilty plea to these charges at the earliest opportunity. All these matters are taken into account in his favour in determining an appropriate penalty.
23. In the deliberation of the Stewards several decisions were mentioned regarding contamination cases. There were various circumstances in each of the cases with penalties imposed ranging from fines of \$400, \$500, and \$1500, a suspension of 3 months and a disqualification of 19 weeks and in another matter disqualification for 8 months. In particular, attention was drawn to the 2023 decision of the Racing Appeals Tribunal in the case of Townsend where the 8 months disqualification was imposed. In that case medication had been obtained via the internet and was consumed before urinating in the stable environment

and in an area where he allowed the horses to pick grass. No enquiries had been made regarding the medication or any risks associated with the handling of horses. Mr Townsend was in charge of the horse when it was presented to race. Counsel for Mr Schembri also provided two decided cases where, firstly, a 6-month disqualification was reduced on appeal to a \$10,000 fine and secondly, where a six-month suspension was reduced to a \$5,000 fine. The case of Racehorse Trainer Peter Green involved the substance dobesilate in circumstances where it was not able to be determined how the substance came to be in the system of the horse and where the evidence of Mr Green was accepted that he did not deliberately administer the substance. Of interest was the evidence of Dr Curl that it was not possible to draw a firm conclusion that dobesilate would assist or decrease bleeding in a horse, and hence it was not possible to find that on the balance of probabilities that dobesilate has any form of performance enhancing effect. In this case the 6-month suspension was reduced to a \$5,000 fine.

24. The Panel regards these cases as setting a general background, albeit covering a wide area of circumstances. Having regard to all the matters referred to above, the Panel is satisfied that in this case a significant monetary penalty is warranted. Mr Schembri's history in Harness Racing and in his community while handling his illiteracy sets his circumstances quite apart from the other cases referred to in the proceedings. While those matters are regarded as appropriate for the imposition of a fine, Mr Schembri's actions and omissions as described in this decision warrant a fine of \$12,500.
25. The decision of the Appeal Panel is that the Appeal be upheld, that the disqualification of 7 months be set aside, and that Mr Schembri be fined \$12,500.

Hon Wayne Haylen KC  
Mr B Skinner  
Ms J Moore

12 February 2024