

**NEW SOUTH WALES  
HARNESS RACING  
APPEAL PANEL**

**APPEAL PANEL MEMBERS**

**B Skinner  
P Kite SC  
Ms J Moore**

**12 DECEMBER 2023**

**APPELLANT BRADLEY ELDER**

**RESPONDENT HRNSW**

**AUSTRALIAN HARNESS RACING RULES  
190(1), (2) & (4) x 3**

**DECISION**

- 1. The appeal of Mr Bradley Elder is dismissed. The decision of the Stewards to disqualify Mr Elder for a period of 10 months in respect of each offence is confirmed.**
- 2. The penalties to be served concurrently.**
- 3. The appeal deposit is to be forfeited.**

1. On 4 November 2022 at Newcastle, 7 November 2002 at Newcastle and on 10 December 2022 at Menangle, Lil Ripper NZ trained by Bradley Elder won each of three races. A post-win urine sample was taken on each occasion from the horse. Upon analysis, a prohibited substance Levamisole was detected in all three samples. The reserve portions and control solutions were confirmed by Racing Analytical Services Limited (RASL) in Victoria.
2. An Inquiry was conducted by HRNSW Stewards on 9 October 2023. Mr Bradley Elder, a licensed trainer was present and provided evidence to the Inquiry. Mr Elder was represented by his solicitor, Mr Morris pursuant to a grant of leave. The certificates of analysis were tendered, and evidence was given by HRNSW Regulatory Veterinarian Dr Martin Waincott. Mr Elder was unable to provide an explanation for the detection of Levamisole in the urine samples.
3. Levamisole is a Class 2 prohibited substance. It is an antiparasitic used to control gastrointestinal parasites and lungworm in a number of species. It is not registered for use in horses in Australia. The applicable rule is Rule 188A (1) (a) and (b). There was no issue raised as to the correct categorisation as a Class 2 prohibited substance.
4. Mr Elder pleaded guilty to three charges issued by the HRNSW Stewards pursuant to Australian Harness Racing Rule (AHRR) 190 (1), (2), & (4) as follows:
  - AHRR 190. (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 (3) is committed regardless of the circumstances in which the prohibited substance came to be present in the horse.
5. Mr Elder was disqualified for a period of ten months in respect of each offence to commence immediately, the penalties to be served concurrently.
6. The Stewards in considering penalty took into account the following matters:
  - Mr Elder's personal, professional, and financial subjectives;
  - The circumstances of the matter;
  - Serious nature of the substance;
  - Class 2 Prohibited Substance;
  - Mr Elder's guilty pleas;
  - Mr Elder's involvement in the harness racing industry;
  - Mr Elder's limited history as a licensed trainer.
7. An appeal against the severity of the penalty was received on 12 October 2023.
8. Mr Morris appeared on the severity appeal and submitted written submissions which to all intents and purposes repeated the submissions made to the Stewards. The core submission was to the effect that the property where the horse was stabled had been the subject of flooding thereby potentially contaminating the property. Precisely how the alleged contamination occurred was not explained. The submission was expanded somewhat by Mr Morris to allege that sheep may also have come into contact with the horse. Again, it must have been inferred that the subject sheep had been treated with Levamisole. The methodology by which the horse could have become contaminated by such contact was not explained. That the substance entered the horse's system before it left New Zealand was proffered as a third possibility.

9. In any event the contamination submissions were clearly dealt with by Dr Wainscott in his evidence. Firstly, at page 28 of the transcript, Dr Wainscott identified various periods of detection varying between one day and 20 days. The period from the time of the floods to the return of the first sample was identified as in the order of three months. The proposition of contamination being caused by flooding was dismissed as a plausible explanation by Dr Wainscott. Secondly, at pages 33 and 34 of the transcript, Dr Wainscott again opined that contact with sheep could cause contamination was possible but not plausible.
10. Similarly, the time between the horse arriving from New Zealand on 4 August and the first detection on 4 November was as too long, based on the evidence of Dr Wainscott to be a plausible source of the substance. Dr Wainscott also said, at page 28 of the transcript, that the previous trainers had indicated they had not treated then horse with levamisole.
11. The Panel rejects the proposition that the horse was the subject of contamination due to flooding or contact with neighbouring sheep or indeed while it based in New Zealand.
12. The Panel accepted the evidence of Dr Wainscott and agrees that it has not been proved that contamination occurred due to flooding or contact with neighbouring sheep. The source of Levamisole was therefore not explained. The Panel notes that it is not an element of presentation offences that the Stewards be satisfied that the substance was administered by the trainer. Therefore the proposition that Mr Elder was “blameless” is only relevant as a consideration on penalty. The onus is on the appellant to make out that proposition. That onus is not satisfied by submitting that it is unknown how the substance came to be present.
13. Matters of mitigation and personal circumstances were identified by Mr Morris before the Inquiry and again on the appeal. The issue of penalty was dealt with by reference to the Penalty decision of the Racing Appeals Tribunal in *Wade v NSWHR* delivered on 2 March 2023. Mr Morris observed that the Stewards relied upon *Wade* as precedent for establishing a starting point (15 months) disqualification). In conclusion Mr Morris submitted that parity considerations render a starting point of 9 months disqualification before reductions as the upper limit of the punitive penalty range.
14. The approach of Mr Morris to the issue of penalty is rejected for several reasons. The introduction of HRNSW Penalty Guidelines requires Stewards to have regard to all relevant matters when determining an appropriate penalty to be imposed in a particular case. The introduction to the Guidelines goes on to state that determining penalty is not a mathematical exercise. In the case of a Class 2 first offence involving a prohibited substance, the Guidelines prescribe not less than two years disqualification, not fifteen months.
15. Appeal Panels have regularly repeated the view expressed in the Guidelines that the suggested penalties and penalty ranges serve only as a guide and are not mandatory. Reliance upon other factual circumstances as amounting to a precedent is to be avoided.
16. The suggested methodology of Mr Morris in distinguishing the penalty in *Wade* is of no utility or assistance and hence adopting a starting point of nine months disqualification is rejected as unsound.
17. It was accepted by the Panel that the ten-month disqualification imposed by the Stewards struck the right balance under the Guidelines and the Appeal was dismissed following the hearing. The appeal deposit fee was forfeited.
18. The Panel noted oral submissions made by Mr Morris about the living arrangements of Mr Elder and mental health challenges faced by him. The forgoing matters were canvassed before the Inquiry. The Chairman of the Inquiry

at pages 65 to 67 invited Mr Elder to make an application in writing to the Harness Racing Board about his accommodation problems. Furthermore, Mr Elder was invited to take advantage of the HRNSW Development and Support program available to him in dealing with mental health issues. Nothing was led as to whether these opportunities were taken up or, if so, what the outcome was. The Panel again drew to the attention of Mr Morris and Mr Elder the forgoing avenues available to Mr Elder.

Mr B. Skinner Chairman  
Mr P. Kite SC – Panel member  
Ms J. Moore – Panel Member

12 December 2023