

IN THE RACING APPEALS TRIBUNAL

MERLE CLARKE
Appellant

v

GREYHOUND WELFARE AND INTEGRITY COMMISSION
Respondent

REASONS FOR DETERMINATION

Date of hearing: 30 September 2024

Date of determination: 15 October 2024

Appearances: Mr J Bryant for the Appellant

Dr A Groves for the Respondent

ORDERS

- 1. The order made on 30 May 2024 pursuant to cl 14(1)(a) of the *Racing Tribunal Regulation 2015* (NSW) is vacated.**
- 2. In respect of the first offence contrary to r 156(b) of the *Greyhound Racing Rules*, namely the offence pertaining to the Appellant's breach of a condition of her registration imposing a limit on the number of greyhounds she was permitted to have at her property:
 - (a) the appeal is allowed;**
 - (b) the penalty imposed at first instance is set aside;**
 - (c) in lieu thereof, a disqualification of 4 months is imposed, commencing on 16 October 2024;**
 - (d) the disqualification in (c) is wholly suspended.****
- 3. In respect of the second offence contrary to r 156(b) of the *Greyhound Racing Rules*, namely the offence pertaining to the Appellant's breach of a condition of her registration preventing her from engaging in greyhound breeding activity:**

- (a) the appeal is allowed;**
- (b) the penalty imposed at first instance is set aside;**
- (c) in lieu thereof, a disqualification of 1 month is imposed,
commencing on 16 October 2024;**
- (d) the disqualification in (c) is wholly suspended.**

- 4. The penalties imposed by orders 2(c) and 3(c) shall be served concurrently.**
- 5. The appeal deposit is to be refunded.**

INTRODUCTION

1. By a Notice of Appeal dated 24 July 2024, Merle Clarke (the Appellant) has appealed against a determination of the Greyhound Welfare and Integrity Commission (the Respondent) made on the same date, imposing:
 - (i) a disqualification for a period of 15 months for a breach of r 156(b) of the *Greyhound Racing Rules* (the Rules) (the first offence); and
 - (ii) a concurrent disqualification of 6 months for a further breach of the same rule (the second offence)
2. The first offence related to the Appellant’s breach of a condition of her registration which imposed a limit on the number of greyhounds she was permitted to have on her property, whilst the second related to her breach of a condition which prohibited her from engaging in breeding activity.
3. It is noted that the Appellant previously pleaded not guilty to both offences. Before the Tribunal, she entered a plea of guilty to the first offence, but maintained her plea of not guilty to the second.¹
4. The parties prepared a Tribunal Book (TB) containing all relevant material. I was also provided with additional documents during the course of the hearing.²

THE OFFENCES

The first offence

5. The first offence was particularised in the following terms:³

“On 6 June 2023, a condition was imposed on [the Appellant’s] registrations, namely that [the Appellant] must not keep in excess of 30 greyhounds at [her] registered kennel address.

¹ Transcript 2.39 and following.

² Transcript 4.27 and following.

³ TB 20 – 21.

On 23 April 2024, [the Respondent's] Inspectors attended [the Appellant's] registered kennel address ... and identified [32 greyhounds].

...

By allowing 32 greyhounds on to the property, [the Appellant] was in breach of the condition placed on [her] registration.

The second offence

6. The second offence was particularised in the following terms:

That [the Appellant], as a registered Public Trainer with the Commission at all relevant times, committed an offence in circumstances where:

1. On 14 March 2023, a condition was imposed upon [the Appellant's] registrations, namely that [she] must not engage in any activities related to the breeding of greyhounds at [her] property or allow any other person to engage in greyhound breeding activity at the property

2. On 23 April 2024, [the Respondent's] Inspectors attended [the Appellant's] registered kennel address ... and identified the following greyhound as being pregnant;

My Dixie - NFCHC/956000004344792;

3. By allowing a pregnant greyhound onto the Property [the Appellant] was in breach of the condition placed upon [her] registration.

THE RELEVANT PROVISION OF THE RULES

8. Both charges were contrary to r 156(b) of the Rules which is in the following terms:

156 General offences

An offence is committed if a person (including an official):

...

(b) fails to comply with any conditions:

(i) of the person's registration or licence as an owner, trainer, attendant or any other category of registration or licence.

THE FACTS

9. The facts of the offending are not uncomplicated, and extend over a significant period of time. They are as follows.

The conditions imposed by the Respondent on 14 March 2023

10. On 14 March 2023, the Respondent's Director of Compliance, Policy and Legal wrote to the Appellant in the following terms:⁴

I have determined that in order to adhere to the Commission's principal objectives it is appropriate to impose conditions upon your registration ...

The conditions imposed on your registration are as follows:

1. Restriction on breeding

You must not engage in any activities related to the breeding of greyhounds at your property, or allow any other person to engage in greyhound breeding activity at the property.

2. Restriction on acquiring greyhounds

You must not acquire any additional greyhounds, or allow any additional greyhounds to be brought onto the property.

Please note that any breach of these conditions may result in disciplinary action being taken against you.

Review

The Commission proposes that the above conditions will be reviewed by the Commission on or before 30 June 2023.

The Respondent's correspondence to the Appellant of 5 May 2023

11. On 5 May 2023, following inspections of the Appellant's property, the Respondent advised the Appellant that it proposed to suspend her registration until such time as she had less than 20 greyhounds in her care, and invited the Appellant to respond.⁵ Although there is no precise evidence of what ensued, it is apparent that discussions took place between the parties following that correspondence.

The Respondent's correspondence to the Appellant of 5 June 2023

12. On 5 June 2023, the Chief Commissioner of the Respondent wrote to the Appellant's Solicitor in the following terms:⁶

⁴ TB 28.

⁵ See the Chronology at p. 5 of the bundle of documents provided in respect of the earlier application for a stay (the Stay Chronology).

⁶ TB 30 – 31.

I note previous discussions between yourself and Commission staff in respect of the proposed condition 3 titled “3. Restriction to number of greyhounds kept at the Property” in the Commission’s Correspondence of 5 May 2023.

In light of these discussions, I agree to resolve the matter by imposing the above condition on the following terms:

- *[The Appellant] must not keep in excess of 30 greyhounds at her registered kennel address and may only house those greyhounds in kennels or yards deemed compliant by the Commission.*

...

We note that the conditions imposed on [the Appellant] on 14 March 2023 remain in effect.

...

The Commission wishes to put [the Appellant] on notice that it intends to take bi-monthly inspections at the property (that is, every two months). The Commission will revisit the above conditions in 12 months’ time. However, if during the course of any inspections conducted at the property it becomes apparent that any of the below issues have arisen, I will consider revisiting this proposed disciplinary action:

- *Keeping more than 30 greyhounds on the property.*

...

The Appellant’s enquiry with the E Trac portal in early April 2024

13. At a hearing before Stewards the Appellant asserted, and I accept, that she made an enquiry on the Respondent’s E Trac portal, which indicated that her breeding certificate was still current.⁷ I am satisfied that such enquiry was made in the early part of April 2024.⁸ Whilst I do not have a hard copy of what appeared on the portal, it was conceded on behalf of the Respondent during the hearing of the appeal that the portal recorded that the Appellant’s certificate remained current.⁹

The Appellant’s application for certification to breed

14. Notwithstanding what appeared on the portal, the Appellant remained in some doubt about the position in relation to her breeding certificate. As a consequence, she submitted an application to the Respondent for certification to breed with the

⁷ TB 61.

⁸ Transcript 7.33

⁹ Transcript 7.25.

bitch *My Dixie*.¹⁰ On the evidence, I am satisfied that this application was lodged with the Respondent in or around early April 2024.

The Appellant's telephone call to the Respondent on 8 April 2024

15. On 8 April 2024, the Appellant telephoned the Respondent's call centre. I have been provided with, and have listened to, a recording of that call. It is accepted by the Respondent that the Appellant made that call to enquire about breeding with "*My Dixie*" generally, and about the outcome of her application for the issue of a breeding certificate in particular.¹¹ The Appellant having identified herself, the following conversation with the Respondent's Operator took place:

Operator: How can I help
Appellant: I sent in on Friday a breeding application through and I'm wanting to know has that been dealt with because the bitch is on season and she's ready ... so I need to know urgently if that's been okayed.

Operator: What was the greyhound's name?
Appellant: My Dixie.

Operator: Sorry what was it?
Appellant: My Dixie. M - Y - D - I - X - I - E

Operator: Can you just bear with me a moment Merle?
Appellant: Yes dear,

Operator: Thanks.
.....

*Operator: Hi Merle, yes I was talking to my colleague. Now she, **so the exemption isn't required until after the 24th of April. So she's ready to go. Like, you don't, if she's served before the 24th April, then you don't need to worry about going ahead with the exemption ... We're just going to hang on to it in case you need us to use it, but as it stands, if you're taking her in and she's going to be served before the 24th April, then the exemption won't be required.***

16. In other words, the Appellant was advised that there was no impediment to her engaging in breeding activities with *My Dixie*, at least up until 24 April 2024. The

¹⁰ Annexure A in the documents provided during the course of the hearing.

¹¹ See the Stay Chronology.

significance of the date of 24 April remains unclear, although nothing turns on it for present purposes.

The Respondent's advice to the Appellant of 15 April 2024

17. On 15 April 2024, a person identified only as "Craig" from the Respondent's Registration and Welfare Team wrote to the Appellant stating the following:¹²

*I'm writing to you to **confirm that the Animal Exemption Order application you submitted is approved** (emphasis added).*

18. That advice was generally consistent with what the Appellant had been told in the phone call on 8 April.

The inspection of the Appellant's property on 23 April 2024

19. The Respondent's inspectors attended the Appellant's property on 23 April 2024. One of those Inspectors was Rebecka Crawley, who provided a statement of 14 June 2024¹³ which included the following:¹⁴

Persons present during the inspection were [the Appellant] and Jeffrey Simms.

...

Upon arrival to the shed, Jeffrey was seated and said something similar to "this is my domain, these are my dogs". I began the inspection of these greyhounds whilst Inspector Campbell was photographing the workplaces in the shed. Jeffrey began handling each greyhound individually for the purpose of me scanning and inspecting them. During the interaction with one of the greyhounds, Jeffrey told me something similar to "this is my pride and joy. She is in pup and due within a few weeks;". I believe this was a red fawn bitch. Inspection of these greyhounds was completed and we moved to some outdoor kennels to the rear of the house.

The kennels to the rear of the house were compliant and all greyhounds in good condition.

*Merle then led us to the kennel shed at the rear of the house where her dogs were located. **I scanned and inspected the greyhounds. All greyhounds were in good condition** (emphasis added in each case).*

¹² Annexure B in the additional bundle provided during the course of the hearing.

¹³ TB 34 – 35.

¹⁴ At [8]; [10] – [12].

20. The inference is that the greyhound referred to by Mr Simms in this conversation as being “*in pup*” was *My Dixie*. A total of 32 greyhounds were scanned.¹⁵ That number exceeded the limit of 30 which had been placed as a condition on the Appellant’s registration. The in

The Appellant’s correspondence to the Respondent of 4 May 2024

21. Following the inspection, the Appellant wrote to the Respondent stating the following:¹⁶

*On the E Trac Portal my Registrations were showing that my Breeding Registration was still current. Due to being in doubt I applied for certification to breed with the bitch My Dixie and **this was granted before insemination.***

....

It was very recently that I had the two additional greyhounds returned to me that I owned. I proceeded immediately to rehome two greyhounds. I booked them in for desexing and they are to be desexed on 6th May. You would be aware that these appointments can be anywhere up to a month wait.

I have a pet home for them to go to when desexed, they will not have to linger here, they can be rehomed immediately.

I explained to your compliance officers the day they visited they were being prepared for rehoming.

I have endeavoured to comply with the restrictions imposed on me but there will be a time I will need the support of understanding (emphasis added).

SUBMISSIONS OF THE PARTIES – THE FIRST OFFENCE

Submissions of the Appellant

22. As previously noted, the Appellant pleaded guilty to this offence at the commencement of the hearing of the appeal, having previously pleaded not guilty before the Stewards. The essence of the Appellant’s position was that the commission of the offence was entirely unintentional, principally for the reasons to which she alluded in her correspondence of 4 May 2024.¹⁷ Mr Bryant, who appeared for the Appellant, emphasised that whilst the Appellant accepted that the limit of 30 greyhounds had been exceeded, it was not her intention to keep the

¹⁵ Stay Chronology provided in the course of the hearing.

¹⁶ Annexure A to one of the additional documents provided during the hearing.

¹⁷ See also TB 59.4 – 59.26 for similar submissions made to the Stewards.

two additional greyhounds on her property for any appreciable length of time, and that it was always her intention to “move them on”¹⁸ (or in other words, rehome them). It was submitted that this was independently corroborated by a letter from the Principal of the Gilgandra Veterinary Clinic dated 23 August 2024 which states the following:¹⁹

In May this year [the Appellant] presented Wyuna Miss and Pick Me Up on 6 May for desexing as part of the Greyhound rehoming program. These appointments, as in previous cases, had been made prior to this date and given the clinic workload at the time, the interim period was likely to be at least 3-4 weeks.

23. Consistent with that correspondence, it was submitted on the Appellant’s behalf²⁰ that the greyhounds had entered the property on or about 10 April 2024, were desexed on 6 May, and were removed from the property on 22 May. Further, and consistent with what had been put to the Stewards,²¹ it was submitted²² that the two greyhounds had been brought on to the property, not by the Appellant, but by another person who shared the property with her, namely Jeffrey Simms.²³ That said, Mr Bryant properly conceded²⁴ that the Appellant, as the registered participant, held the responsibility of complying with the conditions of that registration. In circumstances where, as I have noted, Ms Crawley expressly stated that there were no welfare concerns in respect of any greyhound located at the Appellant’s property at the time of the inspection, it was submitted on the Appellant’s behalf that the offending fell at the lowest end of the scale.²⁵

24. In terms of the Appellant’s subjective case, it was emphasised²⁶ that in circumstances where she is now 85 years of age, the disqualification imposed by Stewards would result in her never returning to the industry, and would therefore

¹⁸ TB 60.5 – TB 60.31; Transcript 8.16 and following; Written submissions at TB 8 [12] – [15].

¹⁹ TB 48.

²⁰ Transcript 9.19 – 10.46.

²¹ TB 60.14 – TB 60.18.

²² Transcript 8.40 – 9.14.

²³ Transcript 12.4.

²⁴ Transcript 12.11.

²⁵ Transcript 11.3 – 11.47.

²⁶ Transcript 12.50.

effectively amount to a lifetime disqualification.²⁷ Ultimately, it was submitted that a fine would be appropriate but that in any event, any penalty which was imposed should be wholly suspended.²⁸

Submissions of the Respondent

25. On behalf of the Respondent, Dr Groves expressly acknowledged the Appellant's long history in, and contribution to, the greyhound racing industry, and the affection in which she is held.²⁹ However, Dr Groves emphasised that the condition was imposed because of concerns held by the Respondent in relation to the welfare of greyhounds in the Appellant's care.³⁰ It was also pointed out that the catalyst for the imposition of the condition was the fact that a substantially greater number of greyhounds had previously been found to be present on the Appellant's property.³¹ It was further submitted³² that the terms of the condition imposed were clear, and that there was an obligation on the Appellant, as an industry participant, to comply with all of the conditions of her registration.³³

26. The Respondent also queried the veracity of the Appellant's assertion that the presence of the additional greyhounds was temporary, pointing out that at the time of the inspection of the Appellant's property, *My Dixie* was apparently pregnant and about to whelp. It was submitted that the logical consequence of that circumstance was that even more greyhounds were about to come on to the Appellant's property, and that accordingly, the proposition that the breach was a temporary one was somewhat artificial.³⁴

27. Finally, it was submitted that one of the purposes of the imposition of the condition was to allow the Appellant to continue to participate in the greyhound

²⁷ Transcript 12.30.

²⁸ Transcript 22.26.

²⁹ Transcript 23.20 – 23.33.

³⁰ Transcript 23.35 – 23.46; TB 12 at [20] – [21].

³¹ Transcript 24.6 – 24.21; TB 9 at [19].

³² Transcript 24.41.

³³ TB 11 at [18].

³⁴ Transcript 25.5 – 25.43.

racine industry.³⁵ The absence of any identified welfare concerns was conceded, although it was emphasised that such concerns underscored part of the reason for the imposition of the condition in the first instance.³⁶

CONSIDERATION

28. As I have noted, it was submitted on behalf of the Respondent that the objective seriousness of the first offence should be assessed by reference to the fact that when *My Dixie* whelped her litter, the limit specified in the condition imposed on the Appellant's registration would have been further exceeded. I accept that this was a clear and logical inevitability, and one that would have been within the Appellant's knowledge.

29. However, it is important to bear in mind that the particulars of the first offence were that the Appellant had committed such offence "*by allowing 32 greyhounds onto the property*", as a consequence of which she was "*in breach of the condition placed upon [her] registration*".³⁷ That was the charge that the Appellant came to meet. To take the circumstances surrounding *My Dixie* into account in determining the objective seriousness of such offending would, in my view, offend the principle that when determining a question of penalty, facts which would amount to a more serious offence cannot be taken into account.³⁸

30. For similar reasons, and although there is some suggestion that the Appellant's previous conduct in having an excessive number of greyhounds at her property prompted the Respondent to impose the condition which led to the commission of the first offence, that previous conduct cannot be taken into account in determining an appropriate penalty. It did not, as I understand it, lead to any charges being brought against the Appellant, or any other formal disciplinary action being taken against her.

³⁵ Transcript 28.44 – 29.2.

³⁶ Transcript 29.4 – 29.14.

³⁷ TB 16.

³⁸ See generally *R v De Simoni* [1981] HCA 31; (1981) 147 CLR 383.

31. It follows that I am left to determine the objective seriousness of the first offence by reference to (amongst other things) the fact the condition in question imposed a limit of 30 greyhounds being present on the Appellant's property, and 32 were located. The fact (if it be the fact) that the additional 2 greyhounds had been brought on to the property by someone other than the Appellant is not to the point, and does not materially mitigate the offending. As the holder of the relevant registration, the Appellant had a fundamental obligation to comply with its conditions.

32. The fact that the Appellant committed the offence is clear. Moreover, I am satisfied that the Appellant acted in the knowledge that she was committing an offence. I also accept that the purpose of imposing the condition stemmed from concerns about the welfare of greyhounds in the Appellant's care and control. The importance of animal welfare needs no emphasis.

33. However, even accepting all of those factors, the evidence makes it clear that no animal welfare concerns whatsoever arose when the Appellant's property was inspected. It follows that at least in that respect, the offending is not aggravated. Moreover, the degree to which the prescribed limit was exceeded was minimal, the time over which the offending occurred was relatively short, and I am satisfied that it was not the Appellant's intention to have the two greyhounds remain on the property permanently.

34. In all of the circumstances, whilst I do not accept that the offending falls at the lowest end of the scale, it is certainly towards that end. There is some need for general deterrence to be reflected in any penalty, although the need for personal deterrence would appear to be less.

35. Subjectively, the Appellant is 85 years of age. That of itself is a factor she is entitled to have taken into account. She was first registered as a participant in the

industry on 1 April 1979, more than 45 years ago.³⁹ Her disciplinary history includes multiple entries for breaches of the rules,⁴⁰ and therefore cannot be regarded as a mitigating factor. At the same time, that history is not so serious as to aggravate the offending. The vast majority of breaches have been dealt with by way of the imposition nominal fines, the clear inference being that such breaches were of a relatively minor nature.

36. Importantly, a series of unchallenged testimonials form part of the evidence before me. They make reference to the fact that in the opinions of the various authors, the Appellant:

- (i) has always presented her greyhounds in good order;
- (ii) follows veterinary advice;
- (iii) has training facilities which are of an acceptable standard;
- (iv) always demonstrates fastidious care for, and compassion towards, her greyhounds, and strives hard to provide a level of attention which is exceptional.⁴¹

37. Other testimonials support the conclusion that the Appellant's greyhounds are kept in excellent condition,⁴² and that their proper care is her priority.⁴³

38. This evidence is of particular significance, given the underlying reason for the imposition of the condition in the first place. It is also entirely consistent with the absence of any animal welfare concerns being identified when the Appellant's property was inspected.

39. The Appellant pleaded guilty to the first offence at the commencement of the hearing of the appeal. Given the time at which that plea was entered, she is not

³⁹ TB 36.

⁴⁰ TB 38 – 40.

⁴¹ Testimonial of Nadine Allan, Gilgandra Veterinary Clinic at TB 41; Testimonial of Dr John Newell at TB 42.

⁴² Testimonial of John Martin at TB 43; Testimonial of Gary Moore and Helen Ayre at TB 44

⁴³ Testimonial of John Staines at TB 45.

entitled to a discount in the order of 25% which may have been applied if it were entered earlier. However, her plea remains a factor which should be given some weight, although I do not propose to precisely quantify the discount.

40. Finally, it should be noted that generally speaking, the Respondent raised no issue with the salient aspects of the Appellant's subjective case.⁴⁴

41. In my view, on the whole of the evidence, a period of disqualification should be imposed, but its operation should be suspended.

SUBMISSIONS OF THE PARTIES – THE SECOND OFFENCE

Submissions of the Appellant

42. The Appellant pleaded not guilty to this offence. Put simply, her position was that the offence should be regarded as one of strict liability, such that she was entitled to avail herself of a defence of honest and reasonable mistake. In the Appellant's submission, the honest and reasonable mistake under which she acted stemmed from:

- (i) the result of her enquiry on the E Trac Portal in early April 2024, which indicated that her breeding certificate was still current (a fact expressly conceded by the Respondent during the hearing of the appeal);
- (ii) her submission, to the Respondent, of an application for certification to breed with *My Dixie*;
- (iii) the advice given to her in the telephone conversation of 8 April; and
- (iv) the advice given to her in writing by the Respondent on 15 April, namely that her application had been approved.

43. It was submitted that in these circumstances, the commission of the second offence had occurred against a background of information provided by the Respondent which was plainly wrong, but on which the Appellant was

⁴⁴ Transcript 28.35.

nevertheless entitled to, and did, rely.⁴⁵ In the event that I came to the conclusion that a defence of honest and reasonable mistake was not available, the Appellant nevertheless relied upon all of these circumstances as matters of significant mitigation, along with her subjective circumstances which I have previously outlined.

Submissions of the Respondent

44. It was submitted on behalf of the Respondent that the second offence should be viewed as one of absolute, as opposed to strict, liability, and that such a conclusion was entirely consistent with its regulatory nature.⁴⁶ That said, the Respondent accepted that even if I were to come to that conclusion, the matters relied upon by the Appellant could properly be taken into account in mitigation.

45. It was submitted that on a proper analysis of the evidence, the Appellant had been advised, in clear terms, of the imposition of a condition restricting her breeding activities, but had “*preferred*” to accept the information on the E Trac Portal.⁴⁷ However, Dr Groves candidly conceded that it was “*regrettable*” that the Appellant had been provided with incorrect information.⁴⁸ Dr Groves accepted, at least in a general sense, that the information provided to the Appellant had resulted in her being effectively misled,⁴⁹ but nevertheless submitted that there was no need for any enquiry to be made by the Appellant at all, given that the terms of the condition in question were clear.

CONSIDERATION

46. The first issue to be addressed is whether the second offence should be regarded as one of absolute liability on the one hand, or strict liability on the other.

47. As a general proposition, offences may be divided into three categories, namely:

⁴⁵ Transcript 13.15 – 13.30.

⁴⁶ Transcript 26.31.

⁴⁷ Transcript 27.34.

⁴⁸ Transcript 27.41 – 27.45.

⁴⁹ Transcript 28.20.

- (i) those in respect of which proof of a mental element (such as intention) is required;
- (ii) those in respect of which a mental element will be presumed to be present, but in which it will be open to the defendant to adduce evidence of the existence of an honest and reasonable mistake of fact or in other words, an honest and reasonable belief that the conduct does not amount to an offence;
- (iii) those in which a mental element plays no part, and where guilt is established simply by proof of the objective ingredients of the offence.

48. The terms “*strict liability*” and “*absolute liability*” are shorthand descriptions of the second and third categories above. A defence of honest and reasonable mistake of fact is available in respect of the second category of offence, but not the third.⁵⁰ In *He Kaw The v The Queen*⁵¹ the High Court identified the following considerations as those which are relevant for the purposes of determining whether the mental element of an offence has been displaced:

- (i) the words of the instrument creating the offence;
- (ii) the subject matter of the offence;
- (iii) whether subjecting a person charged to absolute liability will assist in the promotion of the provision in question; and
- (iv) whether the provision creates an offence for the purposes of regulating social conditions and/or public safety, in which case it will more easily be regarded as imposing absolute liability.⁵²

49. Applying these criteria to the circumstances of the present case, the following conclusions are open.

⁵⁰ See *Director of Public Prosecutions v Stanojlovic* (2017) 53 VR 90 ; [2017] VSC 540 at [13] and the authorities cited therein.

⁵¹ (1985) 157 CLR 523; [1985] HCA 43.

⁵² At 529 – 530; 567; 594 – 595.

50. First, there is nothing in the terms of r 156(b) which would suggest that it incorporates a mental element.
51. Secondly, the subject matter of r 156(b), namely compliance with a licence or registration in a regulatory setting, tends against a conclusion that it incorporates such an element.
52. Thirdly, a conclusion that the offence created by 156(b) is one of absolute liability clearly promotes the provision.
53. Fourthly, the object of r 156 is to regulate the greyhound racing industry, and to promote the objects of the *Greyhound Racing Act 2017* (NSW). That is evident, not only from the terms of the provision, but from the stated aims of Rules.⁵³
54. In my view, each of those considerations weighs heavily in favour of the conclusion that the offence created by r 156(b) is one of absolute liability. Accordingly, a defence of honest and reasonable mistake of fact is not available.
55. It follows that the Appellant must be found guilty of the second offence. However, for a number of reasons, the matters she relied upon in support of a defence remain significant mitigating factors for a number of reasons.
56. First, there is no doubt that when the Appellant made her enquiry of the E Trac portal in early April 2024, the indication was that her breeding certificate was current. That information was fundamentally incorrect. That was not the fault of the Appellant. Moreover in my view, the Appellant is not to be criticised for making the enquiry. Whilst I accept that the conditions which had been imposed on her registration had certainly been set out in correspondence sent by the Respondent to her Solicitor, I also accept that the Appellant was confused about her position, and that it was this which caused her to make the enquiry.⁵⁴ It was

⁵³ Particularly at 1.1

⁵⁴ TB 61.20

not a case of the Appellant “*preferring*” the information on the portal. Consulting records made available by the industry regulator in an effort to have her position clarified was not an unreasonable course for the Appellant to take.

57. In this respect, I should also say that having observed the Appellant when she was present at the hearing of the appeal, and without intending any disrespect to her, she presented as a generally unsophisticated 85 year old person. Had she simply proceeded to engage in breeding without making any enquiry at all, that would be one thing. But that was not what she did. Having consulted the portal, she was entitled to assume that the information provided to her was accurate, and that she could act on it.

58. Secondly, and notwithstanding the information she was given via the portal, the Appellant took the further step of submitting an application that she be permitted to engage in breeding. When she telephoned the Respondent’s offices on 8 April 2024 to ascertain the outcome of that application, she was informed that no exemption was required until after 24 April and that *My Dixie* was “*ready to go*”. In other words, she was told that she was free to engage in breeding. The Appellant had explained in the preamble to that conversation why it was that she was calling. Clearly, she was making the enquiry because she wanted to ensure that she was complying with the rules. I am satisfied that she was not intending to engage in any breeding activity until she received confirmation that she was able to do so. She was informed, in unequivocal terms, that she could proceed. That information was fundamentally wrong. Again, the fault for that does not lie with the Appellant.

59. Thirdly, on 15 April 2024, the Appellant was told *in writing*, not that an exemption was unnecessary (which is what she was told in the telephone call), but that her application for exemption had been *approved*. In other words, she was unequivocally informed that she could engage in breeding. As with the previous advice which had been given to the Appellant, that information appears to have

been fundamentally wrong. Again, the fault for that does not lie with the Appellant.

60. Fourthly, there is evidence that the proposal was that *My Dixie* be impregnated at *Orana Vets*, who had also received confirmation from the Respondent that this could take place.⁵⁵ That confirmation was entirely consistent with everything that the Appellant had been told.

61. I accept that the Appellant had the responsibility of ensuring that she complied with any condition(s) imposed on her registration. Equally, the Respondent had the responsibility of providing accurate information. It is also important to emphasise that the incorrect information I have identified was provided to the Appellant **before** *My Dixie* was served.⁵⁶ I am satisfied that the Appellant engaged in breeding with *My Dixie* solely on the basis of what she had been told, on multiple occasions, by the Respondent.

62. In my view, the inescapable inference is that had the Appellant been given the **correct** information to begin with, she would not have acted as she did. Viewed in that way, the principal catalyst for the commission of the second offence was the incorrect information which was repeatedly provided to her. In other words, the Appellant acted on what she had been told, and engaged in conduct which she was informed was in order, but which in fact amounted to the commission of the second offence. The inevitable conclusion is that whilst the Appellant must be found guilty of that offence, her culpability falls at the lowest possible end of the scale. Whilst a short period of disqualification should be imposed, it should be wholly suspended.

63. Needless to say, I have reached my conclusions in respect of both offences based upon the facts and circumstances of **this** case. Nothing I have said in my reasons should be construed as expressing the view that the breach of a condition

⁵⁵ TB 61.20 – 61.24.

⁵⁶ TB 61.25.

of registration is not a serious matter, or that such offending, if proved, is likely to meet with nothing more than a nominal penalty. It follows that this determination is not to be regarded as having any precedential value in terms of the range of penalties that might be appropriately imposed for this kind of offending.

ORDERS

64. For the reasons given I make the following orders:

1. The order made on 30 May 2024 pursuant to cl 14(1)(a) of the *Racing Tribunal Regulation 2015* (NSW) is vacated.
2. In respect of the first offence contrary to r 156(b) of the *Greyhound Racing Rules*, namely the offence pertaining to the Appellant's breach of a condition of her registration imposing a limit on the number of greyhounds she was permitted to have at her property:
 - (a) the appeal is allowed;
 - (b) the penalty imposed at first instance is set aside;
 - (c) in lieu thereof, a disqualification of 4 months is imposed, commencing on 16 October 2024;
 - (d) the disqualification in (c) is wholly suspended.
3. In respect of the second offence contrary to r 156(b) of the *Greyhound Racing Rules*, namely the offence pertaining to the Appellant's breach of a condition of her registration preventing her from engaging in greyhound breeding activity:
 - (a) the appeal is allowed;
 - (b) the penalty imposed at first instance is set aside;
 - (c) in lieu thereof, a disqualification of 1 month is imposed, commencing on 16 October 2024;
 - (d) the disqualification in (c) is wholly suspended.
4. The penalties imposed by orders 2(c) and 3(c) shall be served concurrently.
5. The appeal deposit is to be refunded.

THE HONOURABLE G J BELLEW SC

15 October 2024