

**IN THE RACING APPEALS TRIBUNAL**

**RONALD HAWKSHAW**  
**Appellant**

**v**

**GREYHOUND WELFARE AND INTERGRITY COMMISSION**  
**Respondent**

**REASONS FOR DETERMINATION**

**Date of Hearing: 22 August 2024; 21 October 2024**

**Date of Determination: 4 November 2024**

**Appearances: Mr D Cleverley for the Appellant**

**Dr A Groves for the Respondent on 22 August 2024**  
**Ms A Summerson-Hingston for the Respondent on 21**  
**October 2024**

**ORDERS**

- 1. The appeal is dismissed.**
- 2. The appeal deposit is forfeited.**

## **INTRODUCTION**

1. By a Notice dated 22 December 2023,<sup>1</sup> Ronald Hawkshaw (the Appellant) has appealed against a determination of the Greyhound Welfare and Integrity Commission (the Respondent) made on 21 December 2023 to refuse his application for registration as a Greyhound Owner/Trainer<sup>2</sup> on the grounds that he is not a fit and proper person to be registered.
2. The hearing of the appeal initially came before me on 22 August 2024. At the commencement of the hearing on that day Mr Cleverley, who appeared for the Appellant, indicated that he intended to call the Appellant to give evidence.<sup>3</sup> Notwithstanding the orders which had been made as to the filing of evidence and submissions from both parties, no statement from the Appellant had been filed. Unsurprisingly, Dr Groves, who appeared on that occasion for the Respondent, took issue with evidence being called from the Appellant in the absence of a statement.<sup>4</sup> It was for that reason that the hearing was adjourned.
3. During the period of the adjournment, the Appellant filed additional material, including an Affidavit of 6 September 2024 and further submissions. The Respondent also filed further submissions in reply. In addition to that, I have the material contained in the Tribunal Book (TB) originally prepared by the parties, as well as a transcript of the evidence given by the Appellant at the resumed hearing.
4. Before coming to a consideration of the issues on the appeal, two preliminary matters should be noted.
5. The first, is that Mr Cleverley initially raised an issue stemming from s 117 of *The Constitution* which makes provision for the rights of residents in the various States of Australia. When the hearing first came before me, I drew Mr Cleverley's

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<sup>1</sup> TB 1 and following.

<sup>2</sup> TB 26 – 27.

<sup>3</sup> Transcript 3.24 and following.

<sup>4</sup> Transcript 4.15.

attention to a number of authorities in relation to that provision.<sup>5</sup> Nothing further was said about the matter when the hearing resumed, and I have therefore proceeded on the assumption that the submissions which were originally made are no longer pressed. I should say that even if I had been required to consider the issue, I would have concluded that the determination of the Respondent which is the subject of the appeal did not infringe the provisions of s 117.<sup>6</sup>

6. The second, is that Mr Cleverley originally submitted that I should depart from my determination in *Fitzpatrick v Harness Racing New South Wales*<sup>7</sup> and conclude that the onus was on the *Respondent* to establish that the Appellant is *not* a fit and proper person, rather than the onus being on the *Appellant* to prove that he is fit and proper. Mr Cleverley ultimately withdrew that submission.<sup>8</sup> Accordingly, I have proceeded on the basis that the onus is on the Appellant.

## **THE FACTS**

7. The primary facts are not in dispute and may be summarised as follows.
8. On 21 August 2023, the Appellant applied for registration with the Respondent as an Owner/Trainer.<sup>9</sup> Question 2 on the application form asked:

*Have you ever been charged (with) or convicted of any criminal offence?*

9. The Appellant ticked the “Yes” box, and gave the following particulars of that answer:

*Possession cannabis 7 years ago.*

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<sup>5</sup> Transcript 5.38 – 5.45.

<sup>6</sup> See generally *Street v Queensland Bar Association* [1989] HCA 53; (1989) 168 CLR 461.

<sup>7</sup> 11 June 2024.

<sup>8</sup> Transcript 32.24 – 32.34.

<sup>9</sup> TB 15 and following.

10. A National Digital Police Certificate obtained by the Respondent<sup>10</sup> set out the Appellant's criminal history as follows:

<b>COURT AND DATE</b>	<b>OFFENCE</b>	<b>RESULT</b>
Wyong Local Court – 1 May 2001	Contravene Apprehended Domestic Violence Order	Fined \$500.00
Wyong Local Court – 1 May 2001	Contravene Apprehended Domestic Violence Order	Good behaviour bond – 18 months
Wyong Local Court – 16 October 2002	Break enter and steal	9 months periodic detention
Wyong Local Court – 11 March 2004	Larceny	Fined \$400.00
Wyong Local Court – 11 March 2004	Enter enclosed lands without lawful excuse	Fined \$300.00
Warwick District Court – 11 June 2018	Extortion with intent to gain benefit with threat of detriment	18 months imprisonment
Maryborough Mag. Court – 5 September 2022	Contravene Apprehended Violence Order	Fined \$500.00

11. I have addressed the penultimate entry in that history in more detail below. However, it is relevant to note at this point that in respect of that entry, the material before me includes an article from the *Courier Mail* Newspaper of 16 June 2018 concerning the Appellant's appearance before the Warwick District Court when the matter was heard and determined. I find myself compelled to observe that even when full allowance is made for the fact that I am not bound by rules of evidence, and that I can inform myself as I think fit in relation to any factual issue, reliance upon a media article to prove facts surrounding the commission of an offence and the sentence imposed, particularly when the commission of that offence is a matter which has a material bearing on my determination, is a most unsatisfactory approach. As I observed when the matter first came before me, it would have been open to the Respondent (or the Appellant for that matter) to make an application to me for the issue of an order pursuant to s 16A of the *Racing Appeals Tribunal Act 1983* for production, either from the Court Registry or from the Queensland Director of Public Prosecutions (or both), of the Crown Case statement setting out the offending, the full reasons of the sentencing Judge, and

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<sup>10</sup> TB Item 5.

any other material which was tendered on sentence. Having squarely raised the matter, I am more than a little surprised that no application was made to me for the issue of a Notice. The fact that the Appellant conceded that the article was accurate is not to the point. It does not alter the fact that material of the kind that I have identified could, and in my view should, have been obtained. The practice of relying upon media articles to prove such important facts is not one to be encouraged.

12. The article in the *Courier Mail* was in the following terms:<sup>11</sup>

***EXTORTION: Threat to break man's legs used to recover debt***

*A PRATTEN man who once helped save lives in the 2011 floods has fronted court after threatening to break a man's legs to reclaim an unpaid debt.*

*Ronald William Hawkshaw and his son Jack William Hawkshaw both pleaded guilty to extortion in Warwick District Court this week, after they worked together to elicit \$4,500 from a 51 year old man in 2015.*

*But the Court heard that unlike some extortion cases, the debt was believed to be real, as Ronald attempted to get back a loan he had given to his friend after he received a huge insurance payout.*

*Defence lawyer Jessica Goldie said Hawkshaw and his victim were previously friends, but the man was an alcoholic and Hawkshaw lent him \$6,000 when the bank was going to repossess his house.*

*The Court heard Hawkshaw, 45, didn't think he'd see the money again but three years later he heard that his friend's house had burnt down and he had received a \$130,000 pay out.*

*Ms Goldie said Hawkshaw tried to chase up the man for his loan on multiple occasions, but he was worried he would be drinking away all the money.*

*"It made him more frustrated that he had helped him out at a time when he needed money but when Mr Hawkshaw was in a position that he wasn't financially well off himself the complainant wasn't willing to help him", she said.*

*Crown Prosecutor Gary Churchill explained that Ronald told the victim he would pick him up with Jack and take him to the bank to withdraw the \$4,000, if he didn't comply he would break his legs.*

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<sup>11</sup> TB 28 – 31.

*Mr Churchill said the next day the trip to the bank was completed, but about 10 days later the pair again picked the victim up and took him to an ATM on Palmerin St so he could withdraw a further \$500.*

*The Court heard Ronald told the man on that occasion that if he didn't go, he'd "smash the man's head in" and when he didn't get a full \$1000 at the ATM he threatened to trash the caravan park where the man was staying.*

*Mr Churchill said Jack, who is now 21 and works in Uluru, drove his dad to the meetings with the victim.*

*"His presence acted as some encouragement to his father and to the complainant's intimidation", Mr Churchill said.*

*Judge Gregory Koppenol said Ronald behaved poorly and was foolish in the way he recovered the debt.*

*"Debts are recovered by legal process, not by threats of violence", he said.*

*But Judge Koppenol acknowledged that there was no actual violence inflicted and Ronald had spent 43 days in custody after committing the offence.*

*Ronald Hawkshaw was sentenced to 18 months' jail but was released on parole immediately, while Jack was given six months jail but the sentence was suspended.*

13. On 21 December 2023, the Respondent wrote to the Appellant in the following terms:<sup>12</sup>

*Thank you for your application for registration as a Greyhound Owner Trainer.*

*On 2nd November 2023, your application was considered by the Commission's Application Assessment Panel (AAP). The AAP have determined to refuse your application for registration as a Greyhound Owner Trainer under Criteria 10 and Criteria 12 of the Fit and Proper Person framework.*

*The reasons for refusing your application for registration as a Greyhound Owner Trainer are:*

- *Under the 'fit and proper person' framework, **criteria 10** – applicant has been previously convicted of a serious offence involving violence and or dishonesty.*

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<sup>12</sup> TB 26 – 27.

- *Your National Police Certificate disclosed that on 05/09/2022 at Maryborough Magistrates Court you were convicted of offence 177(2)(b) contravention of domestic violence order (on 07/08/2022) – Outcome – Conviction recorded fined; \$500. Time to pay: 28 days.*
- *Your National Police Certificate disclosed that on 11/06/2018 at Warwick District Court you were convicted of offence CC 415(1)(a)(i)&(b) extortion with intent to gain benefit with threat of detriment (btn 27/10 & 11/11/2015) – Outcome – conviction recorded sentenced imprisonment: 18 months parole release date: 11/06/2018.*
- *Under the ‘fit and proper person’ framework, **criteria 12** – applicant has previously been charged or convicted of any criminal offence but did not disclose this on their application.*
  - *Your National Police Certificate disclosed 7 convictions.*
  - *On your application to register as a Greyhound Owner Trainer, you declared “cannabis possession 7 years ago.”*

*In making this determination, the AAP has had particular regard to your failure to be truthful in your application about your previous criminal charges.*

14. The references to Criteria 10 and Criteria 12 are references to the Respondent’s *Fit and Proper Person Framework* (the Framework) which is relevantly in the following terms:

**FIT AND PROPER PERSON FRAMEWORK**  
**Guidance to applicants regarding the Commission's application of 'Fit and Proper' person test for registration as a greyhound racing industry participant.**

**Criminal history or background of applicant Commission's likely position given the history and background of applicant**

<b>CRIMINAL HISTORY OR BACKGROUND OF APPLICANT</b>	<b>COMMISSION'S LIKELY POSITION GIVEN HISTORY AND BACKGROUND OF APPLICANT</b>
<b>10 Applicant was previously convicted of a series offence involving violence, dishonestly, drug offences and sexual offences</b>	<b>Applicant may be asked for further information. Application may be refused but the decision will take into account whether the offences occurred more than 5 years ago, and the penalty that was imposed.</b>
<b>12 Applicant has previously been charged or convicted of any criminal offence but did not disclose this on their application.</b>	<b>Applicant will be asked for further information. Application may be refused.</b>

15. Needless to say, the Framework is a guide, to be applied with the flexibility necessary to reflect differing facts and circumstances.

**THE CASE AGAINST THE APPELLANT**

16. The Respondent relies upon a combination of 4 circumstances in support of its case against the Appellant, namely:

- (i) the failure to disclose his complete criminal history in the application;
- (ii) his most recent conviction for a breach of an Apprehended Violence Order;
- (iii) the conviction for extortion in 2018; and
- (iv) his lack of familiarity with, and experience in, the use of relevant technology.<sup>13</sup>

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<sup>13</sup> This issue emerged in the hearing at Transcript 36.15 to 42.11.



17. It is appropriate to assess the evidence in relation to each of those four matters by principal reference to:

- (i) statements made by the Appellant in his Affidavit of 6 September 2024; and
- (ii) oral evidence given by the Appellant at the hearing.

### **The Appellant's failure to disclose his complete criminal history in the Application**

18. In his Affidavit, the Appellant said this:<sup>14</sup>

- 46. *I regret that errors were made on the form. xxx helped me filled them out as she is much more articulate than I am and she has done so in the past.*
- 47. *The circumstances of the offence were that I was sitting near here when she was filling them out.*
- 48. *She asked me some questions and I responded.*
- 49. *I was admitted to practice and registered in NSW for many years and I gave [sic] this registration when I moved up there and I sought and was given admittance to practice in Queensland for many years.*
- 50. *xxx and I were used to the Queensland system, where you apply and fi they think there is anything left incomplete or they are concerned about, they ring, and you fil them in.*
- 51. *I wish to make this very clear I did not intend to deceive or pull the wool over the regulator's eyes about my past.*
- 52. *If I had known for a moment that there would be any kerfuffle about accuracy I would have ensured that every single detail would have been entered.*
- 53. *I did not finish my formal education, and I did rely on xxx to assist. I think she was only trying to assist as well.*
- 54. *I have attached the form in my previous submissions that I wish the Tribunal to note, and I did put my hand up to having a criminal record. xxx entered one of the offences and when I spoke to her after the charge she said:*

*"As far as I was concerned, I thought they would check everything."*

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<sup>14</sup> Commencing at [46]. It is noted that the name of the person referred to by the Appellant in both his Affidavit and his oral evidence has been anonymised.

55. *So we were both alarmed and shocked when it was raised.*
56. *In retrospect, I should have got more guidance on how to complete the form properly and we should not have tried to muddle through on our own.*
57. *My solicitor and I wanted to obtain an affidavit from xxx about this but at the time of writing she is unwell which was unforeseen. I am happy to be cross-examined in relation to it.*

19. The Appellant gave oral evidence in relation to this issue at the hearing in answer to questions from Mr Cleverley:<sup>15</sup>

*MR CLEVERLEY: Yes, sir. All right. I just want to, Mr Hawkshaw, take you to the completion of your form for GWIC. Do you remember completing the application form?*

*MR HAWKSHAW: I mean, I can't – I'm computer illiterate, basically, Dave. So I've relayed this to you before that my ex-wife actually completed the form, not me.*

*MR CLEVERLEY: Right. Okay.*

*MR HAWKSHAW: She does all my paperwork for me. Anything to do with a smartphone or a computer -----*

*MR CLEVERLEY: Mm-hmm.*

*MR HAWKSHAW: ----- I require her services.*

*MR CLEVERLEY: Okay. So you relied upon her. Now, you've completed other application forms, you and your wife, that's in Queensland, is that right?*

*MR HAWKSHAW: Yeah, that's right, yep.*

*MR CLEVERLEY: Okay. And have you ever had any difficulties in relation to forms filed with them?*

*MR HAWKSHAW: No, no. No, if there's ever any problem, they just ring me usually. That's how it works up there.*

*MR CLEVERLEY: Okay. Now, you've spoken to your wife about filling out the application form, is that right?*

*MR HAWKSHAW: Yes, I have, yes.*

*MR CLEVERLEY: Okay. Now, it's the case, isn't it, that your wife did miss disclosing some of your offences, didn't she?*

*MR HAWKSHAW: It is the case.*

*TRIBUNAL: Just a moment. Is that a proper characterisation of what happened, Mr Cleverley?*

*MR CLEVERLEY: I think so, Your Honour. I mean -----*

*TRIBUNAL: It's not his wife's application.*

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<sup>15</sup> Transcript 9.15 and following.

*MR CLEVERLEY: No, it's not his wife's application, but he's just given evidence that she assists him. I mean, I'll retract it if Your Honour is -----*

*TRIBUNAL: A matter for you, Mr Cleverley. Go on.*

*MR CLEVERLEY: I'm happy with it.*

*TRIBUNAL: It's a matter for you. Go on.*

*MR CLEVERLEY: All right. Well, look, I won't – you know, I won't take that further, Your Honour, if that's the case. But that's discussed in the affidavit and previously.*

*TRIBUNAL: Yes.*

*MR CLEVERLEY: All right. That's the evidence-in-chief from Mr Hawkshaw.*

20. When cross-examined by Ms Summerson-Hingston the Appellant said this:<sup>16</sup>

*MS SUMMERSON-HINGSTON: All right. And I just want to understand how the application – how she was filling out the application. Was she asking you for your answers when she was answering them?*

*MR HAWKSHAW: I wouldn't be a hundred percent in saying as far as I can recall, but I'm pretty sure she was. Yeah, I was – like I said, I was only three feet away from her.*

*MS SUMMERSON-HINGSTON: Mm-hmm. Do you recall her asking you whether you have ever been charged or convicted of any criminal offences?*

*MR HAWKSHAW: Yeah, well, she knows that I have been because she was in court with me for the extortion. She was one of the witnesses.*

*MS SUMMERSON-HINGSTON: Right.*

*MR HAWKSHAW: So she knows all that, yeah.*

*MS SUMMERSON-HINGSTON: But do you recall her asking?*

*MR HAWKSHAW: Repeat that question again, sorry, dear?*

*MS SUMMERSON-HINGSTON: Do you recall her asking you on the day that she was completing the application on your behalf, did she ask you to answer the question or did she just answer it with her own knowledge?*

*MR HAWKSHAW: I think she just answered it with her own knowledge, the list criminal of convictions and -----*

*MS SUMMERSON-HINGSTON: Mm-hmm.*

*MR HAWKSHAW: And certificate. "Have you ever been charged with an offence?" I said, "Yes." It was – yeah.*

*MS SUMMERSON-HINGSTON: So I just wanted to look at your application. Let me just grab that. So under the questions, Mr Hawkshaw, there's a box that says, "If you answered yes to any of the above questions, please provide details below." And it's listed there, "Possession cannabis 7 years ago." Do you recall asking xxx to write that?*

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<sup>16</sup> Transcript 18.37 and following.

MR HAWKSHAW: Um, I don't recall. I don't recall. "List the criminal" – "list what you can," I said to her.

MS SUMMERSON-HINGSTON: All right.

MR HAWKSHAW: She said "It's only a small" – I remember her saying, "It's only a small space," or something, and there was something about the – I don't know. If you go through your phone and try and do the application, you'll see how small the space is. So I don't think she could list them all.

MS SUMMERSON-HINGSTON: Mm-hmm.

MR HAWKSHAW: But in saying that, she marked "yes", "do you have criminal convictions", and "yes" to, "do you agree to a police check?" So all that information we provided to GWIC, as per police certificate. It's impossible to list all the convictions. There are some convictions going back 20 years ago. Before (inaudible), you know.

MS SUMMERSON-HINGSTON: If xxx was in court with you with respect to the extortion charges – sorry, I withdraw that. Can you explain why xxx might have written, "Possession cannabis 7 years ago" when your police certificate doesn't actually show a charge for cannabis possession?

MR HAWKSHAW: Ah, why doesn't it show a charge? I might have been found – I don't know. No idea on that one.

MS SUMMERSON-HINGSTON: But were you previously convicted of cannabis possession?

MR HAWKSHAW: I have been once, yes. Yes. It's not on the police certificate?

MS SUMMERSON-HINGSTON: Ah, no.

MR HAWKSHAW: It might have been "no conviction recorded". I don't know.

MS SUMMERSON-HINGSTON: Did that occur in Queensland or New South Wales?

MR HAWKSHAW: In Queensland, yeah. In Queensland, yeah. It might have been further than seven years ago. I don't know. It might have been 10 years ago.

MS SUMMERSON-HINGSTON: All right. So seven years ago would be ----

MR HAWKSHAW: It was out of your framework seven years ago, isn't it? Isn't it the last five years that convictions are relevant?

MS SUMMERSON-HINGSTON: Convictions are more relevant if they've occurred in the last five years, but they're not considered irrelevant if they occurred prior to that date.

MR HAWKSHAW: Well, you've got all the facts around it, so.

MS SUMMERSON-HINGSTON: Well, that's the point, Mr Hawkshaw, we don't have the facts around the cannabis possession. So that's all right.

MR HAWKSHAW: If it's not on the police certificate, obviously, there wasn't a conviction recorded then.

## The breach of an Apprehended Violence Order in 2022

21. In his Affidavit, the Appellant said:<sup>17</sup>

39. *In this matter, there was a low ADVO in place because of a disagreement with my former partner xxx. I had accepted it without any admissions. Nonetheless, the orders were made.*
40. *In terms of the breach, I threw a coffee cup at the TV set out of frustration when xxx was not in the room.*
42. *I was projecting an anger or frustration I had, it wasn't kind of attempt to hurt or frighten xxx but nonetheless, I shouldn't have done it. I think it could have been related to my PTSD and the court accepted this one of the reasons.*
43. *I say it was at the lower level, I realise that there are no excuses, and I received a fine.*
44. *I regret this incident as well and there have been no repeats or anything like that.*

22. In oral evidence, in answer to questions from Mr Cleverley, the Appellant said this:<sup>18</sup>

*MR CLEVERLEY: Thank you, sir. The other matter I would raise is just in relation to the breach of the AVO.*

*MR HAWKSHAW: Yeah, sure.*

*MR CLEVERLEY: Yeah. Okay. Look, can you just tell the Tribunal in your own words what that was about?*

*MR HAWKSHAW: There was an AVO placed on me because of my – from my former ex-partner. She was living with me and she was worried about some of the behaviour.*

*MR CLEVERLEY: Mm-hmm.*

*MR HAWKSHAW: Anyhow, the AVO, she was still living with me at the time because she couldn't find a rental property. And one night I threw an empty milk bottle at the TV. She wasn't even in the room when it happened. And she rang the police and them facts were presented in court. She even wrote that in her statement herself. I don't know. It was just a bad night out that night.*

*MR CLEVERLEY: Okay. So you threw something at the TV and that was deemed a breach. And what was the penalty for that, do you remember?*

*MR HAWKSHAW: I got a small fine.*

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<sup>17</sup> At [39] and following.

<sup>18</sup> Transcript 14.44 and following.

MR CLEVERLEY: Right.

MR HAWKSHAW: There was a conviction recorded, but, I think, but there was no bond or no good behaviour bond or – the penalty was at the lowest end -----

MR CLEVERLEY: Okay.

MR HAWKSHAW: ----- of what could be given. That's what the solicitor told me on the day, he said, "That's the best result you could hope for."

MR CLEVERLEY: Yep.

23. When cross-examined by Ms Summerson-Hingston, the Appellant said this:<sup>19</sup>

MS SUMMERSON-HINGSTON: All right. Thank you. I'll move on. I just want to ask a few questions about the AVO and the breach of AVO that's recorded. Do you recall when the AVO was first made, not the breach, but the actual AVO?

MR HAWKSHAW: About a year before it.

MS SUMMERSON-HINGSTON: About a year before it. And were you and xxx still together at that stage.

MR HAWKSHAW: No, we weren't.

MS SUMMERSON-HINGSTON: All right. Did you attend court when the breach AVO was finalised and the fine was recorded against you?

MR HAWKSHAW: Yeah, I did, yeah. Yeah, I went to court.

MS SUMMERSON-HINGSTON: All right. Now, I just wanted to ask a question about your statement and how you characterised the AVO. Now, at paragraph 39 of your affidavit, you say there was a low ADVO in place. What do you mean by "a low ADVO"?

MR HAWKSHAW: I don't know. I could still reside at my residence with her. Um ---  
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MS SUMMERSON-HINGSTON: But do you recall what the condition -----

MR HAWKSHAW: She was still allowed there. We weren't not allowed to see each other. The children were still there. So that's what I'd call a low – usually an AVO is you're not allowed to be sleep with somebody or be within 500 metres of them, isn't it?

TRIBUNAL: So what you mean by that, as I understand it from what you just said, is that this was not an AVO that prevented you from having any contact with xxx? You were able to have some contact with her to the point of living with her.

MR HAWKSHAW: Yes.

TRIBUNAL: You were able to have contact with your children.

MR HAWKSHAW: Yes.

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<sup>19</sup> Transcript 25.1 and following.

*TRIBUNAL: You just couldn't do anything which amounted to assault, harassment, molestation or anything -----*

*MR HAWKSHAW: Yes.*

*TRIBUNAL: Okay. Is that the correct way of putting it?*

*MR HAWKSHAW: That's exactly right, Your Honour.*

*TRIBUNAL: Thank you.*

*MS SUMMERSON-HINGSTON: Thank you, Your Honour. Now, Mr Hawkshaw, you say in your affidavit at paragraph 40 that xxx wasn't in the room and you threw a coffee cup out of frustration. Is that correct?*

*MR HAWKSHAW: Yeah, that's correct.*

*MS SUMMERSON-HINGSTON: Right.*

*MR HAWKSHAW: That was the facts presented in court, yep.*

*MS SUMMERSON-HINGSTON: Right. You said – you gave evidence earlier today that it was an empty milk bottle that you threw. Do you recall whether it was an empty milk bottle or a coffee cup?*

*MR HAWKSHAW: No, it was an empty milk bottle, yeah, something like that. It was an empty milk bottle. That was the facts in – that's what it was, yeah, a coffee – what did I say in the affidavit? A -----*

*MS SUMMERSON-HINGSTON: A coffee -----*

*MR HAWKSHAW: A coffee cup, did I? No, it was a milk bottle.*

*MS SUMMERSON-HINGSTON: And when you say a milk bottle, do you mean like a plastic milk bottle?*

*MR HAWKSHAW: A plastic milk bottle, yeah. I was betting on the horses and I become frustrated.*

*MS SUMMERSON-HINGSTON: Okay. And where was xxx when this happened?*

*MR HAWKSHAW: In the bedroom.*

*MS SUMMERSON-HINGSTON: So she was in the house but not in the room?*

*MR HAWKSHAW: No, not in the room.*

*MS SUMMERSON-HINGSTON: And would you accept that throwing an item across the room could be characterised as violent behaviour?*

*MR CLEVERLEY: I object to that. It depends on the context of the throw, Your Honour.*

*MS SUMMERSON-HINGSTON: I can rephrase it?*

*TRIBUNAL: Perhaps put it another way, Ms Summerson-Hingston.*

*MS SUMMERSON-HINGSTON: Would you accept, Mr Hawkshaw, that becoming frustrated and throwing an item out of frustration could be characterised as violent behaviour?*

*MR HAWKSHAW: I wouldn't consider it violent because it wasn't directed at a person, it was directed at a television.*

*MS SUMMERSON-HINGSTON: All right.*

*MR HAWKSHAW: But I pleaded guilty to it, so obviously it was a breach.*

*MS SUMMERSON-HINGSTON: And would you accept, Mr Hawkshaw, that the imposition of an AVO is usually to prevent violence from occurring in a domestic setting?*

*MR HAWKSHAW: Correct, yeah.*

*MS SUMMERSON-HINGSTON: And would you accept, therefore, that a breach of an AVO is usually that some sort of violence has occurred in a domestic setting?*

*MR HAWKSHAW: No, no violence occurred whatsoever.*

*TRIBUNAL: I don't think I can allow that, Ms Summerson-Hingston, because of the fact that the terms of – notwithstanding the terminology “apprehended violence order”, the terms and conditions of such an order can be quite wide-ranging -----*

*MS SUMMERSON-HINGSTON: Mm-hmm.*

*TRIBUNAL: ----- and can often just be limited to acts of intimidation and harassment rather than violence.*

*MS SUMMERSON-HINGSTON: All right, I'll withdraw it. Thank you. If I might just have a moment?*

*TRIBUNAL: Sure. When I say they can “just be limited to”, I don't mean to denigrate the seriousness of such an order. But the type of subject matter that can be covered by them varies quite significantly. Yes, take your time, Ms Summerson-Hingston.*

## **The extortion offence**

24. The Appellant said the following in his Affidavit:<sup>20</sup>

19. *I had a friend who was bad alcoholic and occasion he would invite me back to his place.*
20. *It was an older house, and I went there a few times and the place was falling apart and I did some handy work to help him out.*
21. *A few major things were going wrong with the property such as the toilet stopped working and plumbing generally.*

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<sup>20</sup> At [19] and following.



22. *He asked me if he could borrow some money of me and I felt sorry for him, so I lent him about \$6,000.00 -around that mark anyway.*
23. *The terms of the contract were simply that he was to pay me back once he got some money. He was very grateful for my help at the time and I formed the expectation that if he could, he would keep to his word.*
24. *Sometime went past and I found out that he had gotten drunk one night and set his house on fire accidentally. I heard he subsequently got a pay out of over \$150,000 as it wasn't deliberate.*
25. *I gave it sometime and then I hoped he would approach me to pay me back but he never came forward. But he was avoiding me.*
26. *Then I learned from his old neighbour that he was big spending in town and gambling a lot in the clubs and pubs. I heard he was out of control.*
27. *In the meantime, I was beginning to struggle a bit myself and I could well have used that money.*
28. *I caught up with him and asked to pay me back but he refused to acknowledge the debt in any way and he even became angry and aggressive.*
29. *So, I rang him to try again and in that conversation, and I admit that I used threatening language to try to get my money back.*
30. *I didn't go near him physically or anything like that and I never intended to follow through. I just wanted to get him thinking about it.*
31. *It was a really stupid idea and regret it very much.*
32. *I got into a lot of trouble, I was held in remand and then got bail. There were no breaches or anything.*
33. *The court handed down the sentence, which was time served and a long period on parole which I served.*
34. *I walked out of court that day with no further trouble of the like again.*

25. In oral evidence, the Appellant said the following in answer to questions from Mr Cleverley:<sup>21</sup>

*MR. CLEVERLEY: Mr Hawkshaw, in your most recent affidavit that you signed, you did say in that affidavit that, or, at paragraph 30, sir, that, "I didn't go near him physically or anything like that, and I never intended to follow through. I just wanted to get him thinking about it." Do you recall that, saying that?*

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<sup>21</sup> Transcript 4.34 and following.

*MR HAWKSHAW: Yeah, I recall words to that effect. It was nine years ago this incident happened now, so.*

*MR CLEVERLEY: All right.*

*MR HAWKSHAW: Look, it happened while I was -----*

*TRIBUNAL: Just a moment. Mr Hawkshaw, do you have a copy of your affidavit with you or not?*

*MR HAWKSHAW: Ah, no, I don't.*

*TRIBUNAL: All right. That's okay. I was going to say, if you did, you could feel free to refer to it if you needed to. It's okay. Go on, Mr Cleverley.*

*MR CLEVERLEY: Thank you, Mr Bellew. Now, I just want you to explain in your own words to the Tribunal what you meant by that statement.*

*MR HAWKSHAW: Well, the -----*

*TRIBUNAL: What statement?*

*MR CLEVERLEY: At paragraph 30, sir.*

*TRIBUNAL: There's two statements in paragraph 30. Which one are you directing Mr Hawkshaw to? The first one or the second one?*

*MR CLEVERLEY: The one in the most recent affidavit. "I didn't go near him physically."*

*TRIBUNAL: Yes. But I'm saying that there are two statements in that paragraph. Which statement -----*

*MR CLEVERLEY: Oh, I see.*

*TRIBUNAL: ----- are you drawing Mr Hawkshaw -----*

*MR CLEVERLEY: The first. Sorry, sir. The first statement.*

*TRIBUNAL: All right.*

*So, Mr Hawkshaw, the first statement that your attention is being drawn to is where you've said in paragraph 30, "I didn't go near him physically or anything like that, and I never intended to follow through."*

*What's your question, Mr Cleverley?*

*MR CLEVERLEY: My question to Mr Hawkshaw is that, could you please elaborate on that statement? What did you mean by that?*

*MR HAWKSHAW: There was no intention to harm the individual. I was just intending to recover a debt. I'm six foot tall and 100 kilos. The other person in the matter was, you know, was a lot smaller and actually, you know, just a physical altercation with him, somebody who I considered a friend, was not an alternative in this matter.*

*I just used language that was over the top to help recover that debt because I knew that was basically the only sort of language he'd understand, which he then took action on. And it wasn't immediately that I went to pick him up to take him to the bank. Like, it was a 48-hour wait. It was over the weekend I think this conversation happened with Mr Hale. But as I said, this was nine years ago. And he happily accompanied me to the bank to retrieve the money on the second occasion. Yeah, it was basically the same issue.*

*It was the way I went about doing it that was regretful and remorseful for, and I've been punished for that, including a short period of imprisonment. This was nine years ago. I received an 18-month suspended sentence, parole, as you would like it, and in between that period, leading up to the court, I was on Supreme Court bail for a matter of two and a half years, a curfew, a drug and alcohol ban.*

*I never breached my conditions once while on this while on Supreme Court bail, a matter that His Honour duly noted in sentencing, along with my references that I provided from work to show that it was completely out of character for me to do such a thing.*

*But as for the Courier-Mail article, I agree with them facts. The reporter was in the court that day and them facts are true and correct, bar the fact that the police prosecutor was provided with a statement from a third party – this is not in the Courier-Mail article – that was there when I handed the money to Mr Hale. And the police prosecutor spoke to this individual, who was the third party who witnessed the money exchange, and he was willing to testify. And that's the only thing that wasn't basically reported. So the police prosecutor was well aware of that.*

*MR CLEVERLEY: I'll just take you back, Mr Hawkshaw. When you said he happily attended, what do you mean by that?*

*MR HAWKSHAW: Well, we picked him up, or after the initial conversation, it was a couple of days before we picked him up, and he attended the bank. He had to attend the bank in person to get that large amount of money out, you know.*

*MR CLEVERLEY: Did you touch him in any way?*

*MR HAWKSHAW: No, he was never touched or harmed in any sort of way. Like I said, the guy was actually a friend. I provided all sorts of -----*

*MR CLEVERLEY: Okay. So when you say you didn't go near him physically, that's what you meant. Is that right?*

*MR HAWKSHAW: That's right, yeah.*

*MR CLEVERLEY: Okay.*

*TRIBUNAL: Well, before we leave that, in the same paragraph you said, "I just wanted to get him thinking about it." Does that mean you were trying to intimidate him?*

*MR HAWKSHAW: Well, I just wanted my money back, Your Honour, at the end of the day because of his irrational behaviour around town. People had made me aware of it. And he'd agreed to pay the money back. I suppose it was a form of*

*intimidation. Yeah, I suppose that's correct. That's why I pleaded guilty to the extortion charge because I said them things and I pleaded guilty.*

*TRIBUNAL: All right. Thank you. Yes, go on, Mr Cleverley.*

*MR CLEVERLEY: Right, thank you. And just to clarify, Mr Hawkshaw, I think you said it twice, it was nine years ago, was it?*

*MR HAWKSHAW: Nine years ago, yeah, 2015.*

26. When cross-examined by Ms Summerson-Hingston, the Appellant said this:<sup>22</sup>

*MS SUMMERSON-HINGSTON: All right. I want to ask some questions about the extortion offence. I just want to clarify, is Jack Hawkshaw the son of yourself and xxx?*

*MR HAWKSHAW: No, no, no. He's to my first wife.*

*MS SUMMERSON-HINGSTON: Okay. So, you gave an answer earlier that you agreed with the reporting of the Courier-Mail. Is that correct?*

*MR HAWKSHAW: Correct.*

*MS SUMMERSON-HINGSTON: Okay. So the Courier-Mail said that you spoke to the victim and then sometime after that, you and your son Jack picked him up and took him to the ATM. Is that correct?*

*MR HAWKSHAW: That's correct.*

*MS SUMMERSON-HINGSTON: All right. And when you said in your affidavit that you – sorry, I just want to get the wording correct – you said in your affidavit, "I didn't go near him physically or anything like that." Now, Mr Cleverley has spoken to you about that this morning and you said in part that it was nine years ago and you couldn't quite recall. Is that correct? It was a long time ago.*

*MR HAWKSHAW: That's what I said. Yeah, that's correct. It was nine years ago.*

*MS SUMMERSON-HINGSTON: Mm-hmm. Mr Hawkshaw, if you were arrested and spent time in custody, even just for 43 days, I would imagine that would be a pretty confronting experience? Would you agree?*

*MR HAWKSHAW: It was confronting, yes.*

*MS SUMMERSON-HINGSTON: Yeah. And even if it was nine years ago, you would remember the facts of the offending, wouldn't you?*

*MR HAWKSHAW: Yeah, the facts are as per the Courier-Mail article. There was a court reporter reporting the facts. And they're the absolute facts of the case where I pled guilty to it. Bar, I'm saying, about the police prosecutor with his (inaudible). I don't know. I've explained everything I can about it.*

*MS SUMMERSON-HINGSTON: Mm-hmm. So the Courier-Mail reported that you said to the victim that if he didn't comply, you would break his legs. Is that correct?*

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<sup>22</sup> Transcript 20.44 and following.

*MR HAWKSHAW: Yes. That's correct if it's in the Courier-Mail.*

*MS SUMMERSON-HINGSTON: Mm-hmm. And that on the second occasion, when you again collected the victim with your son and took him to the ATM again, that if you didn't get the money that time, that you would smash the victim's head in. Is that correct?*

*MR HAWKSHAW: No, I wouldn't say that. No, that's not correct. Is that reported in the Courier-Mail?*

*MS SUMMERSON-HINGSTON: It was.*

*MR HAWKSHAW: That's correct then. Whatever the Courier-Mail said is correct.*

*MS SUMMERSON-HINGSTON: And that if the victim didn't withdraw the full amount from the ATM, that you would trash the caravan park where this gentleman was staying. Is that correct?*

*MR HAWKSHAW: Is that what's reported in the Courier-Mail?*

*MS SUMMERSON-HINGSTON: It is.*

*MR HAWKSHAW: That's correct then, yeah. Yeah.*

*MS SUMMERSON-HINGSTON: Mm-hmm. Why would you make those threats, Mr Hawkshaw, if you didn't have at least some intention behind them?*

*MR HAWKSHAW: As I explained before, the guy was actually a friend of mine. He is physically inferior to me. It's not in my nature to go around bashing people that are two foot smaller than me, 10 years older than me, and have medical conditions.*

*I just simply wanted my money back because he received a huge insurance claim and he was being on a pokie and drinking binge in my local area. I'm not on trial here. I've already pleaded guilty to this and the facts are the facts, as I say to you. I don't go around hurting – I've never been charged with assault in my whole life. I'm 52-year-old.*

*MS SUMMERSON-HINGSTON: Mm-hmm.*

*MR HAWKSHAW: I've never been charged with assault.*

*MS SUMMERSON-HINGSTON: But, Mr Hawkshaw, you say it's not in your nature to assault someone, but the facts are it is in your nature to threaten to assault your friend who is -----*

*MR CLEVERLEY: I object to this. I mean, Your Honour, I can't see its relevance, to be honest.*

*MS SUMMERSON-HINGSTON: I think it goes directly to -----*

*TRIBUNAL: Relevance?*

*MS SUMMERSON-HINGSTON: ----- Mr Hawkshaw's propriety.*

*TRIBUNAL: Just a moment. It goes directly to the question of fitness and propriety, Mr Cleverley. It's in the affidavit. So -----*

*MR CLEVERLEY: Well, Your Honour, with respect, there's raising of intent. He hasn't harmed anyone physically. He said that. And my friend is trying to go to intent without any act. He's admitted to the offences. Obviously, he's unsure about some parts of it.*

*TRIBUNAL: Mmm.*

*MR CLEVERLEY: And once again, he didn't physically touch that person. I mean --  
---*

*TRIBUNAL: It's not suggested that he did.*

*MR CLEVERLEY: Sorry?*

*TRIBUNAL: It's not suggested that he did.*

*MR CLEVERLEY: Yes, sir.*

*TRIBUNAL: I'll allow it, Mr Cleverley. Go on, Ms Summerson-Hingston.*

*MS SUMMERSON-HINGSTON: Mr Hawkshaw, you would accept that it is in your nature to threaten violence upon someone that you say is a friend?*

*MR HAWKSHAW: No, I don't accept that it's in my nature. I'm 52-year-old and never been charged with assault. I didn't hurt anyone and never have. You can make assumptions ----*

*TRIBUNAL: No, but – Mr Hawkshaw*

*MR HAWKSHAW: You can make theoretical assumptions if you want.*

*TRIBUNAL: No ----*

*MR HAWKSHAW: Yeah.*

*TRIBUNAL: Mr Hawkshaw, can I just point this out, you're not being asked about that, you're being asked about whether or not it's in your nature to threaten someone, not assault them, but to threaten to assault them. Now, in fairness to you, what do you say in response to that?*

*MR HAWKSHAW: Yeah, well, it's not in my nature usually. On that night, it was something that I did.*

## **The Appellant's technological capabilities**

27. This issue emerged at the hearing of the appeal, initially in the context of questions put by Mr Cleverley in relation to the application form. Firstly, the Appellant said:<sup>23</sup>

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<sup>23</sup> Transcript 9.20.

*MR HAWKSHAW: I mean, I can't – I'm computer illiterate, basically, Dave. So I've relayed this to you before that my ex-wife actually completed the form, not me.*

28. He then said:<sup>24</sup>

*MR HAWKSHAW: She does all my paperwork for me. Anything to do with a smartphone or a computer -----*

*MR CLEVERLEY: Mm-hmm.*

*MR HAWKSHAW: ----- I require her services.*

29. Finally, the Appellant said:<sup>25</sup>

*MR HAWKSHAW: Can I just add something to that, Your Honour?*

*TRIBUNAL: If you wish. But do you want to speak to Mr Cleverley before you say anything on your own -----*

*MR HAWKSHAW: No, no, no. No, no, no. I know exactly what I'm going to say.*

*TRIBUNAL: All right. Make -----*

*MR HAWKSHAW: It was my wife's understanding that the form – we weren't being deceitful because she marked on the form I have got criminal convictions and the police certificate was going to be provided so, no convictions – there was no hiding. I wasn't trying to hide anything because they were going to receive the police certificate as it was, anyway. So it's impossible to hide it. But she just said it was a small space to write in, so she only put one of the convictions there. She couldn't list the whole lot. Some of them of which she doesn't even know about, anyway.*

*TRIBUNAL: Okay. And when she was filling out the form, did she read the questions out to you, or how did it work?*

*MR HAWKSHAW: She was doing it on a smartphone, on a telephone.*

*TRIBUNAL: Right.*

*MR HAWKSHAW: And she said it was a very small box.*

*TRIBUNAL: Mm-hmm.*

*MR HAWKSHAW: And she ticked yes to the police certificate thing. Ticked yes to having criminal convictions. And then wrote one of the convictions down. But she didn't write my whole criminal past down. She wouldn't have been able to fit it in there, anyway. From the conversation, what she told me, she wouldn't have been able to actually fit it in there to this small space.*

*It was some sort of computer – I don't know. I can't use a smartphone, so it was done on a – that was her take on it. They were going to get the police certificate anyway. And I wasn't deceitful because I marked that I had criminal convictions on there. I only listed one of them. Like I said, some of them she doesn't even know about. There's no need for her to know about. So.*

---

<sup>24</sup> Transcript 9.25 and following.

<sup>25</sup> Transcript 10.32 and following:

*TRIBUNAL: All right, then. Mr Cleverley, did you want to take that issue any further in the light of what Mr Hawkshaw has just said?*  
*MR CLEVERLEY: No, Your Honour.*

30. The Appellant was cross-examined on the issue by Ms Summerson-Hingston as follows:<sup>26</sup>

*MS SUMMERSON-HINGSTON: All right, thank you. And I just very briefly want to touch on one other point. You've said, Mr Hawkshaw, that you struggle with using computers and with using smartphones, is that correct?*

*MR HAWKSHAW: That's correct.*

*MS SUMMERSON-HINGSTON: All right. How do you nominate your greyhounds when you're racing?*

*MR HAWKSHAW: xxx does it for me. I can't do that, either, dear.*

*MS SUMMERSON-HINGSTON: Mm-hmm. All right. And in terms of your registration in Queensland, does xxx do all of the elect -----*

*MR HAWKSHAW: No, no, no. In Queensland, you ring them up on the phone. That's how they used to take nominations.*

*MS SUMMERSON-HINGSTON: All right.*

*MR HAWKSHAW: I used to nominate myself in Queensland.*

*MS SUMMERSON-HINGSTON: All right, thank you. In general transactions, such as transferring a greyhound or -----*

*MR HAWKSHAW: I'd do some of that up there because, yeah, it's mostly in paperwork.*

*MS SUMMERSON-HINGSTON: All right. So if you were registered in New South Wales, noting that our system is mostly electronic-based now, how would you propose to engage in the industry?*

*MR HAWKSHAW: Maybe I'm going to have to do some sort of training, aren't I, to get up to date with it, because I'm just that far behind that it's not funny. Everything works that way nowadays and I'm just – like I said, yeah, I'm going to have to do some courses or something. I don't know. Learn how to use a computer because, yes, everything up there in Queensland was paperwork and now everything's different, eTracking -----*

*MS SUMMERSON-HINGSTON: Mmm.*

*MR HAWKSHAW: ----- and it's all complicated and there's things that I just don't understand and I can't get a grasp of. If I was to participate down here, if I'm granted a licence, I'm going to have to go down and do some sort of course downtown. The Department of Veterans Affairs will pay for it. I'll ring them and see if I can get something going that I can update myself to the new world, a computer and smartphones, because if it's caused something like this, I have nothing to hide.*

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<sup>26</sup> Transcript 29.40 and following.



## Additional evidence

31. There are two further aspects of the evidence which must be addressed.
32. The first arises out of a statement made by the Appellant in his Affidavit in the following terms:<sup>27</sup>
- While this has issue has been in play, I have not sought to race in NSW on my Queensland licence.*
33. In response to that assertion, the Respondent filed evidence which establishes that the Appellant's greyhound *Shian Suzie* was nominated, and drawn to race, on no less than 10 occasions in New South Wales between 28 December 2023 and 4 September 2024.
34. When questioned by Mr Cleverley<sup>28</sup> about this issue, the Appellant gave the following evidence:

*MR CLEVERLEY: Right. Okay. Now, another matter in your affidavit is in relation to racing dogs in New South Wales. This is at paragraph 61 where you say, "While the issue has been in play, I've not sought to race in New South Wales on my Queensland licence." Is that right, or is there something -----*

*MR HAWKSHAW: Yeah, that's right – that's wrong. That's just a spelling mistake from either yourself or your secretary -----*

*MR CLEVERLEY: Yeah.*

*MR HAWKSHAW: ----- that I've just glanced over and haven't changed because I have been racing since I got here.*

*MR CLEVERLEY: Okay.*

*MR HAWKSHAW: For the last two years I've been racing dogs here without incident.*

*MR CLEVERLEY: Okay. Without -----*

*MR HAWKSHAW: Because I've just glanced over that and haven't noticed it. You notice that I changed the part of the affidavit about the assault? You notice I changed that and initialled that?*

*MR CLEVERLEY: I did, sir.*

*MR HAWKSHAW: Yeah. But I obviously glanced over that, otherwise I would have changed that as well, that's incorrect.*

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<sup>27</sup> At [61].

<sup>28</sup> Transcript 7.25 and following.

*MR CLEVERLEY: Okay.*

*MR HAWKSHAW: The correct answer in that affidavit should be that I've been racing here since the day I got here.*

*MR CLEVERLEY: Yeah, okay, and you said without incident. That's right, isn't it?*

*MR HAWKSHAW: Yeah, that's right, with no incident at all.*

*MR CLEVERLEY: Okay. Now, as far as the rest of the affidavit is concerned, would you say that it's truthful? Have you had the chance to go over it carefully now?*

*MR HAWKSHAW: After speaking to you last night, they're the only two issues I wanted to raise. The Courier-Mail facts are actually correct.*

35. When cross-examined by Ms Summerson-Hingston, the Appellant said this:<sup>29</sup>

*MS SUMMERSON-HINGSTON: Thank you. I just have a few more questions, Mr Hawkshaw, about your racing in New South Wales specifically. Now, Mr Cleverley has this morning clarified on, I think it was paragraph 61 of your affidavit, where it says, "Whilst this issue has been in play, I have not sought to race in New South Wales on my Queensland licence." Now, that's not true, is it?*

*MR HAWKSHAW: No, that's not true. I told Dave that last night. Yeah. So. I didn't read that properly, or somebody hasn't typed that properly. That's not the case at all. And I told David that last night. That's why he brought it up. Yeah.*

*MS SUMMERSON-HINGSTON: All right. You would accept then, Mr Hawkshaw, that you've raced your greyhound Shian Suzie, is that the correct pronunciation?*

*MR HAWKSHAW: Yeah. She's not the only one. There was another one before that, Midnight Prince.*

*MS SUMMERSON-HINGSTON: Yep. But in 2024, you've raced only Shian Suzie approximately, oh, not – exactly nine times.*

*MR HAWKSHAW: Yeah, that'd be right, yep.*

*MS SUMMERSON-HINGSTON: At Gunnedah and Tamworth, is that correct?*

*MR HAWKSHAW: That's right, yeah.*

*MS SUMMERSON-HINGSTON: Yep. And would you accept that you, as recently as 1 September, have attempted to nominate Shian Suzie?*

*MR HAWKSHAW: No, Shian Suzie's no longer in my name. I've transferred to another trainer and sold her.*

*MS SUMMERSON-HINGSTON: Was she in your name at 1 September? So some six weeks ago?*

*MR HAWKSHAW: Yes, six weeks ago she was, yeah.*

*MS SUMMERSON-HINGSTON: And did you attempt to nominate Shian Suzie on 1 September for Gunnedah?*

*MR HAWKSHAW: Yeah, maybe. Yeah. Yeah. Yeah.*

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<sup>29</sup> Transcript 28.6 and following.

*MS SUMMERSON-HINGSTON: All right. And that's approximately five days before this affidavit, is that correct?*

*MR CLEVERLEY: Your Honour, with respect, he's explained the circumstances of the -----*

*TRIBUNAL: Well, he's explained the circumstances. Ms Summerson-Hingston is entitled to cross-examine him and test those circumstances, and it's a matter for me at the end of the day whether I accept them or not.*

*MR CLEVERLEY: Yes, sir.*

*TRIBUNAL: Go on, Ms Summerson-Hingston.*

*MS SUMMERSON-HINGSTON: Mr Hawkshaw, where this matter involves a mis-completed registration form, if we can say that, an application form by yourself that's not completely forthcoming, would you accept that -----*

*MR CLEVERLEY: I object. That's a conclusory remark, and that's one of the things this hearing is to determine.*

*MS SUMMERSON-HINGSTON: Perhaps you could put it another way, Ms Summerson-Hingston. I think I understand that the objection is to that last phrase that you used. So perhaps put the question without that.*

*MS SUMMERSON-HINGSTON: Sure. Mr Hawkshaw, do you accept that if you want to be a participant in New South Wales, that you're required to provide accurate information?*

*MR HAWKSHAW: Yes, I obviously know that now. Yeah. Yeah.*

*MS SUMMERSON-HINGSTON: You accept that providing accurate information includes providing complete information, not leaving anything out?*

*MR HAWKSHAW: Yeah, I suppose so, yeah.*

36. It is noteworthy that the Appellant's Affidavit contains a handwritten amendment at [11]. That may tend to suggest that the Appellant *did* read the Affidavit before signing it. I have returned to this issue further below,

37. Finally, in terms of the evidence, the Appellant has provided a number of testimonials upon which he relies. I have taken that evidence into account. I should also say that the Appellant's Affidavit contains reference to a number of matters of a personal nature which he has specifically asked me to keep confidential. I have therefore not referred to them, but I have taken them into account to the extent that they are relevant.

## **THE RELEVANT PRINCIPLES**

38. The general principles covering fitness and propriety were canvassed in *Fitzpatrick* in the following terms:<sup>30</sup>

[71] *The authorities which set out the general principles to be applied in considering whether someone is a “fit and proper person” for a particular purpose are well known.<sup>31</sup> This Tribunal (differently constituted) has consistently been called upon to apply those principles to determinations of the present kind.<sup>32</sup> The approach adopted, and the observations made, in those determinations have generally been drawn from decisions of superior Courts. Whilst those decisions have generally been in the context of decisions made by organisations regulating various professions, they nevertheless set out a number of fundamental principles which are applicable in matters of the present kind. Many of those principles were succinctly summarised, and in some instances expanded upon, by Beech-Jones J (as his Honour then was) in Hilton v Legal Profession Admission Board.<sup>33</sup> They include the following:*

- (i) *a conviction is important to an assessment of whether someone is fit and proper;<sup>34</sup>*
- (ii) *a conviction is not necessarily determinative, and the controlling body may inquire into the offending to ascertain its real facts;<sup>35</sup>*
- (iii) *the question of whether an applicant is a fit and proper person is to be determined at the time of the hearing;<sup>36</sup>*
- (iv) *consideration must be given to the passage of time which has passed since the commission of any offence, and the age of the person when such offence was committed;<sup>37</sup>*
- (v) *a long passage of time may tend in favour of a conclusion that a person is fit and proper, although by itself, a passage of time without a transgression does not necessarily prove a change in character;<sup>38</sup>*
- (vi) *there may be little or no public interest in denying forever the chance of redemption and rehabilitation.<sup>39</sup>*

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<sup>30</sup> At [71] – [73].

<sup>31</sup> See for example *Hughes & Vale Pty Limited v New South Wales (No. 2)* (1955) 93 CLR 127 at 156.

<sup>32</sup> See for example the decisions in *Zohn v Harness Racing New South Wales* (11 July 2013) at p, 2 and following; *Bennett v Harness Racing New South Wales* (21 May 2019) commencing at [12].

<sup>33</sup> (2016) 339 ALR 580; [2016] NSWSC 1617.

<sup>34</sup> At [6], citing *Ziems v Prothonotary of the Supreme Court of New South Wales* (1957) 57 CLR 279.

<sup>35</sup> At [102] citing *Ziems*.

<sup>36</sup> At [101] citing *Ex Parte Tziniolis; Re the Medical Practitioners Act* [1967] 1 NSWLR 57; (1966) 67 SR (NSW) 448 at 475.

<sup>37</sup> At [103].

<sup>38</sup> At [103] citing *Tziniolis*, and *Saunders v Legal Profession Admission Board* [2015] NSWSC 1839 at [62].

<sup>39</sup> At [105] citing *Dawson v Law Society (NSW)* [1989] NSWCA 58 per Kirby P at [7].

[72] *In P v Prothonotary of the Supreme Court of New South Wales*,<sup>40</sup> Young CJ in Eq cited other factors which, in his view, provided general guidance in cases of this kind. They included:

- (i) *the absence of any prior disciplinary or criminal record;*
- (ii) *honesty and co-operation with the authorities after detection;*
- (iii) *evidence of good character; and*
- (iv) *clear and convincing evidence of rehabilitation.*

[73] *It must, of course, be emphasised that no single consideration is determinative. What I am required to do, is conduct a balancing exercise which takes into account all relevant considerations. The weight to be given to individual factors may well vary.*

39. I would only add that in my view, the term “fit” when it is used in this context connotes, in a general sense, having the requisite degree of practical skill and knowledge to be able to carry out the duties and responsibilities of an industry participant. I am fortified in that view by the definition<sup>41</sup> of the term “fit”, namely:

*... of suitable standard to meet the required purpose.*

## **SUBMISSIONS OF THE PARTIES**

### **Submissions of the Appellant**

40. The Appellant relied upon lengthy oral and written submissions from which the following propositions may be distilled:

- (i) the Framework is not prescriptive;
- (ii) the circumstances surrounding the completion of the application have been adequately explained;
- (iii) those circumstances do not warrant a conclusion that the Appellant is not a fit and proper person;
- (iv) the Appellant understood that even if a conviction was not disclosed in the application form, it would come to the attention of the authorities anyway, a circumstance which reflects an absence of intentional dishonesty;

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<sup>40</sup> [2003] NSWCA 320.

<sup>41</sup> Oxford Dictionary.

- (v) however the information provided in the application might viewed, this is not a case of the Appellant asserting that he had no prior convictions at all;
- (vi) the most recent offending for a breach of an Apprehended Violence Order was (in terms of objective seriousness) at the lower end of the scale;
- (vii) the extortion offence occurred more than 5 years ago;
- (viii) the Appellant gave evidence in an honest and forthright manner;
- (ix) he is generally a person of good character, particularly in terms of his participation in the industry;
- (x) I should not place any weight at all on the Appellant's evidence of his lack of familiarity with technology, firstly because it was not relevant, and secondly because the manner in which that evidence had arisen (i.e. at the hearing and not prior to the hearing) was unfair.

### **Submissions of the Respondent**

41. The submissions advanced by Ms Summerson-Hingston may be summarised as follows:

- (i) there was a necessity to view the evidence as a whole, and not in a piecemeal fashion;
- (ii) in terms of the original application, and whatever the Appellant might have thought, those who seek registration have an obligation to be full and frank in the information that they provide to the Respondent, and the Appellant had failed to act in accordance with that obligation;
- (iii) the Appellant's Affidavit, insofar as it asserted that had not raced greyhounds in New South Wales since the issues which are the subject of this appeal arose, was objectively false, a circumstance which is at odds with a finding that a person is fit and proper;

- (iv) even acknowledging the fact that the most recent breach of an Apprehended Violence Order was dealt with by way of a fine, the conviction nevertheless reflected behaviour which was at odds with the standard expected of industry participants;
- (v) similarly, even though the extortion offence was some years ago, it nevertheless resulted in the imposition of a term of imprisonment, and involved intimidatory behaviour which was, again, at odds with the behaviour expected of registered participants;
- (vi) in circumstances where, in accordance with the authorities to which I have referred, the issue of fitness and propriety is to be considered at the time of the hearing, the Appellant's lack of even a fundamental degree of familiarity with technology reflects that he is unfit to carry out the duties and responsibilities of a registered participant.

## **CONSIDERATION**

### **General propositions**

42. A determination of whether the Appellant has satisfied me that he is a fit and proper person to be registered is one to be made having regard to an assessment of all of the evidence, in accordance with the principles and authorities to which I have referred. Whilst I have addressed the relevant factors individually, I accept the submission advanced by the Respondent that the evidence must be viewed as a whole. That is the approach I have taken.

43. In making my determination, I must be mindful of the fact that registration of participants is carried out by reference to the provisions of the *Greyhound Racing Act 2017* (the Act). The objects of that Act, which are set out in s 3A, include:

- (i) providing for the efficient and effective regulation of the greyhound racing industry;<sup>42</sup> and

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<sup>42</sup> Section 3A(a)

- (ii) ensuring the integrity of greyhound racing.<sup>43</sup>

44. Any determination of the Appellant's fitness and propriety must be made with those objects firmly in mind.

45. Similarly, my determination must have regard to, and be consistent with, the Respondent's prescribed functions under the Act which include:

- (i) safeguarding the integrity of greyhound racing;<sup>44</sup> and
- (ii) maintaining public confidence in the greyhound racing industry.<sup>45</sup>

### **The application form**

46. The Appellant's evidence surrounding the completion of the application form was, in my view, unsatisfactory in a number of respects.

47. To begin with, the underlying assertion of the Appellant appeared to be that because someone else completed the form on his behalf, he should not be held wholly responsible for the information which was provided. A number of observations should be made about that proposition.

48. The first, is that the fact that someone else may have completed the form, or may have assisted the Appellant in completing it, does not alter the fact that it was the *Appellant's* application, and that it was therefore the *Appellant* who had the responsibility of providing accurate information. Contrary to the characterisation which was sought to be advanced on the Appellant's behalf, it was *his* application, not that of anyone else.

49. The second, is that the Appellant said when cross-examined that he thought that the relevant question had been answered by the person who was assisting him on

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<sup>43</sup> Section 3A (d).

<sup>44</sup> Section 11(b).

<sup>45</sup> Section 11(c).



the basis of her own personal knowledge. Any further comment about the unsatisfactory nature of that approach when providing important information would be entirely superfluous.

50. The third, is that the Appellant said that he could not even recall whether he had told the other person to give the information that was provided. That reflects an almost complete lack of proper engagement by the Applicant in the application process, and one which is generally at odds with the responsibilities of any person who seeks to be a registered participant in the industry.

51. As the Regulator, the Respondent necessarily makes important determinations based on the accuracy of the information which is provided to it by participants. In completing and submitting the application form as he did, the Appellant demonstrated a complete failure to provide accurate information. He did not disclose **one single offence** which appears on his criminal history. In all of these circumstances, I am unable to accept the Appellant's assertion that he was "*alarmed and shocked*" when the issues which are the subject of this appeal were raised. The Appellant must have been aware that the information he had provided in relation to his criminal history was, to say the least, less than complete.

52. Further, the fact (if it be the fact) that the Appellant simply provided the information that he did on the understanding that the complete picture would be disclosed on receipt of the police certificate, does not assist him. Such an understanding, if it was held, did not relieve the Appellant of the fundamental obligation to provide full and accurate information from the outset.

### **The most recent conviction for breaching an Apprehended Violence Order**

53. The second issue concerns the Appellant's most recent conviction for breaching an Apprehended Violence Order. I accept the Appellant's account regarding the factual circumstances surrounding that offence. However, his description of the order as a "*low ADVO*", and his evidence that he did not consider his behaviour

violent, reflected what appeared to me to be a general tendency to downplay the significance of the offending.

### **The extortion offence**

54. The extortion offence involved the Appellant engaging in intimidatory behaviour, which encompassed threats to break the victim's legs, to "*smash his head in*", and to "*trash*" the caravan park where he lived, if the debt were not paid. The offence resulted in the imposition of a significant full time custodial sentence. The fact that the sentence was largely suspended is not to the point. It was serious offending, which involved behaviour which was unequivocally intimidatory.

55. I acknowledge that this offending occurred some years ago. I also acknowledge that there is authority for the proposition that consideration must be given to the passage of time which has passed since the commission of an offence, and that a long passage of time may support a conclusion that the person is fit and proper. However, in that regard, it is necessary to make two observations in the context of the present case. The first, is that the passage of time which has passed since the extortion offence has been punctuated by the commission of the offence of breaching a Domestic Violence Order in 2022. The second, is that in any event, the extortion offence is one of a series of factors on which the Respondent relies.

### **The Appellant's technological skills**

56. On his own admission, the Appellant lacks the fundamental skills to operate a computer. He acknowledges that he would "*have to do some sort of training*" to properly participate in the industry, because he's "*that far behind it's not funny*". The authorities I have previously cited demonstrate that the question of fitness and propriety is to be considered at the time of the hearing. At the present time, at least in this particular respect, the Appellant (as he himself effectively conceded) is not fit to carry out the duties and responsibilities of a registered participant in the greyhound racing industry.

57. I do not accept the submission advanced on behalf of the Appellant that this issue, and the evidence in support of it, are not relevant. Clearly both are relevant, for the reasons I have stated.

58. Moreover, I do not accept the submission that the evidence arose in a manner which was unfair to the Appellant. The simple fact is that the issue arose from evidence given by the Appellant in answer to questions asked of him in evidence in chief, when (in an apparent attempt to exculpate himself from responsibility in respect of the information provided in the application form) he effectively volunteered the fact that he was not technologically experienced. The issue having been raised in that way, there was nothing unfair about the Respondent pursuing it, questioning the Appellant about it, and relying upon the evidence that he gave in relation to it.

#### **The Appellant's Affidavit**

59. Finally, I have considerable concerns arising out of the Appellant's assertion in his Affidavit that he was not racing greyhounds in New South Wales. Put simply, that assertion was false. The Appellant only sought to withdraw it when the Respondent brought it to his attention as a consequence of the filing of supplementary evidence and submissions by the Respondent.

60. The effect of the Appellant's explanation for the falsity was that he did not read the Affidavit sufficiently closely before he signed it, and thus did not detect the error. I do not accept that to be the case. Clearly, the Appellant read the Affidavit sufficiently closely to identify an error in, and make a handwritten correction to, the contents of paragraph [11]. Why it was that he did not correct the contents of paragraph [61] is not properly explained. I do not accept his evidence that he "*glanced over it*". It is noteworthy that paragraph [11] of the Affidavit dealt with events which were far more remote in time than those addressed in paragraph [61].

61. I am satisfied that the Affidavit contained an objectively false statement. I am also satisfied that the Appellant must have known that such statement was false at the time that he made it. A lack of honesty of that degree runs wholly contrary to a finding that the Appellant is a fit and proper person to be registered.

### **Remaining evidence**

62. I have taken into account the testimonial evidence and acknowledge that it is unchallenged. However, I have come to the view that it does not outweigh the other matters to which I have referred.

63. I also accept that there is some evidence that the Appellant is actively engaged in greyhound racing in Bundaberg, Queensland. Whether the Regulator in Queensland is aware of the matters which are the subject of these proceedings and has nevertheless allowed the Appellant to participate in the industry, is not clear. Even if that were the case, it would not be binding on the Respondent.

### **CONCLUSION AND ORDERS**

64. For the reasons given, I am not satisfied that the Appellant is a fit and proper person to be registered as a participant in the greyhound racing industry. I therefore make the following orders:

1. The appeal is dismissed.
2. The appeal deposit is forfeited.

**THE HONOURABLE G J BELLEW SC**

**4 November 2024**