

INTRODUCTION

1. By a Notice of Appeal dated 25 September 2024, Ricky Mackenzie (the Appellant) appeals against a determination of the Greyhound Welfare and Integrity Commission (the Respondent) of 8 August 2024, refusing his application for registration as an Owner/Trainer on the grounds that he is not a fit and proper person. Following an internal review, that determination was confirmed by the Chief Commissioner of the Respondent on 19 September 2024.¹
2. For the purposes of the appeal I have been provided with a Tribunal book (TB) containing relevant documentary material. I also had the benefit of oral submissions from both parties at a lengthy hearing on 27 November 2024.

FACTUAL BACKGROUND

3. The factual background to the appeal is not in dispute and may be summarised as follows.
4. The Appellant is presently 43 years of age. He was first registered as an industry participant, in the capacity of an Owner, in July 2001. That registration expired in May 2004, at which time the Appellant became registered as an Owner/Trainer. That registration expired in July 2011.²
5. On 15 July 2024, the Appellant applied to the Respondent for registration as an Owner/Trainer. In completing that application, the Appellant disclosed that he had a criminal history, stating:³

Last charge I received was for common assault after catching a thief in my yard stealing my belongings. All the rest on my history are prehistoric and stem from days when I had severe drug dependency and homelessness.

¹ TB 50 – 53.

² TB 54 – 57.

³ TB 29.

6. It should be noted that the “*last charge*” to which the Appellant referred was in fact one of assault occasioning actual bodily harm and not common assault, although I do not suggest that the Appellant was seeking to be misleading in categorising it as he did. I have addressed this charge in more detail below.
7. In accordance with its normal practice, the Respondent obtained a copy of the Appellant’s Digital National Police Certificate⁴ which contains the following entries:

| NUMBER | COURT AND DATE | OFFENCE | OUTCOME |
|---------------|--|---|--|
| 1. | Wyong Local – 3 October 2001 | Break and enter and commit serious indictable offence | Suspended sentence of 12 months; conditions as to supervision |
| 2. | Wyong Local – 3 October 2001 | Break and enter and commit serious indictable offence | Community Service Order of 500 hours |
| 3. | Wyong Local – 3 October 2001 | Larceny | Fined \$1,000.00; cc \$58.00; s 9 Bond with supervision. |
| 4. | Holden Hill Magistrates – 6 April 2004 | Dishonestly take property without consent | Fined \$150.00 |
| 5. | Tamworth Local – 10 September 2004 | Fail to appear | Fined \$250.00 |
| 6. | Tamworth Local – 5 May 2008 | Provide false or misleading information | Fined \$1,000.00; cc \$70.00 |
| 7. | Tamworth Local – 14 September 2009 | Obtain money by deception | 6 months imp. |
| 8. | Tamworth Local – 14 September 2009 | Obtain money by deception | 6 months imp. |
| 9. | Tamworth Local – 14 September 2009 | Attempted larceny | 5 months imp. |
| 10. | Tamworth Local - 14 September 2009 | Obtain money by deception | 6 months imp. |
| 11. | Tamworth Local - 14 September 2009 | Obtain money by deception | 6 months imp. |

⁴ Commencing at TB 37.

| | | | |
|-----|--------------------------------------|---|---|
| 12. | Tamworth Local – 14 September 2009 | Obtain money by deception | 6 months imp. |
| 13. | Tamworth Local – 14 September 2009 | Obtain money by deception | 6 months imp. |
| 14. | Tamworth Local – 14 September 2009 | Larceny | 6 months imp. |
| 15. | Tamworth District – 19 October 2009 | Obtain money by deception (appeal) | 3 months imp. |
| 16. | Tamworth District – 19 October 2009 | Obtain money by deception (appeal) | 3 months imp. |
| 17. | Tamworth District – 19 October 2009 | Attempted larceny (appeal) | 3 months imp. |
| 18. | Tamworth District – 19 October 2009 | Obtain money by deception (appeal) | 3 months imp. |
| 19. | Tamworth District – 19 October 2009 | Obtain money by deception (appeal) | 3 months imp. |
| 20. | Tamworth District – 19 October 2009 | Obtain money by deception (appeal) | 3 months imp. |
| 21. | Tamworth District – 19 October 2009 | Obtain money by deception (appeal) | 3 months imp. |
| 22. | Tamworth District – 19 October 2009 | Larceny (appeal) | 3 months imp. |
| 23. | Tamworth Local – 9 November 2009 | Affray | Community Service Order – 200 hours |
| 24. | Tamworth Local – 9 November 2010 | Affray (call up) | 12 months imp. |
| 25. | Tamworth District – 3 June 2011 | Affray (call up - appeal) | 12 months imp. suspended |
| 26. | Tamworth Local – 12 March 2012 | Dishonestly obtain financial advantage by deception | 4 months imp. |
| 27. | Tamworth District – 10 August 2012 | Dishonestly obtain financial advantage by deception | s. 9 Bond – 12 months. |
| 28. | Tamworth Local – 17 July 2018 | Dishonestly obtain financial advantage by deception (10 counts) | Intensive Correction Order 2 years; |
| 29. | Tamworth Local Court – 16 March 2023 | Assault occasioning actual bodily harm | Community Corrections Order – 12 months |

8. As to that history, I note that:

- (i) entries [15] – [22] relate to determinations of appeals in the District Court in respect of the penalties imposed in the Local Court for the offending in entries in [7] – [14];

- (ii) entry [25] relates to the determination of an appeal in the District Court in respect of the penalty imposed in the Local Court for the offending in entry [24];
- (iii) entry [27] relates to the determination of an appeal in the District Court in respect of the penalty imposed in the Local Court for the offending in entry [26].

9. I should also note that I have only the Appellant's criminal history itself. I do not have any Statement(s) of Facts setting out the underlying basis of any of the offending. A bare criminal history is one thing. The facts underlying the entries on that history might be quite another. I would urge the Respondent, in cases where a person's criminal history forms part of the basis of a determination that he or she is not a fit and proper person to be registered as a participant, to utilise the provisions of s 16A of the *Racing Appeals Tribunal Act 1983* (NSW) for the production of material which provides some background and context to the offending.

10. The absence of such material was highlighted in the course of the hearing of the appeal, as a consequence of emphasis being placed on the Appellant's conviction in March 2023 for the offence of assault occasioning actual bodily harm. In his submissions,⁵ the Appellant stated that this matter was "*not clear cut and should not be taken into account ... as I was defending my property and belongings*". In the course of the hearing,⁶ the Appellant confirmed that these were the circumstances of the offending, and said that the Statement of Facts tendered to the Magistrate (a plea of guilty having been entered) was amended to reflect the fact that he had struck the victim once in the face (as opposed to striking him from behind, which was what was originally recorded). The Appellant also confirmed that the victim had sustained "*a slight fracture to the cheekbone*".⁷

⁵ TB 6; and see also Transcript 19.45 and following.

⁶ Transcript 19.45 and following; Transcript 24.43 – 26.5.

⁷ Transcript 25.20.

11. I accept, in the absence of any contrary information, that the Statement of Facts was amended as the Appellant has stated, that the injury sustained by the victim was as the Appellant described it, and that the offending came about by virtue of the fact that the Appellant was dealing with someone who was trespassing on his property. I also accept that having been sentenced to a Community Corrections Order by the Magistrate, the Appellant’s supervision by Community Corrections NSW under that order was suspended on 18 April 2023, less than a month after the conviction was recorded.⁸ The obvious inference to be drawn is that the view was taken by a Community Corrections Officer that the Appellant did not require ongoing supervision.

12. On 23 August 2024, the Respondent wrote to the Appellant advising that his application had been refused. By reference to the Appellant’s criminal history, hat correspondence stated:⁹

... under the “*fit and proper person*” framework *Criteria (sic) 10 – [you were] convicted of a serious offence involving violence and dishonesty offences.*

13. At the time, Criterion 10 of the Respondent’s “*Fit and proper person framework*” (the Framework) provided as follows:

| BACKGROUND OF APPLICANT | RESPONDENT’S LIKELY POSITION |
|--|---|
| <i>Applicant was previously convicted of a serious offence involving violence, dishonesty, drug offences or sexual offences.</i> | <i>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.</i> |

14. The Framework is, at best, a guide. At its highest, it provides that in circumstances to which Criterion 10 applies, an application for registration *may* be refused. Equally, depending upon the circumstances, an application *may* be granted. The

⁸ TB 15.

⁹ TB 46.

practical utility of this provision in the Framework is therefore somewhat limited by its own terms. It is not binding on me in any event.

THE RELEVANT STATUTORY PROVISIONS

15. In refusing the Appellant's application for registration, the Respondent was exercising its functions under the *Greyhound Racing Act 2017* (NSW) (the Act). Section 47(1) of the Act mandates that the Respondent exercise those functions so as to ensure that any person who is registered as a participant is a person who, in the Respondent's opinion, is a fit and proper person, having regard to the need to protect the public interest as it relates to the greyhound racing industry. Section 47(2) mandates that a person is not to be registered if he or she has a conviction, and the Respondent is of the opinion that the circumstances of the offence concerned are such as to render the person unfit to be registered. In determining the present appeal, I effectively stand in the shoes of the Respondent. I must therefore have regard to, and act in accordance with, the provisions of s 47 of the Act.

THE EVIDENCE RELIED UPON BY THE APPELLANT AT THE HEARING OF THE APPEAL

16. The Appellant relied upon testimonials of Rebecca Beswick, Rebecca Mizzi and Geoff Rose. The essence of that evidence is as follows.

17. Ms Beswick has known the Appellant for 20 years. She made reference to the progress he has made in terms of his drug rehabilitation, and spoke of his tireless work in the community. She also spoke of the time that the Appellant has spent with her own son, which has brought a remarkable change in his (i.e. her son's) general well-being. She described herself as being "*forever indebted*" to the Appellant.¹⁰

¹⁰ TB 8 – 9.

18. Ms Mizzi is the Appellant's current partner. She has known him for several years.

In what could only be described as a comprehensive and articulate testimonial, Ms Mizzi described having found the Appellant, within the period over which she has known him, to be a person of exemplary character, who has demonstrated dependability and a strong sense of responsibility both personally and within the community, the latter being exemplified through his voluntary support of numerous local organisations. Ms Mizzi described the Appellant as having embraced his role as a father, and as a stepfather to her children. In this regard, she spoke specifically of his commitment to his step-daughter Ava, who suffers from Prader-Willi syndrome and Autism, and for whom involvement with greyhounds (something to which the Appellant has introduced her) provides much needed joy, and serves as an engagement with the community of which she would not otherwise have the benefit. Ms Mizzi expressed the unequivocal view that the Appellant exemplifies the standard that would be expected of a participant, including a strong moral compass and respect for the rules of the industry. She said he would maintain that standard if registered.¹¹

19. Mr Rose is the Chairperson of the GBOTA. He has known the Appellant for 15 years and spoke of his considerable voluntary contributions to greyhound racing in his local community of Gunnedah, through both sponsorship and voluntary labour.¹²

20. For differing reasons, Mr Tutt, who appeared for the Respondent at the hearing of the appeal, took issue with the weight which should be ascribed to this evidence. In particular, he submitted that:

- (i) Ms Beswick's evidence was bereft of any real indication that she had full knowledge of the nature and extent of the Appellant's criminal history;¹³

¹¹ TB 10 – 13.

¹² TB 14.

¹³ Transcript 36.10 – 36.13.

- (ii) the evidence of Ms Mizzi was to be assessed having regard to the fact that she is the Appellant’s partner, as a consequence of which a “*measured*” approach should be taken when assessing her opinions;¹⁴ and
- (iii) the evidence of Mr Rose was lacking in detail, and contained no reference to the Appellant’s criminal history.¹⁵

21. In response, the Appellant emphasised that:

- (i) Ms Beswick grew up with him and is well aware of his criminal history.¹⁶
- (ii) Ms Mizzi, a schoolteacher of some 21 years standing, is a highly respected member of the community;¹⁷ and
- (iii) Mr Rose was well aware of his past.¹⁸

22. In my view, no limitation should be placed on the weight of any of this evidence.

23. In the case of Ms Beswick’s statement, there are references to the Appellant being homeless, to his having had a high drug dependency, and to his rising from the “*proverbial scrap heap*”. Clearly, Ms Beswick is aware of the Appellant’s past.

24. I also accept what the Appellant has said about the period over which he has known Mr Rose. I am satisfied that although Mr Rose did not expressly refer to the Appellant’s past, he is well aware of it. The brevity of his testimonial does not necessarily mean that less weight should be ascribed to what he has said.

25. Finally, I do not consider that the weight to be attached to the views expressed by Ms Mizzi should be reduced by virtue of the fact that she is the Appellant’s current

¹⁴ Transcript 37.5 – 37.34.

¹⁵ Transcript 37.36 – 38.15.

¹⁶ Transcript 40.29 – 40.32.

¹⁷ Transcript 40.1 – 40.27.

¹⁸ Transcript 39.37.

partner. In my view, she is in an extremely good position to express the views she has set out. Her opinions as to the Appellant's strong moral compass should be regarded as a reflection of his current circumstances, rather than those of his past. Moreover, as I observed in the course of the hearing, Ms Mizzi's unwavering support for the Appellant is clearly a positive influence on his life, and is a factor which is conducive to his ongoing rehabilitation.¹⁹

26. Finally, I should make some mention, in this context, of the references by Ms Mizzi to the Appellant's positive influence on his step-daughter arising out of his involvement with greyhound racing.²⁰ The Appellant went so far as to describe this as his main reason for wanting to be registered as a trainer.²¹ Whilst that could not, of itself, be a reason to conclude that the Appellant is a fit and proper person to be registered as a participant, his engagement with his step-daughter in the context of greyhound racing is a further indication of his rehabilitation. I have taken this evidence into account on that basis.

THE APPLICABLE PRINCIPLES

27. In *Fitzpatrick v Harness Racing New South Wales*²² I set out the principles to be applied when determining whether someone is a fit and proper person to be registered. Those principles were expressed in the context of an application for registration as a participant in the harness racing industry, but they are of universal application.

28. The Appellant bears the onus of establishing his fitness and propriety.²³ In the present case, there is no issue that the Appellant is fit to perform the duties of an Owner/Trainer, in the sense of having the requisite degree of knowledge and

¹⁹ Transcript 37.28 – 37.30.

²⁰ See for example TB 19 – 20; Transcript 11.10 – 11.22.

²¹ TB 19.

²² A determination of 11 June 2024.

²³ *Fitzpatrick* commencing at [32].

expertise. The principles by reference to which the Appellant must discharge the onus were expressed in *Fitzpatrick* in the following terms:²⁴

*[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.²⁵ This Tribunal (differently constituted) has consistently been called upon to apply those principles to determinations of the present kind.²⁶ 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*.²⁷ They include the following:*

- (i) a conviction is important to an assessment of whether someone is fit and proper;²⁸*
- (ii) a conviction is not necessarily determinative, and the controlling body may inquire into the offending to ascertain its real facts;²⁹*
- (iii) the question of whether an applicant is a fit and proper person is to be determined at the time of the hearing;³⁰*
- (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;³¹*
- (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;³²*
- (vi) there may be little or no public interest in denying forever the chance of redemption and rehabilitation.³³*

²⁴ *Fitzpatrick* commencing at [71].

²⁵ See for example *Hughes & Vale Pty Limited v New South Wales (No. 2)* (1955) 93 CLR 127 at 156.

²⁶ 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].

²⁷ (2016) 339 ALR 580; [2016] NSWSC 1617.

²⁸ At [6], citing *Ziems v Prothonotary of the Supreme Court of New South Wales* (1957) 57 CLR 279.

²⁹ At [102] citing *Ziems*.

³⁰ At [101] citing *Ex Parte Tziniolis; Re the Medical Practitioners Act* [1967] 1 NSWLR 57; (1966) 67 SR (NSW) 448 at 475.

³¹ At [103].

³² At [103] citing *Tziniolis*, and *Saunders v Legal Profession Admission Board* [2015] NSWSC 1839 at [62].

³³ 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*,³⁴ 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.

SUBMISSIONS OF THE PARTIES

Submissions of the Respondent

29. The written submissions filed on behalf of the Respondent (of which Mr Tutt was not the author) had a tendency to adopt what was, in my view, a somewhat harsh, and at times overstated view, of the Appellant's criminal history, and what it might establish.

30. For example, the submissions asserted that the "*pattern of behaviour demonstrated by the Appellant's criminal history suggest [sic] an underlying inability to conduct himself in an honest and truthful manner*".³⁵ To the extent that such a submission conveyed the suggestion that the Appellant *currently* exhibits such an inability, it is somewhat specious. On a proper analysis of the Appellant's criminal history:

- (i) his most recent conviction for any offences of dishonesty was in July 2018, almost six and a half years ago; and
- (ii) prior to that, his most convictions for dishonesty were in August 2012 (more than 12 years ago).

31. It should also be noted that in respect of the convictions recorded for offences of dishonesty in July 2018, the Appellant informed me, and I accept, that the

³⁴ [2003] NSWCA 320.

³⁵ Submissions at TB 25 [21].

offending itself had actually occurred in about 2011, some 7 years before.³⁶ Further, and quite apart from the gaps in time, the Respondent's submissions entirely overlook the blindingly obvious fact that this particular offending was related to the Appellant's drug addiction. Any suggestion that the Appellant's history of dishonesty offences exhibits an inability on his part to conduct himself honestly *at the present time* is largely untenable.

32. The written submissions also advanced the proposition³⁷ that the Appellant's criminal history established that he is "*an individual who is willing to – and has – engaged in violent and or anti-social behaviour...*". To the extent that the submission suggested that the Appellant's criminal history supported a conclusion that the Appellant *has* – i.e. in the past – engaged in such behaviour, it might well be correct. However, the suggestion which was inherent in that submission, namely that the Appellant *remains* willing to engage in violent or anti-social behaviour, tends to overlook the fact that (leaving aside the 2023 conviction for assault) the last violent offending in his criminal history was the offence of affray which occurred in 2009³⁸, some 15 years ago.

33. The position adopted by Mr Tutt at the hearing represented something of a departure from the written submissions. In a completely balanced approach which could only be described as entirely fair, Mr Tutt conceded that a large component of the Appellant's criminal history was, for want of a better term, historical. He accepted that this was relevant given the terms of criterion 10 of the Framework which makes reference, in the context of a person's criminal history, to whether the relevant offending occurred within a period of the previous 5 years. Mr Tutt also accepted that the evidence supported a conclusion that a large part of the Appellant's criminal history was obviously referable to a period when he was

³⁶ Transcript 21.16 – 21.30.

³⁷ TB 25 at [23].

³⁸ See entry [23] in the criminal history above.

dependent on drugs, a circumstance for which, Mr Tutt acknowledged, the Appellant had undergone significant rehabilitation.³⁹

34. Nevertheless, Mr Tutt submitted that it remained necessary to view the Appellant's criminal history in a holistic way, and that such an approach established that he had engaged in the commission of different offences over a long period of time.⁴⁰ Mr Tutt submitted that even when full weight was given to the fact of the Appellant's obvious and substantial rehabilitation, it remained the case that at the present time, he was not a fit and proper person to be registered. He submitted that when viewed overall, the maintenance of public confidence in the greyhound racing industry, coupled with the fact that the licence for which the Appellant had applied would, if granted, see him performing a significant role in the industry, required that the appeal be dismissed.⁴¹

35. In advancing this position, and whilst accepting that no single factor was determinative, Mr Tutt placed not inconsiderable emphasis on the Appellant's most recent offending for which he was convicted in 2023. Whilst accepting the Appellant's explanation for the circumstances in which that offending occurred, Mr Tutt submitted that it stood in the way of a finding that the Appellant had, as it were, come "*a full circle*".⁴² The effect of Mr Tutt's submission was that even when full weight was given to the extent of the Appellant's rehabilitation, that recent offending, when taken into account as a part of the Appellant's entire history, tended against a finding that he is, at present, a fit and proper person. In these circumstances, he submitted that the appeal should be dismissed.

Submissions of the Appellant

36. The Appellant emphasised that:

³⁹ Transcript 9.44 – 10.15.

⁴⁰ Transcript 6.10 – 7.46.

⁴¹ Transcript 10.34 – 10.44.

⁴² Transcript 31.34 – 31.41.

- (i) he was, from the outset of the application process, entirely transparent about his past;⁴³
- (ii) the vast majority of his criminal history was causally related to a long period of drug addiction;⁴⁴
- (iii) he had undergone significant rehabilitation, to the point where he had come “*full circle*”, such that his circumstances should be viewed as exhibiting redemption;⁴⁵
- (iv) he enjoys a stable family life, is the proprietor of two businesses in the township of Gunnedah, and makes a significant voluntary contributions to the community;⁴⁶ and
- (v) he has put in place the necessary infrastructure to enable him to carry out the responsibilities of a trainer.⁴⁷

37. To the extent that his most recent offending had assumed some focus in the appeal, the Appellant emphasised the circumstances in which that had occurred, the factual basis on which he was sentenced, the sentence itself, and the fact that he had been released from supervision within a short period of time.⁴⁸ In particular, the Appellant emphasised that the offending was committed when he was defending his own property.⁴⁹

CONSIDERATION

38. I have found this determination a very difficult one to make, primarily because there are a variety of factors which pull in different directions. It is appropriate to commence with reference to those principles which have a particular bearing upon the circumstances of this case.

⁴³ TB 5.

⁴⁴ TB 5.

⁴⁵ TB 5 – 6; Transcript 40.21 – 40.22.

⁴⁶ TB 5 – 6.

⁴⁷ TB 6.

⁴⁸ TB 6; Transcript 20.10 – 20.27.

⁴⁹ Transcript 25.26.

39. First, no one factor is determinative of the decision I am required to make. I must consider all relevant factors, and in doing so conduct a balancing exercise, ascribing such weight to each relevant factor that I consider to be appropriate.
40. Secondly, the time for determining whether the Appellant is a fit and proper person is now. That does not mean that matters in his past (such as his criminal history) have no relevance. What it means is that such history is one matter to be taken into account.
41. Thirdly, consideration must be given to the passage of time which has passed since the commission of any offence.
42. Fourthly, stemming from the third matter above, consideration must also be given to the *circumstances* of the commission of any offence.
43. Fifthly, a person's honesty and co-operation with authorities is relevant, as is evidence of good character, and clear and convincing evidence of rehabilitation.
44. By reference to these principles I make the following observations.
45. The Appellant was entirely open and honest with the Respondent in the course of the application process. He did not attempt, at any time, to shy away from his past. Consistent with that, he was entirely open with me in the course of the hearing. I was impressed with his honesty, and his unequivocal preparedness to accept his past. I am also satisfied, for the reasons I have already outlined, that I should not place any limit on the evidence of good character upon which he relies, and which I have taken into account in his favour.
46. I have already engaged in some analysis of the Appellant's criminal history when addressing the submissions which were originally advanced by the Respondent. Clearly, that history is relevant and it must be viewed as a whole. It is extensive, and it reflects the commission of serious criminal offences of varying kinds.

Balanced against that however, are two factors. The first, is that much of the offending dates back a significant period of time. The second, is that it is evident that the vast majority of it (the obvious exception being the offending in 2023) occurred when the offender was addicted to prohibited drugs. In that latter respect, the conclusion that the offender has undergone significant rehabilitation is clear and convincing. It is reflected in a number of factors, including the reduction in offending, his stable family life, his conduct of successful businesses, and his contributions to the community.

47. All of that said, the offending for which the Appellant was convicted in 2023 remains a matter of concern for a number of reasons. To begin with, it occurred less than 2 years ago. Further, and even accepting the Appellant's account of the circumstances in which it was committed, it represents an instance of the Appellant taking the law into his own hands, which resulted in actual bodily harm being occasioned to the victim. Whilst the Appellant was given the benefit of a Community Corrections Order from which he was released from supervision within a short period of time, the fact remains that such an order is an alternative to full time imprisonment.⁵⁰ In those circumstances, the offending must be viewed as objectively serious.

48. I again emphasise that no single factor is determinative in resolving the present appeal. It follows that nothing that I have said should be construed as expressing a view that the Appellant's conviction in 2023, of itself, mandates a conclusion that he is not a fit and proper person to be registered as an industry participant. However, it is obviously relevant, and it must be viewed, not in isolation, but against a background of a long criminal history, albeit one which is inextricably linked to the Appellant's previous addiction to drugs.

⁵⁰ See the Second Reading Speech for the *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Bill* and cognate legislation, NSW, Legislative Assembly, *Debates*, 11 October 2017, p 2, the Attorney General (NSW) – the Hon. M. Speakman SC.

49. The Appellant has made significant progress in his drug rehabilitation, which he has largely undertaken on his own. I am prepared to accept that in that respect, the evidence demonstrates the level of clear and convincing rehabilitation to which Young CJ in Eq. made reference in *P v The Prothonotary*. However, a distinction is to be drawn between rehabilitation from a drug habit specifically, and rehabilitation in terms of criminal offending more generally. In this respect, there is some merit in the submission advanced by Mr Tutt that the offending in 2023, given its recency, demonstrates that the Appellant's rehabilitation in terms of criminal offending is not yet complete.

50. There is, as I have pointed out, authority for the proposition that a long passage of time *without* a conviction *may* tend in favour of a conclusion that someone is a fit and proper person to be registered. The corollary of that proposition is that if the passage of time without a conviction is short, that is a circumstance which may tend in favour of the opposite conclusion.

51. In the present case the Appellant does not, by virtue of the conviction in 2023, have a recent blemish-free period on which he is able to rely. The blemish in question is of relatively recent origin, and it relates to the commission of a serious offence involving violence. It follows that the Appellant's rehabilitation, whilst well advanced, is not complete in terms of criminal offending. I am therefore driven to the conclusion that these factors outweigh those which are in the Appellant's favour. Having reached that conclusion, the appeal must be dismissed. However, I wish to add the following further observations.

52. I am mindful of the observation made by Kirby P in *Dawson*⁵¹ that an outcome of this kind is not necessarily intended to be permanent. Whilst that observation was obviously made in the context of legal practitioners, it is one of general application. I am equally mindful of his Honour's observations in the same case⁵²

⁵¹ At [8].

⁵² At [10].

that there may be no public interest in denying an application forever, and that the public interest may be better served if, in an appropriate case, those who have offended, once they have affirmatively proved reform, are afforded a further chance.

53. I have taken the step of making specific reference to these matters so as to make it clear to the Appellant that my determination to dismiss the appeal on this occasion should not be viewed as being tantamount to a form of lifetime ban from the greyhound racing industry. Whilst a favourable outcome of any future application for registration obviously cannot be guaranteed, the relevant decision maker(s) will, in the event that they come to consider such application, have the benefit of these reasons, in which I have sought to explain why the present appeal has been dismissed, and in which I have made a number of favourable observations of the Appellant generally. I am not in a position to bind any decision maker(s) in terms of the determination of any application for registration that the Appellant might make in the future. Similarly, I am not in a position to bind the Tribunal (be it constituted by me or by someone else) as to the outcome of any appeal which might be brought in the event that a future determination at first instance is adverse to the Appellant. However, what can be said with some certainty is that all other things being equal, evidence of the Appellant's continued rehabilitation, including but not limited to the absence of any further criminal offending, would, as a matter of common sense, be an obviously powerful factor weighing in support of such an application being granted.

54. Finally, it will be apparent that the Appellant's previous periods of registration as a participant coincided with periods in which he was convicted of serious criminal offending. To the extent that my determination to dismiss the present appeal might be viewed as being inconsistent with such circumstances, it needs only be said that the present form governance of the greyhound racing industry is markedly different, in a number of material respects, from its predecessor. . What may have been regarded as appropriate in cases of this kind under the previous administrative regime should not be seen as having any precedential value.

ORDERS

55. For the reasons given, I make the following orders:

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

THE HONOURABLE G J BELLEW SC

3 December 2024