

IN THE RACING APPEALS TRIBUNAL

JAMIE LEE O'MALLEY

Appellant

v

GREYHOUND WELFARE AND INTEGRITY COMMISSION

Respondent

REASONS FOR DETERMINATION

Date of hearing:	12 December 2024
Date of determination	16 December 2024
Appearances	The Appellant in person (assisted by Ms J Bishop) Dr A Groves for the Respondent

ORDERS

- 1. The appeal in respect of the finding of guilt is dismissed.**
- 2. The appeal in respect of penalty is upheld.**
- 3. The disqualification of 9 months which was imposed on 4 October 2024 is set aside.**
- 4. In lieu thereof, a disqualification of 5 months is imposed, to date from 4 October 2024.**
- 5. The appeal deposit is to be refunded.**

INTRODUCTION

1. By a Notice of Appeal dated 28 October 2024, Jamie Lee O'Malley (the Appellant) has appealed against a determination of the Greyhound Welfare and Integrity Commission (the Respondent) made on 4 October 2024, imposing a disqualification of 9 months for a breach of r 156(o) of the *Greyhound Racing Rules* (the Rules).
2. A previous application for a stay of that determination was refused.
3. The Appellant was assisted by Ms Jessica Bishop at the hearing, and I was provided with a Tribunal Book (TB) containing all documentary evidence, including the written submissions of the Appellant and medical evidence upon which he relied. I wish to record my thanks to Ms Bishop for the care and attention with which she assisted the Appellant in the presentation of his case.

FACTUAL BACKGROUND

4. The Appellant is an industry participant who has held various registrations since 2003. He does not currently have any active licences.
5. On 5 June 2024, the Appellant contacted the Respondent's registration team by telephone, making enquiries about his licence. The person to whom he spoke indicated that his licence had expired, but that it was open to him to renew it over the phone. The Appellant indicated that he wished to do so. He was then asked a series of questions, including the following:¹

GWIC Representative: **Now, have you ever been charged with any criminal offences?**

Appellant: **No.**

6. At the conclusion of the conversation, the following was said:²

¹ TB 29; Q and A 20.

² TB 29; Q and A 22.

*GWIC Representative: Okay. Now, I'll just read out this declaration to you. If you could just me know if you agree to this one at the end. So, all of the information you have provided is true and correct. **You understand that if the Commission later determines that any information you've provided is incorrect or deliberately false, disciplinary action may be taken against you, which may include the suspension of your registration or a disqualification. Do you agree with this declaration?***

Appellant: Yes (emphasis added in each case).

7. The Respondent subsequently obtained what has been referred to as an “update” of the Appellant’s criminal history. Given the matters raised in the course of the appeal, it is necessary for me to set out the entirety of the offences which are recorded within that history:³

DATE AND COURT	OFFENCE
29 April 1991 – Parramatta Local Court	Found in gaming house
10 February 1993 – Parramatta Local Court	Offensive behaviour
17 February 1993 – Parramatta Local Court	Stealing
16 June 1993 – Parkes Local Court	Offensive language; resist police; assault police
20 April 1994 – Parramatta Local Court	Found in gaming house
27 May 1994 – Wellington Local Court	Attempt steal motor vehicle
5 February 1998 – Raymond Terrace Local Court	Resist police
9 April 1998 – Raymond Terrace Local Court	Offensive language
11 January 1999 – Parkes Local Court	Contravene AVO
3 April 2006 – Grafton Local Court	Cultivate prohibited plant
27 November 2006 – Grafton Local Court	Resist police; resist/hinder police; use offensive language; assault police
26 March 2007 – Grafton District Court	Deposit litter
8 December 2009 – Grafton Local Court	Contravene AVO; stalk/intimidate
31 May 2010 – Grafton Local Court	Cultivate prohibited plant
18 April 2011 – Grafton Local Court	Resist police
16 May 2011 – Grafton Local Court	Resist police

³ TB 31 – 35.

9 July 2018 – Orange Local Court	Shoplifting
21 June 2023 – Dubbo Local Court	Drive whilst suspended
20 July 2023 – Parkes Local Court	Contravene AVO
23 November 2023 – Parkes Local Court	Drive whilst disqualified
21 March 2024 – Parkes Local Court	Drive whilst disqualified (2)
18 July 2024 – Parkes Local Court	No result recorded

8. The Appellant was interviewed by a representative of the Respondent on 21 June 2024. The questions put to the Appellant, and his answers, included the following:⁴

Q6 Okay. So, do you remember the question on the licencing application about criminal history?

A6 Yep. Yep.

Q7 Because, I'm looking at it and you've actually ticked on there that you didn't have a criminal history.

A7 I haven't as far as I know.

Q8 Okay.

A8 I can show you my police record.

Q9 So, we did have a police record on file for you and we got that updated. And, there's a few things on here in recent times. But, you're saying that you're not aware that there would be things on there?

A9 No. Not as far as I know.

Q10 Okay.

A10 Like, what?

Q11 Okay. So, looks like 2023 has been a busy year for you.

A11 Not for me. From a police officer's view - - -

Q12 Yeah.

A12 - - - not for me.

Q13 From the police officers. Yeah. Especially - - -

A13 For driving, that's all it's been.

Q14 Yeah. So, there's been quite a few – there's been quite a few charges related to driving without a licence.

⁴ TB 37 and following.

A14 *Yep. Well, that's not a criminal offence.*

Q15 *Well, you went to court for it.*

A15 *I haven't been to court. I'm dealing with it now. They're all – I'm taking that I – I didn't attend court. And, I mean, I'm having an annulment done at the moment.*

Q16 *Right.*

A16 *From both Parks and Dubbo for driving.*

Q17 *Okay. So, you're saying that you're going to have these – so, right now, the matters are still on foot, are they?*

A17 *They are. Yes. As far as I know, I'm taking Dubbo back to court and Parks.*

Q18 *Okay.*

A18 *Just trying to get my licence back.*

Q19 *Right. Well - - -*

A19 *What's my – what's my car licence got to do with dogs?*

Q20 *It's – it's actually the fraud of not being honest about your criminal history that's the issue.*

A20 *Well, driving's not a criminal history. Everyone's got a driver's licence. Everyone does the wrong thing. If someone's got drink driving, what you don't get a dog licence?*

Q21 *Well, if you're going to write fraudulent material on your licence that can be - -*

A21 *It's not fraudulent. How is it fraudulent?*

Q22 *Okay. Well, just that box which asks you - - -*

A22 *To me, criminal history – I don't go and do armed hold ups.*

Q23 *Well, I'm glad to hear that.*

A23 *Like, that is criminal history to me.*

Q24 *Okay. So, maybe there's an issue around the understanding of what constitutes criminal history. But, there are other things - - -*

A24 *So, you're telling me all these dog trainers out here that I know that have got worse records than me, they've all got dog licences too. Like, there – people have guns.*

Q25 *People have guns.*

A25 *Like, people have had guns in the past and they've got dog licenses. Like, I know a lot of people in the industry that's done a lot worse than driving a car.*

Q26 *Well, there's – we're certainly cracking down on – this is something that seems to have gone – you know, maybe we haven't been as thorough with doing these checks, but that's definitely shifted in the last six months, or last 12 months even. But, you know, if people are going to write fraudulent information on their documentation – even if it's not very serious offences, the fact that it's fraudulent information on a legal document is a problem, in itself.*

A26 So, what – so, what do you investigate every dog trainer at the moment, you have to? Like, this sounds ridiculous.

Q27 It's a bit of work. But, I mean, at the end of the day we get the - - -

A27 What is a dog licence got to do with a driver's licence?

Q28 Well, there's other things on here too.

A28 Yeah. What?

Q29 So, in 2023, there was a contravene – a – an AVO for a domestic matter in May.

A29 Right. Right. Now, well that is – yeah. I – can I explain myself? I got stabbed.

Q30 Right.

A30 Right. Personally, I got stabbed. But, because we were in the club together the night before, I got charged with an AVO. The police had to do their job.

Q31 So, can we just back track?

A31 So, like, it's not a criminal offence to get it.

Q32 Well, it - - -

A32 I got – I got a fine for it, that was it. No charges. No nothing.

Q33 So, you've been charged and found guilty and they gave you a fine.

A33 Fine that was it.

Q34 So, that's still – that's still a charge.

A34 It's a charge, not a criminal offence.

Q35 It is a criminal offence. They can't fine you if you haven't got - - -

A35 I don't know where you're getting your criminal offence, like, stuff from. Like, driving history is not a – like, that. I don't know what you're barking at. Get to the point.

Q36 So - - -

A36 Because, this is ridiculous. I've held a licence for 30 fucking years, right. And, you're going on about a driver's licence that – something that happened in court from a women stabbing me.

Q37 Right.

A37 It was on a technicality that I got charged.

Q38 Okay. All right. Well - - -

A38 It's – can I explain the situation in this case. She – she made out, I punched her teeth out, right. And, had me on a domestic violence order. She had to go back to the police and tell them the truth, that she fucking done it herself. And, I got stabbed the night after and – because, we were drinking at the club the night before, the AVO come into action and they had to take me in and charge me.

Q39 Right.

A39 Like, this is ridiculous.

Q40 *And so, are you aware that there are current charges for you about growing cannabis?*

A40 *Haven't been to court yet.*

Q41 *Okay. All right.*

A41 *What – what's got – like, its – what – you're – you're talking about futuristic stuff. Now, I got to go to court next month for that. There's no charges in play yet.*

Q42 *Well, I think you may not have understood what that particular ruling around reporting to GWIC when you have charges.*

A42 *Well, charges now – a criminal offence is not a charge.*

Q43 *And then, when you're asked if you have a criminal history, that you've ticked no.*

A43 *And, I haven't got one. I'll still tick no.*

Q44 *Well, you've – you've got a few pages of criminal history. I'm only focussing on the last - more than eleven years.*

A44 *I've got – mate, I can go back to 17 that I've had literal bull shit things with the law. But that's not criminal. I don't go and hold up banks. I don't – look, come on. Get real.*

Q45 *So, well - - -*

A45 *Fuck me dead. What's this industry getting to?*

Q46 *It's - - -*

A46 *Well, tell me.*

Q47 *If – if you'd had of ticked yes - - -*

A47 *I've had a gut full of it. You can't put dogs down. You can't do this. You can't do – I've got a fucking 15 year old dog, that I've been taking to the vet for two years, because it's got dementia and when I get to the vet, they can't tell me it's got dementia. The poor fucking dog goes out of its yard and gets stuck there. Well – well, GWIC have fucked up. When you can't be greyhound and well fare. And, now you're worrying about the people in it. You are the one keeping dogs alive to protect the industry.*

Q48 *Yep. Well - - -*

A48 *Yeah. That's the truth. It is the truth. One hundred and ten percent. The whole industries had enough – gut full of GWIC. And, here I am trying to race dogs that I've been feeding and I'll feed them for another 12 months without racing. It doesn't worry me. They're like a pet to me. But, the other frigging people that you are protecting - - -*

Q49 *And, who are - - -*

A49 *And now, I've got a criminal history.*

Q50 *Who are we protecting, Jamie?*

A50 *Think about it. Everyone in the industry. You are keeping dogs alive that break legs, for what reason? To have an arthritic animal later on. Come on. Get real you people. Don't worry about the people protecting their dogs and having their loved*

pets, do you. You're worried about keeping the industry going, to keep dogs alive. The truth of the matter is, I had a dog at Dubbo, 12 months ago, and I was nearly made to leave my animal to race in the next race. It's ridiculous the game is. And, you're worried about my licence – my – my driving licence. What about the animal.

Q51 Well, right now, this is what we're talking about, is - - -

A51 Yeah. I love my animals. What do you love? Yourself. I've had enough. Fair dinkum. I want – like, what's the go? Tell me where you're getting to.

Q52 That's – that's all I need. I just wanted to check in with you, that you were aware and - - -

A52 So, what – like, what I'm not getting a licence now?

Q53 That's not a decision I can make on my own. I'll just put together my report and we'll see what happens from there.

A53 So – so, there – well, while I got you. I booked in to trial some dogs for over six months. Well – what, aren't you going to let me do that then?

Q54 I – there's nothing that's changed as of right now. No.

A54 Mate, you've just hit the most sensitive point in my life. A few little errors in – in judgement and probably being involved with the wrong people and – and – and you take – you question my licence.

Q55 Well, it's – it – that's, like I said, a decision for the – for the leadership team to make.

A55 Well, I've had a licence – how would you like me to take your car licence off you for being stupid?

Q56 Well, if I was being stupid - - -

A56 Like, think about.

Q57 It's – it's happened before. A long time ago when I was a lot younger and I didn't do it again.

A57 Yeah. Yeah. No. I'm not – yeah.

Q58 So - - -

A58 Yeah. Well, I've had a battle all my life with driving licence, [0:11:11] since P-plates. That's just me. Me and the country. I need to know whether I've got a licence. That's what I need to know. Otherwise, you can come and get all these fucking dogs.

Q59 Well, right now - - -

A59 There yours. They're not – well we – we register them to you. They're yours aren't they.

Q60 Well - - -

A60 This is what I don't understand with this GWIC. It is ridiculous.

Q61 I think – I think what I'll do, is I'll turn off the recorder. So, I'll just finish the formal part of the interview.

A61 Yeah. All right. I – I – I speak my mind. I – I really am. I - - -

Q62 Okay.
A62 I - - -

Q63 So, 3:40pm.
A63 I accept GWIC taking over, it's just a –

[END OF RECORDING]

9. Although nothing turns on it, it should be noted that the reference in that interview⁵ to the Appellant having “*ticked*” on a licencing application that he did not have a criminal history, appears to be entirely misleading. The case against the Appellant is not that he made a false statement in a document by “*ticking*” anything. The case against him is that he made a false statement to an employee of the Respondent in the course of a telephone conversation.⁶ So much is clear from the particulars of the charge which have been pleaded in the following terms:⁷

1. On or about 5 June 2024, you made a false statement in a registration application, in circumstances where:

- (a) On or around 5 June 2024 you contacted the GWIC Registration Team to renew a registration as an Owner Trainer and Breeder with GWIC;*
- (b) During that application you stated that you had never been charged with a criminal offence;*
- (c) at the time of lodging the application you had multiple convictions for numerous offences.*

10. The Appellant was charged with an offence contrary to r156(o) of the Rules which is in the following terms:

Rule 156(o):

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

...

(o) makes or publishes any statement known by the person to be false where the publication is to:

...

(iii) an employee of a Controlling Body;

⁵ At Q and A 6 and 7.

⁶ TB 27 – 30.

⁷ TB 20.

11. It should also be noted that the Appellant was informed when interviewed that the Respondent had a police record on file which it had “updated”.⁸ Bearing that in mind, and further bearing in mind that the Appellant’s criminal history dates back to 1991, the Respondent must have been aware prior to the alleged commission of the present offence that the Appellant had such a history. The Respondent has been a registered participant for a continuous period of more than 20 years. It follows that the Respondent’s predecessor had seen fit to register the Appellant as an industry participant for at least some of that period, apparently in the knowledge that he had a criminal history. As I observed in a recent decision of *McKenzie v Greyhound Welfare and Integrity Commission*⁹, the present form of governance of the greyhound racing industry is markedly different, in a number of material respects, from that which preceded it. 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. Specifically, the fact that a former governing body apparently saw fit to register the Appellant in the knowledge that he had a criminal history, does not assist him on the present appeal.

12. The Appellant was notified of the charge against him in correspondence dated 19 August 2024.¹⁰ The false statement relied upon by the Respondent was that set out in [5] above. The Appellant pleaded not guilty to the charge, but was found guilty and disqualified for a period of 9 months.¹¹ That decision was communicated to the Appellant on 4 October 2024.¹² The decision noted¹³ that in determining penalty, the Appellant’s plea of not guilty was taken into account, along with his history of more than 20 years in the industry which was free of any similar breach. The decision also noted that “*Greyhound racing penalty*

⁸ Q and A 9.

⁹ 3 December 2024 at [54].

¹⁰ TB 23 – 25.

¹¹ TB 18 – 19.

¹² TB 20 – 22.

¹³ TB 18 – 10.

precedents” were taken into account, although what precedents were considered was not specified.

THE ISSUES ON THE APPEAL

13. The hearing of the appeal proceeded on the basis that the Appellant maintained his plea of not guilty.¹⁴ The principal issue arising from that plea is whether I can be satisfied that the statement made by the Appellant which is relied upon to support the charge was one which he *knew* to be false at the time he made it. If I am so satisfied, the Appellant argues that the penalty imposed is excessive.

14. At this point, I should make mention of one particular matter which arises on the evidence. Contained within the material provided by the parties are two medical discharge summaries relating to the Appellant.¹⁵ The first is headed *MH Discharge*. It indicates that the Appellant was discharged from *PAR MH Adult CMHS at WN Mental Health Service*, having presented there from Bloomfield Hospital “*post psychosis*” on 18 January 2018. The diagnoses were recorded as “*Dysthymia; mental and behavioural disorders due to multiple drug use and use of other psychoactive substances*”.

15. A second discharge summary contained within the material¹⁶ states that the Appellant was admitted to a mental health facility on 22 February 2019 on account of an unspecified non-organic psychosis. He presented with agitation and stress due to ongoing psychosocial stressors, and underwent psychiatric review.

16. For reasons which will be apparent, these documents gave rise to a question whether the Appellant was seeking to rely on mental health or related issues as

¹⁴ Transcript 2.43 – 2.45.

¹⁵ TB 8 – 9.

¹⁶ TB 9 – 10.

part of his case on appeal. When I raised the issue, Ms Bishop explained the Appellant's position in this way:¹⁷

What I'm saying is that Mr O'Malley has a diminished lower/lower than average IQ ... in comparison. So, it's not mental health, it's just some people, we can't all be president of the world and the smartest. And he's also of a low socioeconomic status, so he's never been afforded legal counsel on any interaction with law enforcement.

17. Whilst I understand the position as it was put by Ms Bishop, I take the view that in fairness to the Appellant I should not completely ignore the evidence of his previous mental health episodes. That is particularly so in circumstances where the Appellant made a reference in his application for a stay of the Respondent's determination to the fact that he was not guilty of the offence on the grounds of mental health.

18. Although the medical evidence to which I have referred above is not contemporaneous with the commission of the alleged offence, it does demonstrate that the Appellant has some history of mental health issues, which have previously resulted in a diagnosis of a drug-related psychosis. This is relevant in two respects which are discussed below.

SUBMISSIONS OF THE PARTIES – THE ALLEGED COMMISSION OF THE OFFENCE

Submissions of the Appellant

19. The principal submission of the Appellant was that even if it were accepted that the statement he made, namely that he had never been charged with a criminal offence, was objectively false, I could not be satisfied that he *knew* the statement was false when he made it.¹⁸ Ms Bishop submitted that the Appellant was labouring under a misunderstanding of the legal process generally, and more specifically a misunderstanding between a "criminal offence" on the one hand, and a "driving offence" on the other.¹⁹ It was submitted by Ms Bishop that due to

¹⁷ Transcript 3.37 – 3.45.

¹⁸ Submissions at [12](d).

¹⁹ Transcript 4.1 – 4.10.

his limited IQ, the Appellant “*genuinely believed he didn’t have a criminal conviction based on his belief of the definition of criminal conviction*”.²⁰

20. It was further submitted that the Appellant’s responses to the questions asked of him in the interview demonstrated a “*genuine mental capacity/inability to understand his personal legal situation or the manner in which his actions are recorded regarding fines, warnings or interactions with law enforcement*”.²¹ Finally, it was submitted that the Appellant “*suffers from intellectual challenges that prevent a full and proper understanding of his personal criminal status and the definition of what constitutes a criminal conviction*”²², and that the Respondent had not established that the Appellant had knowingly provided a false answer to the question asked.²³

Submissions of the Respondent

21. Whilst the Respondent acknowledged that those making the determination were not aware of the Appellant’s previous mental health episodes, it was submitted that it was unclear whether the Appellant was suffering from any mental health issues at the time of the commission of the alleged offending and, if he was, what impact that may have had on his capacity to answer the question which was put to him.²⁴ In those circumstances the Respondent urged me to reject the suggestion that the Appellant’s response was due to any intellectual challenge(s).²⁵ It was submitted that the whole of the evidence sustained an inference that the Appellant knew that his answer was false when he gave it.

CONSIDERATION

22. There can be no doubt that the Appellant’s answer to the question he was asked was objectively false. The evidence clearly establishes that, contrary to his

²⁰ Transcript 5.1 – 5.3.

²¹ Submissions at [12](b).

²² Submissions at [14](a).

²³ Submissions at [14](b).

²⁴ Submissions at [14].

²⁵ Submissions at [15].

answer, he has been charged with a multiplicity of criminal offences over a long period of time. There is no *direct* evidence that he knew that his answer to the question regarding his criminal history was false. However, that does not mean that he must succeed on his appeal. The question is whether an inference of knowledge can be drawn from the evidence as a whole. In my view, such an inference can be drawn for the following reasons.

23. The first, is that this is not a case where the Appellant's criminal history is limited. On the contrary, it contains a multiplicity of entries. That circumstance tends in favour of a conclusion that the Appellant must have been aware of the falsity of the answer he gave.

24. The second, is that the question was directed, not to whether the Appellant had been *convicted* of offences, but to whether he had been *charged with* offences. That is an important distinction, and one which assumes some significance given that between 1991 and 2004, the Appellant's criminal history indicates that he:

- (i) was charged on 22 separate occasions;
- (ii) appeared in 7 different Local Courts;
- (iii) was sentenced for 16 different types of criminal offending.

25. The third, is that it is an essential plank of the Appellant's case that he could not distinguish between driving offences and other offences and, in effect, was under the impression that driving offences did not constitute a criminal history. However, as I have set out in [24] above the Appellant has been charged with, and convicted of, a multiplicity of different offences, many of which are not driving-related, and which date back as far as 1991.

26. The fourth, is that one of the entries on the Appellant's criminal history is an offence of breaching an Apprehended Violence Order as recently as 2023. When interviewed, the Appellant freely acknowledged that he had been charged with

that offence.²⁶ The question which he was asked, and which gives rise to the alleged offence, was whether he had been “*charged with any criminal offences*”, not whether he had been convicted or fined. The Appellant’s responses to questions regarding the offence of contravening an Apprehended Violence Order in 2023 clearly indicate that he was aware that he had been charged with that offence. That tends wholly against his assertion that the statement he made was not false to his knowledge.

27. The fifth, is that there is nothing contained within the Appellant’s criminal history which would suggest that any of the charges brought against him were dealt with under either s 32 of the *Mental Health (Forensic Provisions) Act 1990* (NSW), or s 14 of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW). That is an objective circumstance which tends against the Appellant’s claimed state of confusion.

28. Taking all of these factors into account, and particularly given the analysis in [24] above, it is untenable to suggest that the Appellant did not know that he was making a false statement when he said that he had never been charged with a criminal offence. It follows that his appeal against the finding of guilt must fail.

SUBMISSIONS OF THE PARTIES – PENALTY

Submissions of the Appellant

29. The Appellant’s overarching submission was that the penalty which was imposed was too severe. In support of that position, Ms Bishop submitted that:

- (i) the Appellant did not present a risk to the integrity of the greyhound racing industry;²⁷

²⁶ Q and A 34.

²⁷ Submissions at [14](d).

- (ii) the disqualification imposed would require the Appellant to rehome a large number of animals, which was not in the best interests of the industry as a whole;²⁸ and
- (iii) a more appropriate penalty would be a fine.²⁹

30. Ms Bishop further submitted that there was a fundamental need to ensure consistency in the penalties imposed for offending of this nature.³⁰ In this regard she drew my specific attention to a decision of the Respondent in a matter of *Loader* which involved a similar charge being brought against an industry official in which a disqualification of 5 months was imposed. Ms Bishop submitted that industry officials should be held to a higher standard than participants, and that the penalty imposed in that case was wholly inconsistent with that imposed on the Appellant.

Submissions of the Respondent

31. The Respondent highlighted the necessity to impose significant penalties for offending of this nature in order to protect the integrity of the industry, and the associated necessity to ensure that penalties were consistent.³¹ In these respects, I was referred to previous determinations of the Tribunal (differently constituted) in *Francis*³² and *Mabbott*.³³ The Respondent acknowledged the evidence of the Appellant's mental health which was now available, and which was not available when the original penalty was imposed. However, the Respondent nevertheless submitted that such evidence did not warrant any reduction in penalty.³⁴

²⁸ Submissions at [15].

²⁹ Submissions at [17].

³⁰ Transcript 5.13 and following.

³¹ Transcript 11.17 – 11.27.

³² 30 May 2022.

³³ 30 November 2021.

³⁴ Transcript 12.36.

CONSIDERATION

32. I have read the previous determinations of the Tribunal to which I was referred by the parties. I have also read the determination in *Boyd* which was included in the Tribunal Book.³⁵ The following propositions which are relevant to the question of penalty in matters of this nature, and with which I agree, may be drawn from those determinations. Although expressed in the context of the greyhound racing industry, they are of universal application:

- (i) there is a fundamental obligation placed upon a participant to act in an honest and forthright manner when dealing with the relevant industry Regulator ;³⁶
- (ii) that obligation is not restricted to circumstances surrounding applications for the issue of a licence, but extends to all dealings;³⁷
- (iii) a Regulator must be able to trust participants;³⁸
- (iv) the responsibility placed on a participant to be honest and forthright stems from the fact that the issue of a licence is a privilege, not a right;³⁹
- (v) a failure to act honestly has the capacity to undermine public confidence in, and the integrity of, the racing industry generally.⁴⁰

33. There are, however, other aspects of those determinations which must be approached with caution.

34. The first, is the observation that “*there is an expectation of a level playing field*” when assessing penalty.⁴¹ If that is understood as conveying nothing more than the proposition that there is a need for consistency, I agree. However, as I have pointed out on a number of previous occasions, consistency in this regard means

³⁵ 8 October 2021.

³⁶ *Mabbott* at [14]; [42]; *Boyd* at [26].

³⁷ *Mabbott* at [11].

³⁸ *Mabbott* at [18].

³⁹ *Mabbott* at [18]; *Boyd* at [28].

⁴⁰ *Boyd* at [28]

⁴¹ *Mabbott* at [38].

consistency in the application of principle, and not numerical equivalence of penalty. As the facts and circumstances of cases differ, so will the penalties which are imposed. In that sense, there can never be a completely “*level playing field.*”

35. The second, is that an approach to assessing penalty which involves the adoption of fixed “*starting points*”⁴² carries the risk of impermissibly interfering with what is a discretionary determination.

36. The third, is that statements⁴³ which mandate certain penalties as “*the only possible outcome*” for certain offences are, with respect, inappropriate for a number of reasons. They are unjustifiably prescriptive. They also have a clear tendency to impermissibly fetter the discretion to determine penalty, to the point of potentially placing the Tribunal in what could be described as a form of sentencing straitjacket. For the reasons I have previously expressed,⁴⁴ statements of that kind should not be regarded as being indicative of the Tribunal’s approach to the assessment of penalty in any case.

37. All of that said, and giving full weight to the principles set out in [32] above, the present offending must be viewed as objectively serious. It constitutes a breach of the fundamental obligations of honesty which are expected of all industry participants, and threatens the integrity of, and public confidence in, the greyhound racing industry generally.

38. In terms of his subjective circumstances, the Appellant chose to defend the matter, and is therefore not entitled to any discount for a plea of guilty. However, to his credit, and as was conceded by the Respondent,⁴⁵ he has a generally good disciplinary record as an industry participant. He was first registered in 2003⁴⁶ and whilst his history is not blemish-free, his infractions are for minor matters in

⁴² *Francis* at [55] – [56].

⁴³ *Mabbott* at [43].

⁴⁴ See *Cecil v Greyhound Welfare and Integrity Commission*, 2 December 2024 at [44].

⁴⁵ Transcript 12.25.

⁴⁶ TB 43.

respect of which nominal fines were generally imposed.⁴⁷ That is consistent with testimonials provided by John Corrigan and the Dubbo Greyhound Racing Club. Although those testimonials are undated (and in the case of the second, unsigned), and although they do not indicate an awareness of the purpose for which they were to be used, I have taken them into account.

39. The absence of prior offending of this nature suggests that there is no need for any penalty to reflect specific deterrence. Moreover, considerations of general deterrence require some degree of moderation. Whilst there is no evidence that the Appellant was suffering from any mental illness at the time of committing the offence, he does have a psychotic history. Moreover, his answers to questions which were put to him when interviewed, and what appears to have been his general demeanour at the time, suggest, not only a limited cognitive capacity, but perhaps some degree of functional overlay. These factors combine to give rise to a circumstance which the Appellant is entitled to have taken into account in his favour when considering his overall subjective case.

40. However, over and above that general consideration, it is an accepted principle that even where (as is the case here) a person's mental state is unrelated to the relevant offending, it may still be the case that such mental state renders the person an inappropriate vehicle for general deterrence.⁴⁸ Whilst care must be taken in applying criminal law principles to the assessment of penalties for regulatory offences, it seems to me that this particular principle has some work to do in the present case. Importantly, and as the submissions of the Respondent acknowledge, matters going to the Appellant's mental and cognitive state were not known to the decision makers when the penalty was imposed.

41. I have had regard to Ms Bishop's submissions regarding the penalty imposed in *Loader*. It is clear that the decision maker in that case took into account that the

⁴⁷ TB 45.

⁴⁸ See generally *Director of Public Prosecutions (Cth) v De La Rosa* [2010] NSWCCA 194 at [177].

offence was committed by an official, rather than a participant.⁴⁹ There is, arguably, some degree of displacement between those observations, and the penalty which was ultimately imposed. It is also worthy of note that although one false statement which was made by that Appellant was the focus of the charge, the commission of the offence was compounded by other statements she made which, it was found, reflected the fact that she had no insight into her offending conduct.⁵⁰ Further, from the point of view of an assessment of the objective seriousness of the offending, it was noted that the Appellant had made a “*deliberately false statement about a legitimate and serious line of enquiry that was put to her*”.⁵¹ Like the present Appellant, the Appellant in *Loader* had pleaded not guilty and was therefore not entitled to a discount for her plea. However, she was not able to rely on mental health considerations, be it in terms of a generally mitigating factor, or as a factor which moderated the need for general deterrence.

42. It might be said that the penalty imposed in *Loader* is not entirely consistent with penalties imposed by the Tribunal in other cases. However, I am obviously not bound by determinations made at first instance, nor by determinations made in the course of an internal review. I must strive for consistency in the Tribunal’s determinations, recognising that perfect consistency may not always be possible.

43. I am not able to accede to the submission that a fine should be imposed. Whilst I have taken into account that any disqualification may impose a requirement on the Appellant to rehome a number of greyhounds, that does not justify the imposition of some lesser penalty. However, taking all matters into account, particularly the subjective factors I have identified concerning the Appellant’s mental health, a disqualification less than that imposed at first instance is appropriate.

⁴⁹ See the reasons of the Internal Review at [19] – [20].

⁵⁰ Reasons at [24].

⁵¹ Reasons at [24].

ORDERS

44. I make the following orders:

1. The appeal in respect of the finding of guilt is dismissed.
2. The appeal in respect of penalty is upheld.
3. The disqualification of 9 months which was imposed on 4 October 2024 is set aside.
4. In lieu thereof, a disqualification of 5 months is imposed, to date from 4 October 2024.
5. The appeal deposit is to be refunded.

THE HONOURABLE G J BELLEW SC

16 December 2024