

IN THE RACING APPEALS TRIBUNAL

TREVOR RICE
Appellant

v

GREYHOUND WELFARE AND INTEGRITY COMMISSION
Respondent

DETERMINATION

DATE OF HEARING

4 September 2024

Further written submissions 3 December 2024

DATE OF DETERMINATION

28 December 2024

APPEARANCES

The Appellant in person

**Mr D Mahendra instructed by Ms A Summerson
and Dr A Groves, Greyhound Welfare and Integrity
Commission, for the Respondent**

ORDERS

- 1. The appeal is dismissed in its entirety.**
- 2. The appeal deposit is forfeited.**

INTRODUCTION

1. On 7 February 2024, the Chief Commissioner of the Greyhound Welfare and Integrity Commission (the Respondent) issued a determination in respect of a number of charges brought against Trevor Rice (the Appellant) pursuant to the *Greyhound Racing Rules* (the Rules). The Chief Commissioner found the Appellant guilty of:

- (i) 9 offences¹ contrary to r 86(o), and 1 offence contrary to r 106(3)(b) of the Rules (the notification offences);
- (ii) 4 offences² contrary to r 86(x) of the Rules (the false statement offences); and
- (iii) 4 offences³ contrary to r 86(o) of the Rules (the welfare offences).

2. The following penalties were imposed on the Appellant:

- (i) as to each of the notification offences contrary to r 86(o) – a fine of \$250.00;
- (ii) as to the notification offence contrary to r 106(3)(b) – a fine of \$1,000.00;
- (iii) as to each of the false statement offences - a disqualification of 4 months (each of those periods of disqualification now having been served in full by the Appellant); and
- (iv) as to each of the welfare offences – disqualification for life.

3. By a Notice dated 11 February 2024,⁴ the Appellant has sought to appeal against the Chief Commissioner’s determination. An application made by the Appellant for a stay of the determination was refused for reasons published on 4 April 2024.

¹ Charges 1 to 9; charge 18.

² Charges 10 to 13.

³ Charges 14 to 17.

⁴ TB 1.

4. The parties provided me with a Tribunal Book of some 655 pages containing relevant documentary evidence and submissions. Supplementary submissions have also been received from the parties.
5. Before embarking upon a determination of the appeal, there are a number of preliminary matters which must be addressed. They are as follows:
 - (i) the procedural history of the appeal;
 - (ii) the scope of the appeal;
 - (iii) the standard of proof to be applied; and
 - (iv) how I should approach the evidence of Ms Ashley Rice, the Appellant's daughter, in light of the fact that as events transpired, she did not attend the hearing to give evidence.

THE PROCEDURAL HISTORY OF THE APPEAL

6. The Appellant has been self-represented for the duration of the appeal which first came before me for hearing on 4 September 2024. On that occasion, Dr Donlon, an expert Anthropologist, and Mr Townsend, an employee of the Respondent, both gave evidence and were cross-examined by the Appellant. In light of the conclusion I have reached regarding the welfare offences, I do not propose to address Mr Townsend's evidence as it is simply not necessary to do so. I have addressed Dr Donlon's evidence below.
7. On 9 August 2024, prior to the hearing date, I had issued a Notice pursuant to s 16A of the *Racing Appeals Tribunal Act 1983* (NSW) for the attendance of Ms Rice at the hearing. Ms Rice did not appear on that day. I was informed by counsel for the Respondent that she could not be located and thus could not be served with the Notice.⁵ The position was explained to the Appellant,⁶ who indicated that he

⁵ Transcript 2.2 and following.

⁶ Transcript 4.25 and following; Transcript 30.32 and following.

wished to have Ms Rice available for cross-examination.⁷ The hearing was adjourned for that purpose.

8. The matter came before me again at a directions hearing on 25 November 2024. That directions hearing was convened essentially at my request, so that I could ascertain the position with Ms Rice's attendance and determine when the hearing of the appeal could resume. On that occasion, I was informed by counsel that despite the Respondent's best efforts, Ms Rice was still not able to be located.⁸ Counsel indicated that in those circumstances, he sought that the appeal be determined on the basis of the evidence given at the hearing, and the accompanying documentary evidence, including the statement and interviews of Ms Rice.⁹
9. That position was explained to the Appellant.¹⁰ He indicated that he did not intend to file any evidence and that, for the reasons he outlined at the time, he wanted the appeal resolved as soon as possible.¹¹ Orders were then made for the filing of final submissions so that the matter could be determined on the basis outlined by counsel for the Respondent.¹² In making those orders, I indicated to counsel for the Respondent that I would be assisted by submissions as to what weight should be given to Ms Rice's evidence in the circumstances I have outlined. Those submissions were subsequently received and have been addressed below.

THE SCOPE OF THE APPEAL

10. The scope of the appeal is not entirely clear. The Notice of Appeal which has been filed makes reference to all of the offences of which the Appellant was found guilty, but gives no clear indication of whether the appeal is brought in respect of:

⁷ Transcript 30.35.

⁸ Transcript 2.22.

⁹ TB 289 – 383.

¹⁰ Transcript 4.3 and following.

¹¹ Transcript 5.25 – 5.43.

¹² Transcript 6.32 – 6.44.

- (i) all, or only some, of the offences;
- (ii) the findings of guilt *and* the determinations of penalty; or
- (iii) penalty only.

11. Moreover, in circumstances where the Appellant pleaded guilty to some of the offences, he has indicated whether he seeks to depart from those pleas, in circumstances where the appeal before me proceeds as a hearing *de novo*. The one thing that is clear, is that the Appellant's primary focus is upon the welfare offences, of which he was found guilty and disqualified for life.

12. In all of these circumstances, I have proceeded as follows. First, in terms of the notification offences, I have assumed, in the absence of any intention to the contrary, that the Appellant adheres to the pleas of guilty he entered before the Chief Commissioner, and that the only issue is that of penalty. Secondly, as to the false statement offences, there may be an issue surrounding the correctness of the conclusions which were reached at first instance. However, the fact is that the periods of disqualification which were imposed in respect of those offences have been served in full. Accordingly, there is no utility in addressing those offences, particularly in view of the conclusion I have reached in relation to the welfare offences. Thirdly, as to the welfare offences, I have proceeded on the basis that the Appellant maintains the pleas of not guilty he entered before the Chief Commissioner. I have also proceeded on the basis that if I find that all or any of those offences are established, the Appellant seeks that the question of penalty be reconsidered.

THE STANDARD OF PROOF

13. One of the bases of the Appellant's application for a stay of the determination was that the Chief Commissioner had not applied the correct standard of proof. Whether that is or is not the case is not something that I have to determine, given that the present appeal proceeds before me *de novo*. However, it is appropriate that I make clear how I have approached the issue, noting that the welfare offences are the only offences in respect of which I will be required to determine

the issue of guilt, and thus the only offences in respect of which the standard of proof will become relevant.

14. In *Briginshaw v Briginshaw*¹³ Dixon J observed that:

- (i) when the law requires proof of **any** fact, the fact finder must feel an actual persuasion of its occurrence or existence before it can be found;
- (ii) it is sufficient that the affirmative of an allegation is made out to the **reasonable satisfaction** of the fact finder;
- (iii) reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequences of the facts to be proved;
- (iv) the seriousness of the allegation made, the inherent unlikelihood of an occurrence of a given description, and the gravity of the consequences flowing from a particular finding, are all considerations which will affect whether the issue in question has been proved to the reasonable satisfaction of the fact finder¹⁴ (emphasis added in each case).

15. I have applied these principles to my determination of the welfare offences. In doing so, I have been mindful of, and have also applied, the following further principles derived from the decision in *Briginshaw* and other authorities to which I was referred by counsel for the Respondent:

- (i) the decision in *Briginshaw*:
 - (a) does not create a third standard of proof; the standard of proof remains the same, but the degree of satisfaction that is required in determining whether that standard has been discharged may

¹³ (1938) 60 CLR 336; [1938] HCA 34.

¹⁴ At 362.

vary according to the seriousness of the allegations which are made;¹⁵

(b) calls attention to the requirement that a party seeking a finding of serious misconduct produce adequate material to enable a decision maker to reach a level of comfortable satisfaction that the alleged misconduct is established;¹⁶

(ii) where direct proof is not available, it is sufficient if the evidence gives rise to a reasonable and definite inference. There are no hard and fast rules by which serious allegations must be established. The question, ultimately, is whether the allegations have been established on the balance of probabilities.¹⁷

THE EVIDENCE OF ASHLEY RICE

16. I have already outlined the position of Ashley Rice, who is the Appellant's daughter. Ms Rice:

- (i) signed a statement on 2 February 2022;¹⁸
- (ii) participated in an interview on 13 March 2023;¹⁹
- (iii) participated in a further interview on 24 March 2023.²⁰

17. All of this material forms part of the evidence before me. Two issues arise from it.

18. The first, is whether I should consider Ms Rice's evidence at all, given that she was not available. That involves competing considerations. Whilst Ms Rice's evidence

¹⁵ Respondent's submissions at [6] citing *Qantas Airways Limited v Gama* (2008) 167 FCR 537; [2008] FCAFC 69 at [110] per French J (as he then was) and Jacobsen J.

¹⁶ Respondent's submissions at [7] citing *Whitlam v Australian Securities and Investments Commission* [2003] NSWCA 183; (2003) 57 NSWLR 559 at [119] per the Court (Hodgson, Ipp and Tobias JJA).

¹⁷ Respondent's submissions at [8] citing *Palmer v Dolman* [2005] NSWCA 361 per Ipp JA at [35] – [39]; [47].

¹⁸ TB 177 – 180.

¹⁹ TB 289 – 323.

²⁰ TB 414 – 417.

is important to proof of the welfare offences, the Appellant asked that she be present for cross-examination and she has not been made available. The second, assuming the evidence of Ms Rice is taken into account, is what weight should be given to it in light of her absence.

19. Generally speaking, I have accepted the submissions of counsel for the Respondent²¹ in these respects, and have concluded that I should have regard to Ms Rice's evidence, and that I should give it full weight notwithstanding her absence. I have come to that view for the following reasons.

20. First, cl 17 of the *Racing Appeals Tribunal Regulation 2024* (NSW) (as well as cl 16 of its predecessor, the *Racing Appeals Tribunal Regulation 2015* (NSW)), provide that I am not bound by the rules of evidence, and am able to inquire into, or inform myself, on a matter in any way I think fit. A decision to take Ms Rice's evidence into account, even in her absence, is entirely consistent with that provision.

21. Secondly, Ms Rice provided her statement in circumstances where she acknowledged that she would be liable to prosecution if she stated anything she knew to false, or did not believe to be true.

22. Thirdly, that same general "solemnity" (as counsel for the Respondent described it) surrounded Ms Rice's participation in the two interviews. It fortifies my view that Ms Rice was well aware of the fundamental requirement that she tell the truth in the information she provided.

23. Fourthly, and notwithstanding some of the suggestions made by the Appellant, there is no basis upon which to conclude that the evidence of Ms Rice is untruthful. For the reasons I have set out, I reject the proposition which appeared to be advanced by the Appellant that Ms Rice was motivated to tell untruths because her relationship with the Appellant has become strained.

²¹ Submissions at [20].

THE OFFENCES

24. For the purposes of determining the appeal, I will address the offences in the following order:

- (i) the notification offences;
- (ii) the false statement offences; and
- (iii) the welfare offences.

THE NOTIFICATION OFFENCES

Offences 1 to 9 - The relevant rule

25. Each of the notification offences in 1 – 9 alleged a contravention of r 86(o) of the Rules which, at the relevant time, was in the following terms:

A person (including an official) shall be guilty of an offence if the person:-

...

(o) has, in relation to a greyhound or greyhound racing, done a thing, or omitted to do a thing, which in the opinion of the Stewards or the Controlling Body, as the case may be, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct.

26. The Appellant pleaded guilty before the Chief Commissioner to all of the notification offences. As I have noted, the Appellant has not indicated that he wishes to resile from those pleas and I have assumed in the circumstances that he does not.

The terms of the offences

Offence 1

27. Offence 1 was in the following terms:

That Mr Rice, as a registered participant who was suspended on an interim basis between 27 October 2020 and 21 October 2021, did a thing that was improper or constitutes misconduct in that:

(a) Mr Rice was a registered Public Trainer and Breeder;

(b) On 27 October 2020, the Racing Appeals Tribunal dismissed Mr Rice's appeal and Mr Rice's registrations were suspended on an interim basis until 21 October 2021;

(c) On or about 11 May 2021, Mr Rice submitted a Retirement Notification form in relation to the greyhound 'Legend Man' (microchip number 956000004871818) ("**Greyhound**"), of which Mr Rice was the registered owner and trainer;

(d) The Retirement Notification form stated that the Greyhound had been transferred to a third-party non-industry participant on 10 May 2021;

(e) Mr Rice did not seek approval from GWIC to rehome the Greyhound prior to its transfer out of Mr Rice's custody;

(f) In not seeking approval from GWIC prior to transferring the Greyhound out of his custody, Mr Rice was not adhering to the restrictions imposed on a suspended person under Local Rule 99B(3)(a) which, in the opinion of the Controlling Body, is improper and constitutes misconduct.

Offence 2

28. Offence 2 was in the following terms:

That Mr Rice, as a registered participant who was suspended on an interim basis between 27 October 2020 and 21 October 2021, did a thing that was improper or constitutes misconduct in that:

(a) Mr Rice was a registered Public Trainer and Breeder;

(b) On 27 October 2020, the Racing Appeals Tribunal dismissed Mr Rice's appeal and Mr Rice's registrations were suspended on an interim basis until 21 October 2021;

(c) On or about 21 April 2021, Mr Rice submitted a Retirement Notification form in relation to the greyhound 'Penumbra' (microchip number 956000004482408) ("**Greyhound**"), of which Mr Rice was the registered owner;

(d) The Retirement Notification form stated that the Greyhound was retired on 17 February 2021 and was being transferred to a third-party non-industry participant on 4 May 2021;

(e) Mr Rice did not seek approval from GWIC to rehome the Greyhound prior to its transfer out of Mr Rice's custody;

(f) In not seeking approval from GWIC prior to transferring the Greyhound out of his custody, Mr Rice was not adhering to the restrictions imposed on a suspended person under Local Rule 99B(3)(a) which, in the opinion of the Controlling Body, is improper and constitutes misconduct.

Offence 3

29. Offence 3 was in the following terms:

That Mr Rice, as a registered participant who was suspended on an interim basis between 27 October 2020 and 21 October 2021, did a thing that was improper or constitutes misconduct in that:

- (a) Mr Rice was a registered Public Trainer and Breeder;*
- (b) On 27 October 2020, the Racing Appeals Tribunal dismissed Mr Rice's appeal and Mr Rice's registrations were suspended on an interim basis until 21 October 2021;*
- (c) On or about 11 May 2021, Mr Rice submitted a Retirement Notification form in relation to the greyhound 'Avoid Regrets' (microchip number 956000009462164) ("**Greyhound**"), of which Mr Rice was the registered owner and trainer;*
- (d) The Retirement Notification form stated that the Greyhound had been transferred to a third-party non-industry participant on 10 May 2021;*
- (e) Mr Rice did not seek approval from GWIC to rehome the Greyhound prior to its transfer out of Mr Rice's custody;*
- (f) In not seeking approval from GWIC prior to transferring the Greyhound out of his custody, Mr Rice was not adhering to the restrictions imposed on a suspended person under Local Rule 99B(3)(a) which, in the opinion of the Controlling Body, is improper and constitutes misconduct.*

Offence 4

30. Offence 4, to which the Appellant pleaded guilty at first instance, was in the following terms:

That Mr Rice, as a registered participant who was suspended on an interim basis between 27 October 2020 and 21 October 2021, did a thing that was improper or constitutes misconduct in that:

- (a) Mr Rice was a registered Public Trainer and Breeder;*
- (b) On 27 October 2020, the Racing Appeals Tribunal dismissed Mr Rice's appeal and Mr Rice's registrations were suspended on an interim basis until 21 October 2021;*
- (c) On or about 11 May 2021, Mr Rice submitted a Retirement Notification form in relation to the greyhound 'Unnamed: ear brand NHBYN' (microchip number 956000009592460) ("**Greyhound**"), of which Mr Rice was the registered owner;*
- (d) The Retirement Notification form stated that the Greyhound had been transferred to a third-party non-industry participant on 11 May 2021;*
- (e) Mr Rice did not seek approval from GWIC to rehome the Greyhound prior to its transfer out of Mr Rice's custody;*
- (f) In not seeking approval from GWIC prior to transferring the Greyhound out of his custody, Mr Rice was not adhering to the restrictions imposed on a suspended person under Local Rule 99B(3)(a) which, in the opinion of the Controlling Body, is improper and constitutes misconduct.*

Offence 5

31. Offence 5 was in the following terms:

That Mr Rice, as a registered participant who was suspended on an interim basis between 27 October 2020 and 21 October 2021, did a thing that was improper or constitutes misconduct in that:

- (a) Mr Rice was a registered Public Trainer and Breeder;*
- (b) On 27 October 2020, the Racing Appeals Tribunal dismissed Mr Rice's appeal and Mr Rice's registrations were suspended on an interim basis until 21 October 2021;*
- (c) On or about 15 April 2021, Mr Rice submitted a Retirement Notification form in relation to the greyhound 'Simply Chaotic' (microchip number 956000009461375) ("**Greyhound**"), of which Mr Rice was the registered owner and trainer;*
- (d) The Retirement Notification form stated that the Greyhound had been transferred to Homebound Bound Hounds on 10 April 2021;*
- (e) Mr Rice did not seek approval from GWIC to rehome the Greyhound prior to its transfer out of Mr Rice's custody;*
- (f) In not seeking approval from GWIC prior to transferring the Greyhound out of his custody, Mr Rice was not adhering to the restrictions imposed on a suspended person under Local Rule 99B(3)(a) which, in the opinion of the Controlling Body, is improper and constitutes misconduct.*

Offence 6

32. Offence 6 was in the following terms:

That Mr Rice, as a registered participant who was suspended on an interim basis between 27 October 2020 and 21 October 2021, did a thing that was improper or constitutes misconduct in that:

- (a) Mr Rice was a registered Public Trainer and Breeder;*
- (b) On 27 October 2020, the Racing Appeals Tribunal dismissed Mr Rice's appeal and Mr Rice's registrations were suspended on an interim basis until 21 October 2021;*
- (c) On or about 15 April 2021, Mr Rice submitted a Retirement Notification form in relation to the greyhound 'unnamed: ear brand NIESW' (microchip number 956000007853482) ("**Greyhound**"), of which Mr Rice was the registered owner;*
- (d) The Retirement Notification form stated that the Greyhound had been transferred Homebound Bound Hounds on 10 April 2021;*
- (e) Mr Rice did not seek approval from GWIC to rehome the Greyhound prior to its transfer out of Mr Rice's custody;*
- (f) In not seeking approval from GWIC prior to transferring the Greyhound out of his custody, Mr Rice was not adhering to the restrictions imposed on a suspended person under Local Rule 99B(3)(a) which, in the opinion of the Controlling Body, is improper and constitutes misconduct.*

Offence 7

33. Offence 7 was in the following terms:

That Mr Rice, as a registered participant who was suspended on an interim basis between 27 October 2020 and 21 October 2021, did a thing that was improper or constitutes misconduct in that:

- (a) Mr Rice was a registered Public Trainer and Breeder;*

(b) On 27 October 2020, the Racing Appeals Tribunal dismissed Mr Rice's appeal and Mr Rice's registrations were suspended on an interim basis until 21 October 2021;

(c) On or about 14 July 2021, Mr Rice submitted a Retirement Notification form dated 1 November 2020 in relation to the greyhound 'Odi Sannette' (microchip number 956000003653992) ("**Greyhound**"), of which Mr Rice was the registered owner;

(d) The Retirement Notification form stated that the Greyhound had been transferred to Greyhounds as Pets ("**GAP**");

(e) Mr Rice did not seek approval from GWIC to rehome the Greyhound prior to its transfer out of Mr Rice's custody;

(f) In not seeking approval from GWIC prior to transferring the Greyhound out of his custody, Mr Rice was not adhering to the restrictions imposed on a suspended person under Local Rule 99B(3)(a) which, in the opinion of the Controlling Body, is improper and constitutes misconduct.

Offence 8

34. Offence 8 was in the following terms:

That Mr Rice, as a registered participant who was suspended on an interim basis between 27 October 2020 and 21 October 2021, did a thing that was improper or constitutes misconduct in that:

(a) Mr Rice was a registered Public Trainer and Breeder;

(b) On 27 October 2020, the Racing Appeals Tribunal dismissed Mr Rice's appeal and Mr Rice's registrations were suspended on an interim basis until 21 October 2021;

(c) On or about 14 July 2021, Mr Rice submitted a Retirement Notification form dated 1 November 2020 in relation to the greyhound 'Fast Judgement' (microchip number 956000005388762) ("**Greyhound**"), of which Mr Rice was the registered trainer;

(d) The Retirement Notification form stated that the Greyhound had been transferred to Greyhounds as Pets ("**GAP**");

(e) Mr Rice did not seek approval from GWIC to rehome the Greyhound prior to its transfer out of Mr Rice's custody;

(f) In not seeking approval from GWIC prior to transferring the Greyhound out of his custody, Mr Rice was not adhering to the restrictions imposed on a suspended person under Local Rule 99B(3)(a) which, in the opinion of the Controlling Body, is improper and constitutes misconduct.

Offence 9

35. Offence 9 was in the following terms:

That Mr Rice, as a registered participant who was suspended on an interim basis between 27 October 2020 and 21 October 2021, did a thing that was improper or constitutes misconduct in that:

- (a) Mr Rice was a registered Public Trainer and Breeder;
- (b) On 27 October 2020, the Racing Appeals Tribunal dismissed Mr Rice's appeal and Mr Rice's registrations were suspended on an interim basis until 21 October 2021;
- (c) On or about 14 July 2021, Mr Rice submitted a Retirement Notification form dated 1 November 2020 in relation to the greyhound 'Cappuccino' (microchip number 956000005577967) ("**Greyhound**"), of which Mr Rice was the registered owner and trainer;
- (d) The Retirement Notification form stated that the Greyhound had been transferred to a Greyhounds as Pets ("**GAP**");
- (e) Mr Rice did not seek approval from GWIC to rehome the Greyhound prior to its transfer out of Mr Rice's custody;
- (f) In not seeking approval from GWIC prior to transferring the Greyhound out of his custody, Mr Rice was not adhering to the restrictions imposed on a suspended person under Local Rule 99B(3)(a) which, in the opinion of the Controlling Body, is improper and constitutes misconduct.

Offence 18 – The relevant rule

36. The notification offence in 18 was contrary to r 106(3)(b) of the Rules which, at the material time, was in the following terms:

- (3) *At any time after the notification of the result of service pursuant to r 136, the last registered owner of the greyhound at the relevant time shall notify the Controlling Body by lodging the prescribed form:*
- ...
- (b) *within two working days if that greyhound has been humanely euthanised by a veterinary surgeon or is deceased.*
- (5) *An owner or person responsible at the relevant time who fails to comply with any provision of the rule shall be guilty of an offence and liable to a penalty in accordance with rule 95.*

37. Offence 18 was in the following terms:

That Mr Trevor Rice, as a greyhound racing industry participant at all material times has failed to notify the Commission within two working days of the death of greyhounds in his care and control as required by Rule 106(3)(b) in circumstances where:

- (a) *On a date unknown between 1 February 2019 and 26 January 2022, the greyhound 'Big Prince' (microchip number 956000003669915) has died whilst in Mr Rice's care. Mr Rice did not notify the Greyhound Welfare & Integrity Commission ("**GWIC**") within 2 days of the death of 'Big Prince' as required by Rule 106(3)(b);*

(b) On a date unknown 23 September 2019 and 26 January 2022, the greyhound 'Double Take' (microchip number 956000005409246) has died whilst in Mr Rice's care. Mr Rice did not notify GWIC within 2 days of the death of the 'Double Take' as required by Rule 106(3)(b); and

(c) On a date unknown between 1 June 2019 and 26 January 2022, the greyhound 'Diva's Dream' (microchip number 956000004368567) has died whilst in Mr Rice's care. Mr Rice did not notify GWIC within 2 days of the death of 'Diva's Dream' as required by Rule 106(3)(b).

The case against the Appellant in respect of the notification offences

38. I draw the following summary from the reasons of the decision maker at first instance.²²

39. Offences 1 to 9 arose following the Appellant being the subject of an interim suspension for an unrelated matter. During the period of that suspension, the Appellant rehomed a number of greyhounds in his care, without the prior approval of the Respondent. In doing so, the Appellant breached the terms of his interim suspension and engaged in misconduct. Offence 18 related to three greyhounds dying whilst in the Appellant's care. The Appellant failed to notify the Respondent of the deaths of those greyhounds within the two day period stipulated under the Rules at the time.

Determination of penalty in respect of the notification offences

40. On 27 November 2023, the Respondent wrote to the Appellant advising him of the penalties which were proposed, and inviting him to make submissions. Those proposed penalties were:

- (i) a \$250.00 fine in respect of each of offences 1 to 9;
- (ii) a \$1,000.00 fine in respect of offence 18.

41. The Appellant relied upon testimonial evidence²³ which I have taken into account.

I have no information before me about the Appellant's personal circumstances,

²² TB 89 at [3] and following.

²³ Summarised by the decision maker at TB 111 at [132].

particularly his capacity to pay a fine, although I infer that he is not a person of substantial means.

42. In my view, the penalties imposed for the notification offences were appropriate. For reasons which will be obvious, accurate and timely notification of information is essential to the Respondent be able to carry out its functions as an industry regulator. Moreover, the Appellant's conduct amounted to a breach of the conditions of an interim suspension.

43. The appeal in respect of the notification offences should therefore be dismissed.

THE FALSE STATEMENT OFFENCES

44. In each of these offences, the false statement was particularised in terms that the Appellant stated that particular greyhounds "*had been transferred ...*". The Appellant was found guilty on that basis. However, the printed form of the relevant notification recorded the following:

***I intend to retire and transfer the greyhound** to a person or organisation not registered with GWIC.*

45. Obviously, there is a distinction between stating that a thing has been done, and stating an intention to do that thing at some time in the future. Each of the false statement offences alleged the former. It is arguable that what the Appellant actually stated was the latter. However, the penalties imposed for the false statement offences (a 4 month disqualification in each case, to be served concurrently) have been served in full. It follows that there is no utility in considering any appeal in relation to these matters, particularly given the conclusions I have reached in terms of the welfare offences. The appeal in respect of the false statement offences should therefore be dismissed.

THE WELFARE OFFENCES

The relevant rule

58. Each of the welfare offences alleged a contravention of r 86(o) of the Rules, the terms of which I have set out above.

The terms of the offences

Offence 14

59. Offence 14 was as follows:

That Mr Rice, as a greyhound racing industry participant at all material times, has in relation to greyhound racing done a thing which, in the opinion of the Controlling Body, is improper or constitutes misconduct in circumstances where:

- (a) On or about 1 February 2019, Big Prince **(Greyhound)** came into his care and control;*
- (b) On an unknown date between 1 February 2019 and 26 January 2022, Mr Rice has caused the death of the Greyhound by using an object to cause severe damage to the cranium of the Greyhound;*
- (c) On an unknown date between 1 February 2019 and 26 January 2022, Mr Rice has buried the greyhound at 9210 Summerland Way, Leeville NSW 2740.*

Offence 15

60. Offence 15 was as follows:

That Mr Rice, as a greyhound racing industry participant at all material times, has in relation to greyhound racing done a thing which, in the opinion of the Controlling Body, is improper or constitutes misconduct in circumstances where:

- (a) On or about 16 April 2019, Double Take **(Greyhound)** came into his care and control;*
- (b) On 23 September 2019 the Greyhound competed in its last event at the Grafton racetrack.*
- (c) On a date unknown between 23 September 2019 and 26 January 2022, Mr Rice has caused the death of the Greyhound by using an object to cause severe damage to the cranium of the Greyhound;*
- (d) On a date unknown between 23 September 2019 and 26 January 2022, Mr Rice has buried the greyhound at 9210 Summerland Way, Leeville NSW 2740.*

Offence 16

61. Offence 16 was as follows:

That Mr Rice, as a greyhound racing industry participant at all material times, has in relation to greyhound racing done a thing which, in the opinion of the Controlling Body, is improper or constitutes misconduct in circumstances where:

- (a) On or about 28 August 2019, Itchy McCaw (**Greyhound**) came into his care and control;*
- (b) On 21 February 2020 the Greyhound competed in its last event at the Casino racetrack.*
- (c) On a date unknown between 21 February 2020 and 27 April 2020, Mr Rice has caused the death of the Greyhound by using an object to cause severe damage to the cranium of the Greyhound;*
- (d) On an date unknown between 21 February 2020 and 27 April 2020 2019 Mr Rice has buried the greyhound at 9210 Summerland Way, Leeville NSW 2740.*
- (e) On 27 April 2020 Mr Rice informed the Commission that the Greyhound had died from an unknown illness.*

Offence 17

62. Offence 17 was as follows:

That Mr Rice, as a greyhound racing industry participant at all material times, has in relation to greyhound racing done a thing which, in the opinion of the Controlling Body, is improper or constitutes misconduct in circumstances where:

- (a) On or about 1 June 2019, Diva's Dream (**Greyhound**) came into his care and control;*
- (b) On a date unknown between 1 June 2019 and 26 January 2022, Mr Rice has caused the death of the Greyhound by using an object to cause severe damage to the cranium of the Greyhound;*
- (c) On an date unknown between 1 June 2019 and 26 January 2022 Mr Rice has buried the greyhound at 9210 Summerland Way, Leeville NSW 2740.*

63. The terms in which each of the welfare offences has been pleaded are arguably duplicitous. However, even if that is the case, any duplicity is not productive of prejudice or procedural unfairness to the Appellant. It is clear that the determination of the welfare offences has proceeded from the outset on the basis that the gravamen of each offence is that particularised in (c) in each case, namely that the Appellant caused the death of the named greyhound by using an object to cause severe damage to the cranium. Consistent with the manner in which the matter has been conducted up to this point, I have considered and determined the welfare offences on that basis.

A SUMMARY OF THE EVIDENCE IN SUPPORT OF THE WELFARE OFFENCES

64. The principal evidence in support of the welfare offences may be summarised as follows.

The anonymous report received by the Respondent

65. On 1 January 2016, the Respondent received an anonymous report²⁴ which was partly in the following terms:

I believe from words of Trevor Rice, he has disclosed to many dog trainers across multiple dog tracks, there are an estimate of 15 – 20 dogs buried and brutally killed on this property along with 10+ dogs at property located at 9210 Summerland Way Leeville NSW. I have witnessed Trevor bragging about killing “useless dogs” brutally with a hammer.

The statement of Ashley Rice dated 2 February 2022

66. Peter Austin, the Respondent’s Senior Inspector, visited 9210 Summerland Way, Leeville (the property) on 27 January 2022. The Appellant had been a resident of that property for some time. Mr Austin spoke with Ms Rice²⁵ who took him to various locations. On 2 February 2022 Ms Rice signed a statement in which she said (inter alia) that:

- (i) she was worried about the greyhounds that the Appellant had killed and buried on the property;²⁶
- (ii) the Appellant had killed the greyhounds by striking them on the head with a hammer;²⁷
- (iii) the Appellant was in the habit of parking a vehicle (a white van) in a way which would impede the neighbours’ view of the property;²⁸
- (iv) there was an occasion on which she had seen a blood spatter on the side of the van, which the Appellant had told her not to look at;²⁹

²⁴ TB 175 – 176,

²⁵ Statement of Mr Turner at TB 236 – 237 at [5] – [6].

²⁶ TB 179 at [25] – [26].

²⁷ TB 179 at [26].

²⁸ TB 179 at [29].

²⁹ TB 179 at [30].

- (v) the Appellant had told her, more than once, not to dig in the garden beds because there was something in there and that she had concluded that the Appellant had killed a total of five greyhounds on two separate occasions;³⁰
- (vi) she did not look to see if any dogs were buried on the property.³¹

The inspection of the property by Mr Austin

67. Mr Austin returned to the property on 2 February 2022 with two other Inspectors, Joel Santin and Flett Turner. What occurred on that occasion may, to the extent relevant for present purposes, be summarised as follows:

- (i) an area referred to as site 1 was identified;³²
- (ii) a concrete slab at site 1 was smashed and remains were discovered which were identified to be those of *Big Prince* who had been retired to the Appellant as a pet on 1 September 2019;³³
- (iii) a separate area referred to as site 2 was identified, which was a raised garden bed;³⁴
- (iv) remains were discovered buried at site 2 which were identified as those of:³⁵
 - (a) *Itchy McCaw*, who had been recorded as having died from unknown causes on 25 April 2020;
 - (b) *Diva's Dream*, in respect of whom no death notification had been made;
 - (c) *Double Take*, in respect of whom no death notification had been made.³⁶

³⁰ TB 180 at [31] – [33].

³¹ TB 180 at [34].

³² TB 236 at [11].

³³ TB 236 at [11].

³⁴ TB 236 at [13].

³⁵ TB 237 at [16].

³⁶ A further inspection of the site was conducted on 3 February 2022 and additional remains located which are not the subject of a charge.

The interview with the Appellant on 11 February 2022

68. Mr Turner interviewed the Appellant on 11 February 2022.³⁷ In the course of that interview, the Appellant said that he:

- (i) had buried dogs who had died on the property (without being specific as to the particular dogs in question);³⁸
- (ii) could not recall what happened to *Big Prince*;³⁹
- (iii) could not say anything about an apparent injury to the skull of *Big Prince*;⁴⁰
- (iv) “*certainly didn’t kill*” *Big Prince*;⁴¹
- (v) could not recall anything about *Double Take*;⁴²
- (vi) was sure that *Diva’s Dream* had died of snake bite⁴³ but that wasn’t definite;⁴⁴
- (vii) denied killing, and then burying, any greyhound;⁴⁵
- (viii) denied parking his van on the property in an attempt to deliberately impede the view of neighbours.⁴⁶

69. Importantly, the Appellant also said the following in the course of the interview in response to questions put to him:⁴⁷

- Q ... *Double Take* appeared to have the same sort of blunt force trauma to the – to the skull. Do you recall what happened with that dog?
- A **Yeah, that’s a common thing that you’d crack their skulls and stuff so they break down quicker. I was always taught that.**
- Q So, you were taught. What do you mean? Can you explain that to me?
- A **Well they break down quicker if you open their skin up, you break their skulls, you bury them.**

³⁷ Commencing at TB 181.

³⁸ TB 182 – 183 at Q and A [15] – [18].

³⁹ TB 183 at Q and A [21] – [30].

⁴⁰ TB 184 at Q and A [33] – [41];

⁴¹ TB 184 at Q and A [41] – [42].

⁴² TB 188 at Q and A [105] – [106].

⁴³ TB 191 at Q and A [158] – [159].

⁴⁴ TB 191 at Q and A [160] – [161].

⁴⁵ TB 201 at A [329]; TB 202 at A [352]; TB 207 at A [456].

⁴⁶ TB 202 at [352] – [353].

⁴⁷ TB 189 at [117] – [136].

- Q Okay.
A *It might be a fad or whatever, but that's something I was told or grew up with, so.*
- Q Yep, Okay.
A *Some people cover them up with lime or whatever, but ---*
- Q *So yeah. Okay. So, when – when you're burying them, so they break down, you're suggesting that you were told that you – **you break their skulls?***
A **Yes.**
- Q ***How – how do you perform that?***
A ***Usually with a hammer.***
- Q *A hammer. Do you recall doing that with those ones that were in there?*
A *No, I can't remember specific dogs, but ...*
- Q Yep, Okay.
A ***But that wouldn't surprise me that you found a dog in a hole with its skull crashed – crushed.***
- Q Okay.
A *That happened when it was deceased, not when it was alive.*
- Q ***Okay. You're saying that it died and you – you did it afterwards when you put it in there?***
A **Yep** (emphasis added in each case).

70. He was then asked:⁴⁸

- Q *... Diva's Dream, Itchy McCaw and Double Take all had the fractures on the skull.*
A Yep.
- Q *Or, what appeared – what looked like to us anyway.*
A *That's – that's exactly right, **that's what I'd do.***
- Q ***Is that what you're saying that it would have been, because you were told to – that helps break them down?***
A Yes.
- Q Okay.
A *I didn't do it to a live body, **I did it to – as we buried it** (emphasis added in each case).*

⁴⁸ TB 192 at [177] – [184].

71. The admissions made by the Appellant in the bolded passages above regarding his use of a hammer to inflict injury to the skulls of greyhounds were clear and unequivocal. I acknowledge, of course, that he denied *killing* any greyhound in that way, and that he stressed that he carried out the actions he described *after* greyhounds had died. However, his admissions as to his conduct remain significant for the reasons discussed below.

The interview with Ashley Rice on 13 March 2023

72. Ms Rice was interviewed by the Respondent's Integrity Manager, Jamie Palmer, on 13 March 2023. In the course of that interview, Ms Rice said (inter alia) that:

- (i) she had seen blood spatter on the Appellant's van;⁴⁹
- (ii) the Appellant had said to her, in relation to that blood spatter, "*shit, don't look at that*" before attempting to wipe it off the van;⁵⁰
- (iii) the Appellant had said to her that he had "*put the van there so the neighbours wouldn't see*";⁵¹
- (iv) she thought that the blood was on the passenger's side of the van, although she would only be guessing;⁵²
- (v) the Appellant had said to her words to the effect of "*I need to get rid of some of the dogs*";⁵³
- (vi) she had formed a view that the Appellant had struck the deceased greyhounds on the head because he had no access to firearms;⁵⁴
- (vii) the Appellant had said to her (in reference to areas on the property) "*don't dig in there*";⁵⁵
- (viii) she did not see any deceased greyhounds;⁵⁶
- (ix) the Appellant had laid the concrete slab over site 1;⁵⁷

⁴⁹ TB 296 at [88].

⁵⁰ TB 296 at [90]; TB 309 – 310 at [289] – [302].

⁵¹ TB 298 at [120].

⁵² TB 298 at [122].

⁵³ TB 297 at [97] – [99].

⁵⁴ TB 299 – 300 at [139] – [150]; TB 308 at [272].

⁵⁵ TB 302 at [180] – [190].

⁵⁶ TB 302 at [192].

⁵⁷ TB 305 at [236].

- (x) the Appellant had made reference to her to “*hitting them on the head*”;⁵⁸
- (xi) two greyhounds had died from a snake bite, one called *Wendel*, and another whose name she could not remember;⁵⁹
- (xii) the manner in which the Appellant looked after the dogs in his care was, at least in her view, generally below standard.⁶⁰

The interview with the Appellant on 22 March 2023

73. The Appellant was interviewed again on 22 March 2023. A number of the exchanges in the course of that interview are particularly telling in light of the admissions made by the Appellant in his first interview. To begin with, when asked about *Big Prince*, the Appellant said:⁶¹

- Q *How did – how did Big Prince end up under a cement slab that you laid?*
A ***Who said I laid it?***
- Q ***You did.***
A ***Okay. I do not know.***
- Q ***Is it your common practice to bury dogs under cement slabs?***
A ***No.***
- Q *Okay. So this would be an unusual circumstance. Would that be fair to say?*
A Yes.
- Q *And can you – how do you normally bury dogs on your premises?*
A *In the ground.*
- Q *OK. So is there anything that you can recall in your memory why you would have done this differently?*
A *No. So you’re saying I did it?*
- Q *Well, no, sir. You said you did it.*
A ***I said what? I put the dog under the slab? I don’t remember saying --- I don’t recall it being under a slab*** (emphasis added in each case).

⁵⁸ TB 309 at [282].

⁵⁹ TB 312 – 314 at [332] – [374].

⁶⁰ TB 317 – 319 at [417] – [436].

⁶¹ TB 333 – 334 at [180] – [195].

74. Specifically, as to his earlier admission that he was in the habit of deliberately applying blunt force trauma to the skulls of greyhounds in his care, the Appellant said the following:⁶²

Q So in relation to your interview with Mr Austin on the 11th of February, you talked about a process that you hit the dogs in the head with a hammer. Talk to me about that.

A **I've done that before.**

Q Okay. And talk to me about the reasons why you do that.

A This isn't recently. It breaks their body down.

Q It breaks their body down. Can you explain to me that process?

A No. Why? Just – people next door down in Sydney and that, they had cattle and that, and when something died that's what they used to do. Dig a hole with the tractor, put the cattle in, break their skull. If you caught a fox in a trap or something, do the same thing. Break their skull, bury them.

Q Okay. So if you caught a fox in a trap, the fox is alive. So you're saying that ---

A No. It's dead. It's not me doing it. I was a kid back then.

...

Q So you're saying as a kid there were people in Sydney who talked to you about cattle and ---

A I've seen it. Many, many animals with people down there, and that's what they used to do, break their skull.

Q And, how would they do that?

A Depends what sort of animal it is. There's a hammer, sledgehammer, axe.

Q Right. Okay. And so, what's the ---

A If a cattle died, they'd dig a hole, they'd slide the cow in.

75. The Appellant then said the following:⁶³

Q Okay. All right. So you're telling me that your understanding was that by hitting the skull, that that would increase the breakdown?

A These people used to tell me, old people that are dead, yes.

...

⁶² TB 371 – 372 at [935] – [952].

⁶³ TB 374 – 375 at [991] – [1017].

Q ... Just – and, how would you do that? What would you use?
A The times I have done it with a dead animal ---

Q How would you do that?
A **I haven't done it.**

Q Sorry?
A **I haven't done it. You do it with a hammer. Like I said, they do it with a hammer and sledgehammer and axe.**

Q Okay, So, sorry. Now, I'm the one that's confused. So, let's just take a step back. **So, before you said to me that you didn't always do it, but you have done it, then I asked you how you did that, and you said haven't done it.**
A **Well, I have done it before, yes.**

Q Okay.
A On the property down there, many years ago.

Q Okay. So, I'm still a little confused. I'm just going to have to ask some more questions, okay?
A Okay. Yeah. I'll answer it again.

...

Q **Okay. So you're saying to me that the property at Summerland, at Leeville, you've never hit an animal with a hammer in the head?**
A **Not that I recall** (emphasis added in each case).

76. The internal inconsistencies in some of the Appellant's responses, and the objective inconsistencies between some of those responses and other responses he gave when first interviewed, will be obvious without further comment.

77. The interview then turned specifically to the circumstances in which the remains of *Double Take* were found.⁶⁴

Q ... I'll ask you that question again. **In relation to the greyhound Double Take, there is blunt force trauma to the cranium area of that greyhound. What can you tell me about that?**
A **Did not happen. I did not do anything to that greyhound.**

Q **Well, sir, you told Mr Adams that, in fact, you did.**
A **Did I?**

⁶⁴ TB 376 – 377 at [1032] – [1053]; TB 378 at [1069] – [1077].

Q *So, are you now changing that version. Are you saying that you never hit that animal in the head?*

A *The dead animal or the live animal?*

Q ***I'm asking that animal?***

A ***No I did not.***

Q ***Okay. Whether it be dead or alive, did. You ever hit that animal in the head with a hammer?***

A ***No. Me, myself, no.***

Q ***And so, when you say, "Me, myself", what do you mean by that?***

A ***It means I did not do it.***

Q *All right. Well, you were the person in charge of the greyhounds,*

A *Yes.*

Q ***You were the person that buried them in multiple locations on the property?***

A ***Who said I buried them?***

Q ***You did.***

A ***Did I?***

Q *You've said it a number of times in this interview that you buried them in multiple different locations on the site, including in garden beds that you erected for that purpose. So, you've already given that information both in an interview with Mr Austin in February of this year, but also today with me. You've given that information.*

A *Okay.*

Q ***Are you retracting that now?***

A ***I don't recall burying the animals there.***

...

Q ***... .. So now you're saying to me in this interview that in fact you didn't hit any dogs and skull with a hammer at the location at Summerland at Leeville.***

A ***That I recall.***

...

Q ***Can you explain to me why your answer is different today than it was on the 11th of February 2020 with Peter Austin?***

A ***Because I was intoxicated and I was very confused.***

Q *All right. So confused, sir, that you told an inspector that you hit dogs in the head with a hammer, but now you're saying that you never – you've done that in the past at a different property.*

A ***I've done that in the past, yes***

- Q ***But not this property?***
A ***Not that I recall at this property. Like I say, if I did hit one on the head, I don't recall that*** (emphasis added in each case).

78. Again, the inconsistencies in some of these answers will be obvious.

79. Finally, the Appellant denied the presence of blood spatter on his van, and also denied that he had said to Ms Rice words to the effect “*Shit, don't look at that*”.⁶⁵

The interview with Ashley Rice on 24 March 2023

80. Ms Rice was interviewed again on 24 March 2023, in the course of which she said (inter alia) that she:

- (i) did not assist the Appellant to bury or euthanise any animals on the property;⁶⁶
- (ii) was not aware of anyone else who had access to the property;⁶⁷
- (iii) believed that the Appellant had struck greyhounds with a hammer as a consequence of comments he made to the effect of “knocking them on the head”;⁶⁸
- (iv) had been motivated to come forward and disclose these matters because:
 - (a) she was a registered participant in the greyhound racing industry at the time;
 - (b) she had asked the Appellant to leave the property;
 - (c) she was considering renting or selling the property;
 - (d) she was not prepared to dig up the remains, and did not consider it appropriate to ask a new owner, or a tenant, to do so.⁶⁹

⁶⁵ TB 404 at [1456] – [1461].

⁶⁶ TB 415 – 416 at [17] – [22].

⁶⁷ TB 416 at [25] – [26].

⁶⁸ TB 416 at [27] – [34].

⁶⁹ TB 416 – 417 at [36] – [37].

The expert evidence of Dr Donlon

81. Dr Denise Donlon, a consultant Anthropologist, examined the remains of the four greyhounds in question and provided a report.⁷⁰ Her opinions and findings may be summarised as follows:

- (i) the remains of *Big Prince* exhibited:
 - (a) severe damage to the frontal and parietal bones of the cranium, with a circular defect on the posterior of the right side with redating fractures;
 - (b) a circular defect on the left parietal bone with a radiating fracture and external bevelling;
 - (c) a broken and missing left zygomatic arch;⁷¹

- (ii) the remains of *Double Take* exhibited:
 - (a) a large defect on the top of the cranium, with hinging, deformation and curved fractures;
 - (b) a broken and deformed right Zygomatic arch;
 - (c) an absence of any sign of healing;
 - (d) an absence of any exit wound;⁷²

- (iii) the remains of *Itchy McCaw* exhibited:
 - (a) a cranium broken into two pieces;
 - (b) the presence of circular holes on both sides of the posterior parietal bones, with hinging, deformation and curved fractures;
 - (c) fractured Zygomatic arches (both);
 - (d) broken coronoid processes of the right side of the mandible;⁷³

- (iv) the remains of *Diva's Dream*⁷⁴ exhibited:

⁷⁰ Commencing at AB 210.

⁷¹ TB 217; 228.

⁷² TB 218; 229.

⁷³ TB 219; 230.

⁷⁴ Referred to in Dr Donlon's report as *Divers Dream*.

- (a) three holes in the top of the cranium, one of which was circular in shape;
- (b) hinged fractures;
- (c) an absence of any sign of healing.⁷⁵

82. Significantly, Dr Donlon concluded that:

- (i) the skulls of each of these four greyhounds exhibited perimortem damage to the skull (i.e., damage occasioned at or near the time of death), as opposed to postmortem damage (i.e. damage occasioned after death);⁷⁶
- (ii) the presence of perimortem damage, and the absence of other damage, suggested that each greyhound suffered from severe blunt trauma to the head at or about the time of death⁷⁷ i.e., not after the time of death.

83. At the request of the Appellant, Dr Donlon was made available for cross-examination at the hearing on 4 September 2024.⁷⁸ I do not propose to set out that cross-examination. There was some attempt on the part of the Appellant to suggest, in questions put to Dr Donlon, that she did not have the relevant qualifications, experience and expertise to enable her to express the opinions set out in her report. I unequivocally reject that proposition. That it has no basis is evident from Dr Conlon's Curriculum Vitae contained within her report. I have no reservations whatsoever about the veracity or reliability of any of the opinions expressed by Dr Donlon.

⁷⁵ TB 220; 231.

⁷⁶ TB 226.

⁷⁷ TB 233.

⁷⁸ Commencing at Transcript 7.31.

The hearing before Chief Commissioner

84. I have been provided with a transcript of the hearing before the Chief Commissioner held on 11 September 2023⁷⁹ which I have read in its entirety. Whilst I do not consider that I need to refer to it in any detail, I do note that Mr Austin gave evidence to the Chief Commissioner in response to the Appellant's assertion that he (i.e. the Appellant) was under the influence of alcohol when he was first interviewed, and that he was confused when answering the questions put to him. This appeared to constitute an attempt on the part of the Appellant to dilute the effect of, and distance himself from, what are, in my view, unequivocal admissions made by him in the course of that interview. In this regard, Mr Austin stated that the Appellant "*had a lot of clarity in his answers*" and that he had "*no concerns*" about his capacity to answer the questions which were put to him.⁸⁰ Whilst I do not have the recordings of the first interview, the transcript supports Mr Austin's evidence, which I accept.

CONSIDERATION AND ANALYSIS OF THE EVIDENCE

Preliminary observations

85. In considering and analysing the evidence I should note three particular matters at the outset. The first, is that in light of the seriousness of the allegations underpinning the welfare offences, I am mindful of, and have applied, the principles in *Briginshaw* and the other authorities to which I referred at length above. The second, is that there is no *direct* evidence that the Appellant caused the death of any of the greyhounds in question. In those circumstances, it is necessary, in order to find the offences proved, that the evidence gives rise to a reasonable and definite inference, bearing in mind that the ultimate question is whether the allegations have been established on the balance of probabilities. The third, is that the case against the Appellant is, in one sense, based upon circumstantial evidence. That, in my view, requires that the evidence be assessed as a whole, and not in a piecemeal fashion.

⁷⁹ Commencing at TB 511.

⁸⁰ TB 530.6 – 530.26.

The objective facts established by the evidence

86. The evidence establishes the following objective, and in my view uncontested, facts:

- (i) the Appellant was, for a period of time, a resident at the property;
- (ii) remains of the four greyhounds were exhumed by Mr Austin from the locations described as Sites 1 and 2;
- (iii) the Appellant, on his own admission, was responsible for positioning the concrete slab over Site 1;
- (iv) the remains were examined by Dr Donlon who found evidence of significant blunt force trauma which was perimortem in nature;
- (v) the Appellant, on his own admission, was in the habit of applying blunt force trauma to the crania of greyhounds.

The expert evidence of Dr Donlon

87. There is no cogent reason why I should not accept the entirety of the expert opinions of Dr Donlon. Her findings are entirely *inconsistent* with the Appellant's assertion that he was in the habit of applying blunt force trauma to greyhounds *after* they had died, but entirely *consistent* with a conclusion that the four greyhounds named in the welfare offences died as the consequence of such trauma being applied to them. Given that, the Appellant's admission that he inflicted such trauma is obviously significant and, in my view, supports an inference that the Plaintiff was responsible for the death of the greyhounds.

The evidence of Ashley Rice

88. In fairness to the Appellant, it is important not to overstate Ms Rice's evidence. For example, although Ms Rice expressed concern about (as she put it) the greyhounds "[the Respondent] had killed", that statement cannot, having regard to the entirety of Ms Rice's evidence, be treated as evidence of the fact that the Respondent killed the greyhounds. Ms Rice specifically stated that she did not see any greyhound killed. Similarly, and principally for the same reason, Ms Rice's

assertion that the Respondent killed the greyhounds by striking them on the head with a hammer cannot be treated as evidence of that fact.

89. However, Ms Rice's evidence, which I accept, was that at one point the Appellant had made reference to "*knocking them on the head*", and spoke to her of the "*need to get rid of them*". Those statements are clearly relevant to, and provide further support for, a conclusion that the Appellant committed the welfare offences by killing the four greyhounds in the manner which is alleged.

90. Ms Rice's evidence has some other important, and in my view truthful, aspects. Although it is evident that she is estranged from the Appellant, she gave an explanation of why she had gone to the authorities in the first instance. That explanation was entirely cogent. I am satisfied her actions in disclosing matters to the Respondent were not, as the Appellant would have it, motivated by ill-feeling towards him. Moreover she was, as counsel for the Respondent pointed out, acutely aware of the ramifications which would ensue in the event that anything she said was found to be untrue to her knowledge. That is an objective circumstance which fortifies my view that, to the extent that she gives evidence of observations of, and conversations with, the Appellant, such evidence should be accepted.

91. It is also apparent that Ms Rice identified, to the Respondent's officers, those areas which were excavated and found to contain the remains. The importance of that evidence will be obvious. Accepting, as I do, that Ms Rice was not involved in any way in the commission of any offence, the knowledge that she had about the areas identified as Site 1 and Site 2 can only have come from the statements and conduct of the Appellant. There is no other identified source. In particular in this regard, I accept Ms Rice's evidence that in circumstances where there is evidence that the Appellant was responsible for laying the cement slab over Site 1, he cautioned Ms Rice not to dig in the areas of the property where the remains of the greyhounds were located. That statement on the part of the Appellant demonstrates firstly, knowledge of the location at which the greyhounds were

buried, and secondly, a clear and unequivocal consciousness of guilt. Further, and despite the Appellant's denials, I also accept the evidence of Ms Rice concerning the blood spatter on the Appellant's vehicle, and the reasons he gave Ms Rice for parking it where he did. Those matters establish further facts which are consistent with the Appellant being responsible for the killing of the greyhounds.

92. Overall, and subject to the limitations I have identified, I accept Ms Rice's evidence as truthful.

The evidence of the Appellant

93. The Appellant chose, as is his right, not to give (or adduce) evidence at the hearing of the appeal. However, as I have outlined, he was interviewed on two occasions and the statements he made in those interviews form part of the evidence before me. In assessing that evidence, I bear firmly in mind that the Appellant does not carry an onus to disprove the commission of the welfare offences. Indeed, the Appellant carries no onus at all. That said, it is open to me to take his various statements into account in determining whether the case against him has been established.

94. In his first interview on 11 February 2022, the Appellant unequivocally stated that he had applied blunt force trauma to greyhounds, and that he had buried dead greyhounds on the property. Although he stated that he did not do this when any greyhound was alive, that assertion is, for the reasons I have pointed out, fundamentally at odds with the opinions of Dr Donlon.

95. When interviewed 13 months later, the Appellant's evidence in these respects shifted to a material degree. Such an important, and fundamental, inconsistency, necessarily leaves me with considerable disquiet as to whether his denials of wrongdoing should be accepted. For the reasons I have already outlined, I reject the assertion that the Appellant was affected by alcohol when he made any of the admissions that he made. Those admissions are important, for the simple reason

that they go directly to the conduct which has been identified as the cause of the death of the greyhounds.

96. For all of these reasons, and in light of the entirety of the evidence to which I have referred, the inference that the Appellant killed the four greyhounds in question by applying blunt force trauma to the cranium of each of them is frankly overwhelming. I am more than comfortably satisfied that each of the welfare offences is made out.

THE ISSUE OF PENALTY

97. To the extent that the Appellant sought to pursue an appeal against the severity of the penalty imposed, that issue can be disposed of briefly. For reasons which require no elucidation, there must be a clear message sent to all industry participants that proof of any form of animal cruelty will be met with zero tolerance. In the present case, the cruelty involved the infliction of repeated instances of blunt force trauma which caused the death of not just one, but four, greyhounds. For all of these reasons general deterrence is a paramount consideration in assessment of penalty.

98. The Appellant is not assisted by the fact that he has shown no remorse for his conduct. He is also not assisted by the fact that having made a series of what could only be described as unequivocal admissions, he sought to resile from them by telling what were, in my view, a series of untruths in a subsequent interview. Evidence going to the Appellant's subjective case is essentially limited to that which I previously referred. Whilst I have taken that evidence into account, it is of limited weight in light of the seriousness of the offending.

ORDERS

99. When determining questions of penalty, each case must depend on its own facts. In the circumstances of the present case, nothing less than a lifetime disqualification from the greyhound racing industry is appropriate. Conduct of the kind in which I have found the Appellant engaged is entirely antithetical to

maintaining the integrity of the industry, to the point where the imposition of anything less than a lifetime disqualification would hold the industry up to ridicule in the mind of any right-thinking member of the public. Any lesser penalty would also fly in the face of s 3A(f) of the *Greyhound Racing Act 2017* (NSW) which provides that one of the objects of that Act is to provide for the protection and promotion of the welfare of greyhounds. I therefore make the following orders:

1. The appeal is dismissed in its entirety.
2. The appeal deposit is forfeited.

THE HONOURABLE G J BELLEW SC

28 December 2024