IN THE RACING APPEALS TRIBUNAL

MATTHEW KWONG
Appellant

v

GREYHOUND WELFARE AND INTEGRITY COMMISSION
Respondent

REASONS FOR DETERMINATION

Date of hearing	**28 February 2025**
Date of determination	**17 March 2025**
Appearances:	**Mr C Parkin instructed by Murphys Lawyers for the Appellant**
	Mr M Watts instructed by Mr B Gillies, Greyhound Welfare and Integrity Commission, for the Respondent

ORDERS

1. **The order of the Tribunal of 13 November 2024 pursuant to cl 20(1) of the *Racing Appeals Tribunal Regulation 2024* (NSW) is vacated.**
2. **The appeal is upheld.**
3. **The periods of disqualification imposed by the Respondent on 5 November 2024 are quashed.**
4. **In lieu thereof, a fine of $1,500.00 is imposed in respect of each of the three charges brought against the Appellant.**
5. **The total fine will be $4,500.00.**
6. **The appeal deposit is to be refunded.**

INTRODUCTION

1. By a Notice of Appeal filed on 12 November 2024, Matthew Kwong (the Appellant) has appealed against a determination of the Greyhound Welfare and Integrity Commission (the Respondent) made on 5 November 2024 imposing a disqualification of 12 months for each of three offences contrary to r 156(o) of the *Greyhound Racing Rules* (the Rules), and ordering that such disqualifications be served concurrently. The Appellant pleaded guilty to those offences at first instance, and adhered to those pleas before me.

2. On 13 December 2024, with the consent of the Respondent, I made an order pursuant to cl 20 of the *Racing Appeals Tribunal Regulation 2024* (NSW) that the operation of the Respondent's determination be suspended pending the determination of the appeal which was heard before me on 28 February 2025.

3. For the purposes of the appeal, the parties prepared a Tribunal Book (TB) containing the entirety of the evidence.

THE RELEVANT PROVISION OF THE RULES

4. Rule 156(o) of the Rules is in the following terms:

> *156 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 or controlling body.*

THE CHARGES

5. The charges against the Appellant were in the following terms:[1]

[1] TB 24 – 25.

Charge One

That [the Appellant], as a registered Owner at all material times, made a false statement to an officer of the Controlling Body, in circumstances where:

1. *During an interview on 4 October 2022 with Commission staff, [the Appellant] stated:*

   (a) that he had disposed of two animals in the bin at the Richmond Racetrack on Friday 30 September 2022;

   (b) that the two animals were:
   (i) a Labrador; and
   (ii) a Bull-Arab cross breed; and

   (c) that the Bull-Arab cross breed was brought to [his] clinic by a 40 year-old Australian man on or around that day; and

2. *[he] knew at the time of making these statements that they were false.*

Charge Two

That [the Appellant], as a registered Owner at all material times, made a false statement to an officer of the Controlling Body, in circumstances where:

1. *During an interview on 4 October 2022 with Commission staff, [he] stated that the waste that [he] disposed of in the Richmond Bin on 30 September 2022 did not contain any deceased greyhounds; and*

2. *[He] knew at the time of making these statements that they were false and that the bags did in fact contain deceased greyhounds.*

Charge Three

That [the Appellant], as a registered Owner at all material times, made a false statement to the Controlling Body, in circumstances where:

1. *On 4 October 2022 [he] stated that [he was] involved in taking two bags containing two dead dogs to the Hawkesbury tip on 2 October 2022;*

2. *On 5 October 2022 [he] stated that [his] brother had taken two bags containing two dead dogs to the Hawkesbury tip on 2 October 2022; and*

3. *[He] knew at the time of making these statements that they were false.*

6. Although nothing turns on it, I should say that in my view, charges [1] and [3] are plainly duplicitous, for the simple reason that they allege more than one false statement in the one charge. Charge [2], as drafted, alleges only one false statement yet makes reference to "*these statements*" in the particulars.

THE FACTS OF THE OFFENDING

7. The facts of the offending are not in dispute. I draw the following summary (in part) from the submissions of the Respondent.[2]

The Appellant's registration as an industry participant

8. The Appellant was, at the material time, registered with the Respondent as a greyhound owner[3] (although his registration expired in November 2022 and has not been renewed). He is also a registered Veterinarian.

The discovery of deceased greyhounds at Richmond Race Club

9. On 2 October 2022, a member of the public discovered deceased greyhounds in a rubbish bin at the Richmond Race Club. This discovery was reported to the Track Manager, Ms Barnes, and to the Respondent. Ms Barnes contacted the Appellant, who subsequently returned to Richmond Race Club and removed the greyhounds from the bin.

The interviews of Ms Barnes and Mr Kelly on 2 October 2022

10. Mr Kelly, the curator of the Richmond Club, said that he had seen a male person near the bins who had reported finding a dog.[4] He advised Ms Barnes, and said that the person he had seen was someone who "*goes around and goes through the bins and gets all the cans and bottles for recycling*".[5]

11. Mr Kelly said that the Appellant later arrived[6], at which time he (Mr Kelly) unlocked the bin and the Appellant removed carcasses of deceased dogs in two bags.[7]

12. Ms Barnes was interviewed on 2 October 2022.[8] She said, in general terms, that her attention had been drawn to the presence of a person on the Richmond Club

[2] Commencing at TB 14.
[3] TB 233.
[4] TB 71.
[5] TB 72.
[6] TB 75.
[7] TB 75 – 77.
[8] Commencing at TB 62.

property that day who had reported "*seeing a dog in the bin*".[9] Shen then had various conversations with other representatives of the Respondent about the discovery.

The interview of the Appellant on 4 October 2022

13. On 4 October 2022 the Appellant was interviewed by officers of the Respondent.[10] On that occasion, he stated that:

    (i) there were no "*remains of greyhounds*", but rather two domestic animals in the bin, one of which he assumed had been hit by a car, and another that had undergone a post-mortem examination and been defrosted;[11]

    (ii) the first dog had been presented to his clinic (deceased) some days prior by a male person around 50 years of age;[12]

    (iii) the first dog looked like a Bull-Arab cross[13] which appeared to have suffered a broken leg and died and bled;[14]

    (iv) he bagged the dog and put it in the bin;[15]

    (v) the second dog had been brought into his premises by a breeder for the purposes of an autopsy, having died during surgery at a veterinary hospital;[16]

    (vi) the second dog was a domestic Labrador,[17] had been brought in by a person named Matthew Pace,[18] and had been disposed of in the same way;[19]

[9] TB 63.
[10] Commencing at TB 86.
[11] Q and A 9 – 18.
[12] Q and A 19 – 31.
[13] Q and A 35.
[14] Q and A 39.
[15] Q and A 47; 62.
[16] Q and A 69; 71.
[17] Q and A 97.
[18] Q and A 108 – 111.
[19] Q and A 130.

(vii) he returned to the Richmond Track having been called by Ms Masters, to whom he admitted throwing "rubbish" into the bin;[20]

(viii) he removed the dogs from the bin;[21]

(ix) his actions in putting the dogs in the bin "*wasn't the ideal situation"* but he did not want the dogs to decompose at his premises[22] and knew that the bins would be emptied;[23]

(x) this was the first occasion on which he had acted in this way.[24]

(xi) when he collected the dogs, he *"took them to the dump"*[25] (later identified as the Hawkesbury Tip).[26]

The interview of the Appellant on 5 October 2022

14. The Appellant was interviewed again on 5 October 2022.[27] On that occasion, inspectors from the Respondent attended his premises for the purposes of scanning animals held in the freezer.[28] In the course of being questioned, the Appellant said that:

(i) he also put *"a couple of bags of rubbish"* in the bin, along with the two dogs;[29]

(ii) he had previously said that the dogs had in fact been taken to the Hawkesbury Tip by his brother;[30]

(iii) he was unable to comment on the fact that his car had never been identified as attending the Hawkesbury Tip;[31]

[20] Q and A 148 – 154.
[21] Q and A 155.
[22] Q and A 169.
[23] Q and A 171.
[24] Q and A 203.
[25] Q and A 213.
[26] Q and A 268.
[27] Commencing at TB 110.
[28] TB 111.
[29] TB 119.
[30] TB 120.
[31] TB 120.

(iv) the dogs had not been taken to the Hawkesbury Tip at all, but were in his freezer;[32]

(v) the dogs were not in his freezer, but were at his premises at Berkshire Park;[33]

(vi) there were, in fact, two to four greyhounds in bags at his premises[34] in addition to the two dogs previously identified;[35]

(vii) the first dog (i.e. the Bull-Arab cross) had been disposed of, and although he was not sure where, he thought it may still be at his premises.[36]

15. When the inspectors suspended the interview and attended the Appellant's premises, the bags removed from the bin at the track were identified.[37]

The interview of the Appellant on 13 October 2022

16. The Appellant was interviewed again on 13 October 2022 and said:

(i) he had disposed of "*excess bodies"* in the bin at the racetrack which was an *"inappropriate option"*;[38]

(ii) having spoken to Ms Barnes, he retrieved them[39] before driving home and unloading them into his shed;[40]

(iii) when he had previously asserted that there were no remains of greyhounds disposed of, he had been in a state of panic;[41]

(iv) he had lied to investigators;[42]

[32] TB 121.
[33] TB 121,
[34] TB 122.
[35] TB 124.
[36] TB 122 – 123.
[37] TB 125 127.
[38] TB 145.
[39] TB 148.
[40] TB 149.
[41] TB 151.
[42] TB 152; 154; 161.

(v) his conduct had brought the industry into disrepute, which he regretted;[43]

(vi) in a state of panic, he had told his brother what to say if approached by anyone on behalf of the Respondent;[44]

(vii) he had fabricated a story which he thought would protect the industry;[45]

(viii) he was sorry for telling untruths and wasting the Respondent's time.[46]

Events following the Appellant's interview on 13 October 2022

17. Notwithstanding the fact that the Appellant made full admissions in his interview of 13 October 2022, it was not until 6 September 2024, almost two years later, that a Notice of Charge was issued alleging the three breaches of r 156(o) set out above.[47] A disciplinary hearing was conducted some 6 weeks later, on 25 October 2024, at which the Appellant pleaded guilty to those breaches.[48] On 5 November 2024, a penalty of 12 months disqualification was imposed in respect of each charge.[49] It was ordered that such periods of disqualification to be served concurrently.

18. For the reasons discussed more fully below, the period of delay between October 2022 and November 2024 has emerged as an important factor in the determination of this appeal.

[43] TB153.
[44] TB 154.
[45] TB 167.
[46] TB 167.
[47] TB 24 – 28.
[48] TB 238 – 239.
[49] TB 30 – 32.

THE APPELLANT'S CASE ON APPEAL

The Appellant's Affidavit

19. The Appellant relied on an Affidavit of 27 November 2024[50] on which he was not cross-examined. Its contents are thus unchallenged and may be summarised as follows:

    (i) the Appellant completed his studies in Veterinary Science in 1997;[51]

    (ii) he has generally worked in practices where a significant proportion of his work involved treating racing greyhounds;[52]

    (iii) following an approach by the Executive of Richmond Race Club, he opened a clinic in 2016 where 95% of the work involved treating racing greyhounds;[53]

    (iv) he became registered with the Respondent as an owner in November 2020, but has no intention of renewing that registration;[54]

    (v) he has never previously been the subject of disciplinary action of any kind, and has no criminal history;[55]

    (vi) he was burdened with significant personal and professional issues at the time of the offending and was not thinking clearly,[56] to the point where his actions were the result of a *"complete brain explosion"* ;[57]

    (vii) he unreservedly accepts that his actions were wrong;[58]

    (viii) he embarrassed about how he had acted,[59] such embarrassment having become worse since the matter was made public;[60]

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[50] Commencing at TB 49.
[51] At [6].
[52] At [9].
[53] At [9].
[54] At [10] – [11].
[55] At [12] – [13]; [15].
[56] At [16] – [24]; [27].
[57] At [30].
[58] At [31].
[59] At [33] – [36].
[60] At [40].

(ix) having closed down his clinic initially, he opened a new clinic in March 2023 at Londonderry and was inundated with work involving the treatment of racing greyhounds, making it difficult for him to establish a domestic clientele, to the point where greyhound work now accounts for approximately 90% of his practice;[61]

(x) given the matters in (ix), the present disqualification would impact him to the point where he would lose a substantial portion of his income, and would be forced to close the clinic[62] which would, in turn, have an obviously adverse impact on his family.[63]

The testimonial evidence

20. The Appellant also relies on a strong body of testimonial evidence which is similarly unchallenged. He is variously described by those who have provided those testimonials as:

(i) well respected, empathetic and deeply remorseful;[64]

(ii) a person of good character;[65]

(iii) an exceptional Veterinarian whose compassion, professionalism and expertise has made a significant impact on the animals he has treated, for whom he demonstrates a deep and genuine case;[66]

(iv) a person dedicated to educating the wider greyhound community, both in terms of Veterinary Medicine and the policies and procedures of the Respondent, and an invaluable resource to the greyhound community;[67]

(v) an honest, trustworthy, honourable and responsible individual;[68] and

[61] At [41] – [48].
[62] At [50] – [56].
[63] At [57] – [66].
[64] Testimonials of Dr Patrick Choi at TB 42 – 43; Paul Boyd at TB 44; Adam Crouch at TB 45; James Yip at 47; Megan Yeo at TB 48.
[65] Testimonial of Paul Boyd at TB 44.
[66] Testimonial of Adam Crouch at TB 45.
[67] Testimonial of Adam Crouch at TB 45.
[68] Testimonial of James Yip at TB 47.

(vi) a person who has consistently demonstrated a remarkable commitment to the health and well-being of racing animals, as well as pets, and for whom the present offending is out of character.[69]

SUBMISSIONS OF THE PARTIES

21. The written submissions of Counsel for the Appellant advanced the following propositions:[70]

(i) the offending was unsophisticated;
(ii) the false statements did not go to anything which amounted to a contravention of the Rules, given that the Rules dos not prescribe the manner of disposal of greyhounds;
(iii) the Appellant made full admissions within 8 days of the offences being committed;
(iv) the Appellant's moral culpability was low, given the personal and professional issues which were impacting upon him at the time.

22. More broadly, counsel's written submissions relied upon:[71]

(i) the Appellant's pleas of guilty;
(ii) his prior good character;
(iii) his demonstrated remorse and contrition;
(iv) what was said to be the limited significance of specific deterrence (which was accompanied by a concession that general deterrence was relevant); and
(v) the significant financial consequences which would result if the disqualification imposed at first instance remained in place.

[69] Testimonial of Megan Yeo at TB 48.
[70] At [9].
[71] At [10]- [17]; [20].

23. Counsel also pointed out that the unexplained delay of 2 years, and the consequences that such delay caused for the Appellant, were matters that should operate to reduce the penalty. It was submitted, in particular, that during the same period in which the Respondent had done nothing in terms of bringing proceedings, the Appellant had expended a significant amount of money in opening a new clinic which would be wasted if he was disqualified for any appreciable period of time.[72]

24. Counsel expanded upon all of these matters in oral submissions at the hearing. He accepted that, as a general proposition, there was an expectation that all industry participants would act honestly[73] although he submitted that the degree of any breach of trust was to be assessed according to the category of registration.[74] Counsel accepted that the present penalty did not prevent the Appellant from conducting practice as a Veterinarian. However, he emphasised that in light of the fact that 90% of his work involved treating racing greyhounds, and he could not, if disqualified, have any association with the industry, the financial effect of any disqualification would remain substantial.[75]

25. Counsel's ultimate submission, at least at that point, was that any period of disqualification should be suspended in whole, or shortened substantially.[76] He pointed out, with some force, that during the entirety of the 2 year period in which the Respondent had done nothing to prosecute the matter, the Appellant had conducted a professional practice without incident. It was submitted that in circumstances where the primary purpose of any penalty was protective rather than punitive, any substantial disqualification would not, in the circumstances of this case, serve its intended purpose.[77]

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[72] At [18] – [19].
[73] Transcript 4.26.
[74] Transcript 4.33.
[75] Transcript 5.40.
[76] Transcript 7.1 – 7.4.
[77] Transcript 8.13 – 8.41.

Submissions of the Respondent

26. The written submissions filed on behalf of the Respondent prior to the hearing (of which counsel who appeared for the Respondent was not the author) advanced the following propositions:

    (i) the objective seriousness of the offending was significant, the operation of the industry being necessarily dependent upon the honesty and integrity of its individual participants;[78]

    (ii) the Appellant had lied in a blatant attempt to obfuscate what had in fact occurred;[79]

    (iii) the presence of deceased dogs in a bin at a racetrack was, of itself, a bad reflection on the greyhound racing industry;[80]

    (iv) the Appellant's offending was not isolated, in the sense that he had told a series of lies[81] as a consequence of which the Respondent wasted significant time and resources investigating what had occurred;[82]

    (v) the Appellant's admissions that he had lied were not properly regarded as spontaneous, given that they were made *after* the Respondent had conducted extensive investigations in the course of which the Appellant's lies had been uncovered;[83]

    (vi) because the offending was always likely to result in a period of disqualification, any delay was of little or no consequence;[84]

    (vii) delay, of itself, did not mean that the penalty should be reduced;[85]

    (viii) both general and specific deterrence were relevant considerations on penalty;[86]

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[78] At [23].
[79] At [26].
[80] At [27].
[81] At [29].
[82] At [31].
[83] At [32].
[84] At [38].
[85] At [42].
[86] At [51] – [52].

(ix) taking all factors into account, the penalty imposed remained appropriate.[87]

27. In oral submissions, counsel for the Respondent emphasised the need for integrity at all levels of the greyhound racing industry.[88] He also pointed out that in circumstances where the Respondent was under an obligation to investigate matters of this nature, a significant amount of time and resources had been wasted, and that this was part of the prism through which the offending was to be viewed, and its objective seriousness assessed.[89]

28. Counsel submitted that the Appellant's assertion that the offending was attributable to what he had described as a "*brain explosion"* should be viewed with considerable caution. Whilst Counsel did not submit that the offending was in any way premeditated, he submitted that the chronology of events was at odds with a conclusion that the offending was as the Appellant had described it. Counsel submitted, in particular, that this was not a case where the offending had been immediately rectified once it was committed.[90] Counsel described the case as one in which the Appellant had only decided to come forward with the truth when he came to realise that there was no other alternative.[91] In these circumstances, whilst it was conceded that there was evidence of remorse and contrition, it was submitted that neither was spontaneous.[92]

29. With commendable candour, counsel for the Respondent accepted that the issue of delay was relevant on penalty. In circumstances where no evidence was filed by the Respondent, counsel was not in a position offer any real explanation for the delay, other than to observe that the Respondent was required to prioritise cases, and that this particular matter had "*slipped down the priority list*".[93] Counsel also

[87] At [58].
[88] Transcript 13.40 – 13.44.
[89] Transcript 14.39 – 15.24.
[90] Transcript 15.22 – 17.8.
[91] Transcript 17.10 – 17.14.
[92] Transcript 19.40.
[93] Transcript 17.39 – 18.41.

accepted that during the period of the delay, the Appellant had demonstrated considerable rehabilitation.[94]

30. Counsel submitted that in terms of the utility of any sanction, general deterrence was *"the critical component"* of the present case.[95] That said, in advancing that position counsel accepted that general deterrence could not, as it were, be determinative to a point where it resulted in the imposition of an inappropriate penalty, to the exclusion of other subjective factors.[96]

31. Finally, and again with absolute candour and fairness, counsel for the Respondent accepted that other sanctions might be available, including a financial penalty, particularly in circumstances where there was little or no dispute about the Appellant's subjective case.[97] In response, counsel for the Appellant embraced that outcome.[98]

CONSIDERATION

32. The honesty and integrity of all participants must be viewed as a fundamental cornerstone of the greyhound racing industry. That is so, irrespective of the level at which, or the capacity in which, a participant is registered. The expectation that all participants will act with absolute honesty and integrity is enshrined in s 3A(d) and 11(b) of the *Greyhound Racing Act 2017* (NSW). Any departure from such expectation will be viewed, by itself, as serious.

33. The Appellant's case does not constitute an exception to any of those principles. In particular, I am not able to accept the proposition that the Appellant's actions were the result of what he described as a *"brain explosion"*. As counsel for the Respondent submitted, the chronology of events does not bear out that assertion.

[94] Transcript 19.43.
[95] Transcript 20.34 – 21.21.
[96] Transcript 21.31.
[97] Transcript 22.26 – 22.33.
[98] Transcript 23.38.

34. That said, the Appellant is to be afforded some credit for the fact that within a very short period, albeit when he was confronted with little option and after considerable time and resources had been wasted in an investigation, he made full admissions to his offending. I accept the Appellant's unchallenged evidence as to the issues he faced at the time. Some of those issues were of a particularly personal nature and I do not propose to disclose them. It is sufficient to say that they were significant. They certainly do not excuse the Appellant's conduct. They do, however, go some way to explaining why a person of otherwise unblemished character would act in the manner in which the Appellant did.

35. The Appellant pleaded guilty at the first available opportunity. He has expressed his remorse, which I am satisfied is genuine. He is clearly a person of prior unblemished character who has made a not inconsiderable contribution to the greyhound racing industry through his profession. In my view, his subjective case, about which there was no real dispute between the parties, supports a conclusion that the present offending is properly regarded as an aberration. Personal deterrence is plainly not an issue on the question of penalty.

36. As I have already noted, a significant factor in the determination of penalty in this appeal is that of delay. Putting it simply, the Appellant made full admissions to the offending. The Respondent was in a position to take disciplinary action against the Appellant on the basis of those admissions. No further evidence was needed to do so. The fact is that it took almost 2 years for the Respondent to bring charges, and more than 2 years to have them finalised. That delay is largely, if not entirely, unexplained. None of it was attributable, in any sense, to the Appellant.

37. I unable to accept the proposition advanced in the Respondent's written submissions that a period of delay of that magnitude is of no consequence because the offending was always likely to result in a period of disqualification. To begin with, that proposition carries an inbuilt assumption which is at odds with the fundamental notion that each case is to be determined on its own facts. Further, it overlooks a number of authorities which address the question of how

delay should be taken into account as a mitigating factor when assessing penalty. I am, of course, mindful of the caution which has been expressed about applying principles drawn from the criminal law to the process of assessing a penalty where the principal purpose of such penalty is protective rather than punitive.[99] However, for the reasons set out more fully below, I am satisfied that delay is a factor to be taken into account.

38. The relevance of delay on the issue of penalty was explained by Vincent JA in *R v Schwabegger*[100] in this way:

> *There is, in my opinion, a serious incongruity between the assertion that an offence is serious .... on the one hand, and ... a leisurely progression of the criminal justice proceedings which following its commission, that literally years pass before the matter comes before the Court, on the other. For a number of reasons, the investigation and prosecution of criminal conduct should be conducted as quickly as is reasonably practicable if the objectives of the system are to be attained. Additionally, an legitimate sense of unfairness can develop when the criminal justice process proceeds in what can be perceived as too leisurely a fashion.*

39. These observations have been repeatedly endorsed by other intermediate Appellate Courts.

40. For example, in *R v Gay*[101] Mason P, having expressly agreed with the comments of Vincent JA, said:

> *It is bordering on the unconscionable for three years to elapse between an interview which results in full admissions, and the laying of ensuing charges. ... the public interest, as well as the legitimate private interests of the offender, require a matter such as this to be brought to justice quickly. A failure by the authorities to do so will mitigate an otherwise appropriate sentence.*

41. The fact that the observations in *Schwabegger* and *Gay* were made in the context of revenue prosecutions is not to the point. The reference by Mason P to matters

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[99] See generally *Pattinson v Australian Building and Construction Commissioner* [2022] HCA 13; (2022) 274 CLR 450.
[100] [1998] 4 VR 649 at
[101] [2002] NSWCCA 6 at [18].

of "*public interest*" fortify the view that delay is a relevant factor in a case such as the present.

42. It follows that at a level of generality, delay which is not attributable to an offender constitutes a powerful mitigatory factor.[102] The delay in the present case was more than 2 years. It arose in circumstances where the Respondent had the benefit of full admissions from the Appellant, on the basis of which it could have brought charges in 2022. Why no charges were brought until 2024 has not been explained. Accepting the general tenor of what was put by counsel for the Respondent at the hearing, I am left to draw two conclusions. The first, is that there were other cases which were considered by the Respondent as being of greater priority. The second, is that such assessment was made because those other cases involved offending which the Respondent regarded as being of substantially greater gravity than that committed by the Appellant.

43. Assessments of that kind are, of course, the prerogative of the Respondent. However, accepting such conclusions, two observations can be made about them. The first, is that they reflect the very incongruity of which Vincent JA spoke in *Schwabegger*, and the unconscionability of which Mason P spoke in *Gay*. The second, is that they reflect an opinion having been formed by the Respondent that there was no need for the industry to be protected from the Appellant. That is of particular significance in circumstances where the primary purpose of penalties in matters of this kind is, as I have noted, a protective one.

44. Quite apart from these general considerations, delay can also be relevant at a more granular level.

45. To begin with, if, as a consequence of delay, there has been a lengthy process of rehabilitation undertaken by the offender, any deterrent aspect should not be

[102] *R v Liang and Lee* (1995) 124 CLR 350 at 356,

allowed to prevail to the point where the results of that rehabilitation might be destroyed.[103]

46. Further, if, during the period of delay, an offender had a reasonable expectation that he or she would not be charged, and ordered his or her affairs on the basis of that expectation, delay will further mitigate the penalty.[104]

47. Finally, the law recognises that delay is relevant where it results in the matter *"hanging over the head"* of the offender for a long period of time. In *Sabra v R*[105] the following was said:

> *Delay which is not attributable to an offender may be relevant on sentence at a number of different levels. Ordinarily, such delay will be a mitigating factor if (as in the present case) it has resulted in significant stress to the offender, or has left him or her, to a significant degree, in a state of uncertain suspense. Where there is evidence that delay has led to consequences being visited upon an offender which are adverse to his or her circumstances and which are over and above stress and anxiety, be those consequences in the nature of interrupted rehabilitation or otherwise, then the weight to be given to such delay in the sentencing process will obviously be greater. But that is not to say that an offender must be able to establish consequences of that kind before delay can become relevant at all. To so conclude would be contrary to the weight of previous authority in this Court.*

48. In a not dissimilar context, Street CJ in *R v Todd*[106] made reference to the need for "*understanding, … flexibility of approach … and fairness"* in cases where lengthy delay has left an offender in a state of uncertain suspense.

49. Applying these principles to the facts of the present case, the following conclusions can be reached.

50. First, in the 2 year period of delay the Appellant demonstrated substantial rehabilitation and did not come under adverse notice in circumstances where, for

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[103] See *Duncan v R* (1983) 47 ALR 746 at 749,
[104] See *R v Scook* [2008] WASCA 114 at [57] – [65].
[105] [2015] NSWCCA 38 at [45].
[106] [1982] 2 NSWLR 517 at 519-520.

the majority of that time, he treated racing greyhounds on a regular basis and was thus exposed directly to the industry. It follows that in a case where the primary purpose of a penalty is protective, there is little or no protective element which needs to be met. It can be reasonably inferred that if the Respondent had taken the view that the industry needed to be protected from the Appellant, it would have moved more quickly than it did.

51. Secondly, the Appellant's establishment, and his subsequent conduct since early 2023, of a new Veterinary Clinic, obviously came at substantial personal cost, both financial and otherwise. The Appellant's decision to open and operate that clinic was not only taken in the absence of any disciplinary action being taken against him, it occurred in circumstances where the unchallenged evidence is that in January 2023, after he had received the necessary licence approvals required to open the clinic, the Appellant enquired of his solicitor as to whether the Respondent had been in contact regarding possible disciplinary action. He was informed that this had not occurred.[107] It was in those circumstances, that he went ahead and opened the clinic. He has operated it, inferentially to the knowledge of the Respondent, since that time, without coming under any adverse notice.

52. If the present disqualification were to remain in place, the financial consequences visited on the Appellant would be significant, to the point where he would have to close the clinic.[108] To allow that to occur in the circumstances I have outlined would give rise to the very kind of unfairness of which Street CJ spoke in *Todd,* and would be entirely antithetical to the flexibility of approach which his Honour considered was necessary in circumstances of the present kind.

53. Thirdly, there is unchallenged evidence of the stress and suspense suffered by the Appellant as a consequence of the delay in this case. He has specifically alluded

[107] Affidavit at [44] – [45].
[108] Affidavit at [50].

in his Affidavit to the personal consequences of what he described as the "*decision which never came",*[109] the *"constant waiting",*[110] the questions put to him by others,[111] and the fact that the matters were eventually made public.[112] They are clearly matters which must be taken into account, consistent with the authorities I have cited.

CONCLUSION AND ORDERS

54. There is no doubt that honesty must be expected of all industry participants. Generally speaking, instances of dishonesty are likely to meet with a disqualification. None of the observations I have made should be interpreted as a qualification, much less a dilution, of either of those propositions.

55. The written submissions of the Respondent drew my attention to a previous statement of this Tribunal (differently constituted) in *Shannon Boyd v Greyhound Welfare and Integrity Commission*[113] in which the requirement for honesty on the part of participants, in the specific context of maintaining public confidence in the integrity of the industry, was emphasised. I respectfully endorse those observations. But they must, in any case, be balanced against the entirety of the evidence.

56. In the present case, and leaving aside the Appellant's undisputed strong subjective case, the delay to which I have referred operates to significantly reduce what would otherwise be an appropriate penalty. I am mindful of the necessity to have regard to principles of general deterrence, but I am satisfied that those principles are properly reflected, in the circumstances of ***this*** case, by a financial penalty. Whilst the Appellant described his financial position as "*moderately difficult*", [114] I am satisfied that he has the capacity to pay a fine. The penalty I have

[109] Affidavit at [37].
[110] Affidavit at [37].
[111] Affidavit at [39].
[112] Affidavit at [40].
[113] A decision of 8 October 2021.
[114] Affidavit at [62].

determined should be imposed takes into account all of the relevant factors to which I have referred. It is also one which, in a practical sense, will go some way to meeting the cost of the Respondent's investigation, the necessity for which arose directly from the Appellant's offending.

57. Finally, I should emphasise, to the extent that it might not otherwise be clear, that the conclusion I have reached should not be regarded as some kind of binding precedent in terms of the penalty to be imposed in cases of dishonesty offences committed by an industry participant. The force of the fundamental principles to which I referred in [32] and [53] – [54] above remains unaltered. The reasons for my departure from them in this instance have been explained at length, and simply reflect the fact that each case will always be determined according to its own facts and circumstances.

58. I make the following orders:

    1. The order of the Tribunal of 13 November 2024 pursuant to cl 20(1) of the *Racing Appeals Tribunal Regulation 2024* is vacated.
    2. The appeal is upheld.
    3. The penalties imposed by the Respondent on 5 November 2024 are quashed.
    4. In lieu thereof, a fine of $1,500.00 is imposed in respect of each of the three charges brought against the Appellant.
    5. The total fine will be $4,500.00.
    6. The appeal deposit is to be refunded.

THE HONOURABLE G J BELLEW SC

17 March 2025