RACING APPEALS TRIBUNAL
NSW

TRIBUNAL MR DB ARMATI

28 SEPTEMBER 2018

SEVERITY APPEALS

MARK FARRUGIA, STEPHEN FARRUGIA and DONNA FARRUGIA

GRR 86(o), GRR 86(q), GRR 117(1), GRR 117(2) and GRR 124

DECISION:

1. **Severity Appeals upheld**
2. **Mark and Stephen Farrugia each disqualified for 12 months from 23 October 2017 and each fined $21300**
3. **Donna Farrugia disqualified for 6 months from 23 October 2017.**
4. **Directions for appeal deposit issued.**

BACKGROUND

1. Each of the appellants appeals against a decision of 23 October 2017 by Mr Adrian Anderson, Steward, ("the Steward").

2. The Tribunal will return to the actual penalties imposed, but the effect of them was that each of Mark and Stephen Farrugia were disqualified for a period of five years, of which two and a half years was suspended, and fined $22,000, and Donna Farrugia was disqualified for two and a half years, of which one year was suspended.

3. After the determination by the Steward, a number of matters were found not proven. As a result of that determination, the following matters are to be dealt with on this appeal.

Summary of Charges

4. On 21 November 2016, the Steward particularised the following as the breaches, but the Tribunal only sets those out to be dealt with on appeal.

5. Rule 124 – 96 breaches. An example is in the following terms for charge 1 and the remaining 96 are in the same terms but with differently named or unnamed greyhounds.

> Charge 1: unauthorised exportation of a greyhound from Australia to any other country (excluding Australia) without a greyhound passport and certified pedigree issued by Greyhounds Australasia.

6. Forty-two grouped charges for breaches of Rules 117(1) and 117(2) and the remaining matters are charges 99 and following, and an example is in charges 99 and 100 as follows:

> Failure to lodge a prescribed transfer of ownership form following the purchase or acquisition of a named greyhound (first charge) and sale or disposal of a named greyhound (second charge).

7. Charge 281 was for a breach of Rule 86(o) and it was particularised as follows:

> The doing of, or omission of a thing which, in the opinion of the stewards or the Controlling Body, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct.

8. Charge 282 was for a breach of Rule 86(q) and it was particularised as follows:

The commission or omission of any act, or conduct which is in any way detrimental or prejudicial to the interest, welfare, image, control or promotion of greyhound racing.

Detailed Charges- Macau Matters

9. The Steward set out the details of those summarised charges on 21 November 2016 for Mark and Stephen Farrugia in the following terms:

"In respect of each of the 98 greyhounds listed in Table 1 above, the Stewards charge you with a breach of Rule 124(1) of the rules, in that you exported each such greyhound without a valid passport and certified pedigree issued by GA."

Rule 124 of the rules, as it applied on and subsequent to 1 July 2014:

"Any person intending to export a greyhound, being the subject of these Rules or to those of a relevant Registration Controlling Body, from Australia or New Zealand to any other country (excluding Australia or New Zealand) must, prior to meeting the quarantine and inspection service requirements of the relevant country, obtain a greyhound passport and certified pedigree issued by Greyhounds Australasia."

In respect of each of the 41 greyhounds listed in Table 2, the Stewards charge you with a breach of Rule 117(2) of the rules, in that you failed to lodge a prescribed transfer of ownership form after purchasing or otherwise acquiring each such greyhound.

Rule 117(2)(a) of the rules as it applied on and subsequent to 1 July 2014:

"A person who purchases or otherwise acquires a named greyhound shall:

(a) within 10 days lodge with the Controlling Body a prescribed transfer of ownership form containing the signature of the previous registered owner together with the prescribed fee and the certificate of registration for the greyhound."

Alternative, Rule 117(2) of the rules as it applied prior to 1 July 2014:

"A person who purchases or otherwise acquires a named greyhound shall within 10 days, or if entered for an event forthwith, lodge with the controlling body a prescribed transfer of ownership form together with the prescribed fee and the certificate of registration for the greyhound."

In respect of each of the 41 greyhounds listed in Table 2, the Stewards charge you with a breach of Rule 117(1) of the rules, in that you failed to lodge a prescribed transfer of ownership form after the sale or disposal of each such greyhound.

Rule 117(1) of the rules as it applied on and subsequent to 1 January 2013:

"On the sale or disposal of a named greyhound transferor shall:

(c) within 10 days lodge with the Controlling Body a prescribed transfer of ownership form."

The Stewards charge you with a breach of Rule 86(o) of the rules in that you have been involved or associated with breaches of Rule 124(1), Rule 117(1), Rule 117(2) and/or Rule 106(3) of the rules, to an extent that constitutes misconduct in the opinion of the Stewards as reflected in the brief.

Rule 86(o) of the rules as it applied through to 1 January 2016:

"A person (including an official) shall be guilty of an offence if the person 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."

The stewards charge you with a breach of Rule 86(q) of the rules in that you have committed or omitted to do an act or engaged in conduct that is detrimental or prejudicial to the interest, welfare, image, control or promotion of greyhound racing, by being involved or associated with breaches of Rule 124(1), Rule 117(1), Rule 117(2) and/or Rule 106(3) of the rules, as reflected in the brief.

Rule 86(q) of the rules as it applied through to 1 January 2016:

"A person (including an official) shall be guilty of an offence if the person commits or omits to do any act or engages in conduct which is in any way detrimental or prejudicial to the interest, welfare, image, control or promotion of greyhound racing."

Detailed Charges- China Matters

10. On 20 June 2017 the Steward particularised a number of other breaches of the rules by each of the three appellants. The first charges had been

particularised as the Macau charges and the latter breaches as the China breaches.

11. In respect of both Mark Farrugia and Stephen Farrugia, they relevantly each faced two additional Rule 124 breaches, the first of which related to exporting 30 greyhounds and the second of which related to exporting 40 greyhounds. Those charges and the particularisation of them were in the same terms as those that applied to the Macau breaches. In addition, for the China matters, each of them were charged with a breach of 86(o), a breach of 86(q), 25 breaches of 117(2) and 25 breaches of 117(1).

12. In relation to Mrs Donna Farrugia, the letter of 20 June 2017 particularised her remaining breach in the following terms:

> "The Stewards charge you with a breach of Rule 86(n) of the rules, in that you knowingly aided, abetted, counselled or procured one of, or alternatively both of, Stephen Farrugia and Mark Farrugia, to commit breaches of Rule 124(1), Rule 117(1), Rule 117(2) and/or Rule 106(3) of the rules as reflected in the brief.
>
> Rule 86(n) of the rules as it applied through to 1 January 2016:
>
> "A person (including an official) shall be guilty of an offence if the person knowingly aids, abets, counsels or procures a person to commit a breach of these Rules."
>
> Withdrawn Charges.

13. The Steward withdrew 2 charges under Rule 124 in the Macau charges for exporting against each of Mark and Stephen Farrugia.

14. The Steward withdrew a charge under Rule 86(n) against Donna Farrugia in the Macau charges as the aid and abet etc. conduct in the China matter, for the same charge, encompassed the Macau matter.

> "Not Guilty" Findings.

15. The Steward found Mark and Stephen "not guilty" of Macau matters for 96 charges under Rule 106(3), one charge under Rule 86(m) and one charge under Rule 86(n).

16. The Steward found Donna Farrugia "not guilty" of all other charges. They comprised for the Macau matters: 98 charges under Rule 124; one charge under each of Rules 86(o) and 86(q); 41 charges under each of Rules 117(2) and 117(1); 96 charges under Rule 106(3); one charge under each of Rules 86(m) and 86(n). They comprised for the China matters: two

charges under Rule 124; one charge under each of Rules 86(o) and 86(q); 25 charges under each of Rules 117(2) and 117(1).

Penalties

17. The Steward, in a practical fashion, elected to group the various matters and impose penalties for the groups of matters. In respect of only the 117(1) and (2) were individual penalties specified.

18. The penalties for Mark Farrugia and Stephen Farrugia were the same and are as follows.

> For the 98 export offences under Rule 124 a penalty in the sum of $22000 and a disqualification of 5 years of which 2.5 years was suspended for 5 years“pending any further breaches of Rule 124 in the next 5 years”.
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> For the two conduct prejudicial offences under Rule 86(q) a disqualification of 5 years of which 2.5 years was suspended for 5 years “pending any further breaches of Rule 86(o) (sic) in the next 5 years”.
>
> For the two misconduct offences under Rule 86(o) a disqualification of 5 years of which 2.5 years was suspended for 5 years “pending any further breaches of Rule 86(q) (sic)in the next 5 years”.
>
> For the 132 registration offences under 117(2) and 117(1) a penalty of $6600 being $50 for each individual breach.
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> The penalties of disqualification for Rules 86(o)and 86(q) were ordered to be concurrent with the disqualification for Rule 124. The penalty of $6600 for Rules 117(2) and 117(1) was ordered to be concurrent to the penalty of $22000 for Rule 124.
>
> The penalties of disqualification commenced on 23 October 2017.

19. The penalty for Donna Farrugia under Rule 86(n) was a disqualification of 2.5 years of which one year was suspended for a period of 2.5 years “pending any further breaches of Rules 124 or 86(n) in relation to knowingly aiding, abetting, counselling or procuring any breaches of Rule 124(1)”. That disqualification commenced on 23 October 2017.

The Penalty Powers of the Tribunal

20. Rule 95(1) provides power to impose suspensions, disqualifications, cancellation of registration or warning off. In addition, subparagraph (a), which is in doubt, provides as follows:

> "(a) fine not exceeding such amount as specified in the relevant Act or Rules for any one (1) offence".

21. Section 21(1)(f) of the Greyhound Racing Act 2009 (in force for the purpose of these proceedings) provides as follows:

> "(f) impose fines, not exceeding 200 penalty units, on any greyhound racing club or on any owner, trainer or bookmaker or other person associated with greyhound racing for breaches of the rules,"

22. An issue in these proceedings is whether that maximum penalty of 200 penalty units may only be applied in respect of all of these breaches when taken together or whether it is a maximum penalty in respect of each breach. For the reasons that will become apparent, the Tribunal does not have to determine this matter to finality in these proceedings. The parties invited the Tribunal to consider the matter on the basis that the maximum of 200 penalty units was the total for all matters. The Tribunal agrees with the findings of the Steward that the provisions are not clear.

23. Rule 95(3) enables suspension of penalties.

24. Rule 92(4) sets out certain matters which must be taken into account, and they are as follows:

> "Matters to which the Controlling Body or Stewards must have regard are-
>
> (a) the character and antecedents of the person charged;
>
> (b) the nature of the breach and the circumstances in which it was committed, in particular, the seriousness of the breach and any negligence, recklessness or indifference of the person charged;
>
> (c) whether the person has denied or admitted the charge."

25. These are classically standard matters which this Tribunal always addresses in respect of a penalty determination, whether in that order or otherwise expressed does not matter.

26. Rule 97, which enables the determination of whether any penalty is to be cumulative, which must apply unless another order is made, or concurrent.

FACTS

27. At the request of the Tribunal in an endeavour to reduce hearing time, but more importantly the amount of preparation time required for the hearing, the parties agreed to provide their agreed statements of facts. This saved the necessity for the perusal of some thousands of pages of documentation which were before the Steward.

28. The three appellants have been involved in the greyhound industry for more than 18 years and operate a business providing greyhound education and rearing services through a corporation Blue High Group Pty Ltd. Each of Mark and Stephen Farrugia own 50 percent of the shares and Mark Farrugia is the sole director. Donna Farrugia manages the paperwork for the business.

29. The company did not require a licence for the education and rearing services.

30. Mark Farrugia was registered as an owner/trainer between 1 April 1995 and 30 September 2009. Stephen Farrugia was a registered greyhound owner from 19 March 2011. Donna Farrugia was never registered.

31. The respondent inspected their business once prior to and once during 2015.

32. The appellants maintain that upon receipt of their registration they were not required to sign any forms, they were not provided with the rules or any education and were not informed of the need to comply with the rules.

33. Prior to the Steward's inquiry, Stephen Farrugia had four offences for failing to lodge documentation and it is an agreed fact that these were minor offences only. The Tribunal shall disregard them.

34. Greyhounds Australasia ("GA") introduced the export passport scheme in 2004 and it wrote to all its then GA members, that is the State and Territory controlling authorities, and informed them of the new rule. The rule was subject to a review in 2012.

35. In 2013 GA suspended the issuing of greyhound passports to Macau. GA sent a letter about that decision to suspend to all known exporters of greyhounds. The letter was not sent to the Farrugias.

36. As a result of a further inquiry in 2014, GA made the decision to continue the suspension for Macau and to cease issuing passports for any country in which GA had no formal association. GA has not ever had a formal association with Macau, China or Dubai. In June 2014 GA sent a letter about the adoption of those recommendations to known exporters of greyhounds to Macau. The letter was not sent to the Farrugias. On 24 June

2014 GA issued a media release and posted it on its website about its decision to adopt the recommendations.

37. Laws relating to the export of greyhounds are governed by Commonwealth law. That is operated by the Department of Agriculture and AQIS. The procedure to export a greyhound under Commonwealth laws requires an exporter to meet quarantine and inspection requirements. This means filling in and lodging forms. Those processes require the exporter to satisfy a veterinary test involving injections and inspections.

38. The Commonwealth laws did not require the presence of the passport and pedigree certification required by GA. Accordingly, exporting a greyhound without a GA passport was not a breach of any Commonwealth law.

39. The Farrugias had advertised at Richmond race track and at their property in terms that:

> "Dogs wanted for overseas. Must run 18.80 and better (300m)."

40. Donna Farrugia was the person designated to complete all Commonwealth forms, including preparation and lodgement of forms, and obtaining necessary approvals and arranging the actual export under the Commonwealth provisions.

41. The Farrugias advised the Steward that greyhounds were purchased for between $500 and a bit more and sold for between $2100 and $2700, providing an estimated profit of $300 per dog after expenses associated with quarantine, vaccination, flights and boxes. Accordingly, the appellants estimated their profit at a total of $50,000 as a result of their export activities.

42. The respondent does not dispute that it did not publicise the findings of the GA review to its members and issued no notice to its members as to the recommendations made by the 2014 review and the consequent continuation of the suspension to Macau and the non-availability of export to China and Dubai.

43. It is not disputed, therefore, that the appellants were unaware that it was necessary for them under the rules to obtain a passport and pedigree certificate before they engaged in the export process under the Commonwealth law. For that purpose it is acknowledged that the appellants had not been included in any other mail-out which had gone to other known exporters or persons under the auspices of GA.

44. In addition to exporting greyhounds to Macau and China, the appellants had also exported two greyhounds to Dubai.

45. The Farrugias participated in interviews with Stewards on 20 November 2015 and 8 September 2016. In those interviews they quite clearly specified that they were unaware that it was against the rules to export greyhounds in the circumstances that they did.

46. The appellants ceased exporting greyhounds immediately after they were interviewed by the respondent's officers on 20 November 2015. Prior to 9 December 2015, at an uncertain date, the Farrugias were interviewed by journalists from the ABC. On 9 December 2015 a 7.30 Report was broadcast and included footage and information about the Farrugias' export of greyhounds to Macau and raised community concern about animal welfare issues relating to the export of greyhounds.

47. The respondent submits in its agreed statement of facts that the appellants' conduct placed the greyhounds at risk of and exposure to stress, substandard kennel and racing conditions, high rates of injury and euthanasia, a lack of suitable post-racing arrangements, and an environment with inadequate animal welfare laws and enforcement. Accordingly, tit was submitted that heir conduct was seriously detrimental to the interests, welfare, image, control or promotion of greyhound racing in NSW. The respondent admits the appellants cooperated with the inquiry by providing incriminating documents which were otherwise not available to the inquiry and expressly acknowledges that each of the appellants has shown contrition, remorse and insight into their wrongdoing.

SUBMISSIONS

48. The appellants submit that the contraventions were in the low range of objective seriousness due to their accidental nature, the absence of any concealment, and the absence of any evidence of reckless disregard of animal welfare standards. In addition, the unqualified support provided by the appellants to the respondent in its investigations and their subsequent admissions of the breaches are important facts.

49. The appellants acknowledge the important purposes of the rules in protecting the welfare of greyhounds and the repute of the industry. However, they say that they are people of good character who accidentally contravened poorly communicated requirements and when found out fully cooperated with the investigators.

50. The fact that the appellants' business was primarily directed to activities of educating and rearing rather than exporting was emphasised. The fact they have no prior history of contravening the rules, with the exception of relatively minor offences by Stephen Farrugia, was raised.

51. It was acknowledged that they were not provided with copies of the rules or any registration process and received no education in respect of the rules. They accept that they were non-compliant with the rules relating to the export of greyhounds. Indeed, patently so.

52. Emphasis is placed upon the fact that there was no publication of the decision of GA to suspend and to not recognise certain countries and that this was not widely publicised and in particular that the appellants were not informed by anyone of the adoption of the recommendations of the review. Accordingly, it is said these facts significantly reduce the seriousness of their contraventions, particularly because of the poor communication to actual and potential exporters of greyhounds.

53. It is emphasised by the appellants that they complied fully with the known laws that applied to them and ensured that there was no concealment of their activities and, indeed, they positively advertised them. It is said, therefore, that they were bona fide in their attempts to comply with all requirements known to them.

54. In addition, it is submitted that their activities in ensuring the greyhounds were exported properly is an indication of their desire for humane treatment of greyhounds.

55. The submissions continue emphasising the full cooperation with the inspectors and, importantly, the provision of inculpating documentation, otherwise many of the breaches could not have been alleged against them.

56. The fact that they ceased exporting immediately on 20 November 2015 when they were first interviewed is emphasised.

57. The absence of any concealment of their contraventions is emphasised. In addition, it is said that the fact that there was no obstruction in any fashion at all of the respondent and its officers is a critical factor.

58. For the appellant Donna Farrugia it is acknowledged that she did not attend the inquiry or make any submissions to it and that she has therefore not “pleaded guilty”, but her activities must be viewed in light of the fact that only one breach was found against her of a great number that were proffered.

59. Rule 92(4) is relied upon as providing strong guidance for mitigating factors which must be taken into account. The Tribunal acknowledges those provisions and there are others which it takes into account as well and which have been expressed in numerous prior decisions.

60. The mitigating factors set out on behalf of the appellants here are their: early “guilty” pleas; full cooperation with the inquiry and the provision of

incriminating documents; good record and contribution to the industry; compliance with all Federal law; ignorance of the breach of the law in circumstances that despite the fact they were educators and rearers of greyhounds and had an important role to play that they were not informed; the fact that they openly advertised and were not informed, and there was no communication to them; the fact that they ceased exporting immediately on becoming aware it was not permissible.

61. The submission is also made that the Stewards had attended their property on numerous occasions and had not brought any matters to their attention.

62. Detailed submissions are made on the method of determination of penalty and its processes. These do not need to be set out.

63. It is finally submitted that a different determination should be made here because there was no high range of objective seriousness, as the Steward found, based on animal welfare or the number of greyhounds exported. It is said that the Steward did not give sufficient weight, and the Tribunal should, to the accidental nature of the contraventions, the inadequacy of notice to them and the absence of any evidence that they recklessly disregarded relevant animal welfare standards.

64. Accordingly, it is submitted that their conduct should be viewed at a low level of seriousness and that it did not stem from any deliberate evasion or any deliberate evasion of animal welfare.

65. Acknowledging the importance of the message to be given to the public at large, it is said that a lesser penalty is appropriate here because inadequate weight was given to their subjective factors below. It is also said that the general message cannot override the mandatory considerations in Rule 92(4).

66. Accordingly, it is submitted that significantly lesser penalties should be imposed here than were those considered appropriate by the Steward. The appellants supported the in globo approach to penalty adopted by the Steward. In addition, it was submitted that the equivalent of the totality principle should be applied.

67. In oral submissions the respondent took issue with three points made in the appellants' written submission.

68. Firstly, challenge was taken to the submission that their conduct was accidental. It is said they must have had knowledge of their obligations and that they demonstrated wilful blindness or recklessness because there was an awareness in them that there were rules that applied to them and they could not rely upon the fact that nobody approached them.

69. Secondly, challenge was taken to the submission that there was no evidence of a reckless disregard of welfare. It was pointed out that they had been to Macau to carry out an inspection and in the course of trying to drum up business and they there became aware of various factors of a welfare nature such as the small nature of kennels. Accordingly, they were on notice as to welfare issues.

70. Thirdly, issue was taken as to the submission there was unqualified support to the investigators in the inquiry, as this was incorrect, it is said. It is said that they ignored the respondent for a long period of time after the original proffering of breaches and did not admit their wrongdoing until the inquiry itself. In addition, at no stage did Donna Farrugia engage with the Steward with any method of cooperation at all.

71. The respondent's written submissions, as expressed above, invite the Tribunal to reach the same conclusions on penalty as the Steward. As the appellants' oral submissions touched upon a number of paragraphs of the written submission, those submissions of the respondent will be incorporated in the summary of the respondent's written submissions.

72. In opening remarks inviting dismissal of the appeal and confirmation of the penalties, the respondent emphasised that the breaches are serious and relate to a significant number of greyhounds exported for profit. It is said that the appellants actively sought out this commercial opportunity and should have been aware of the risks to the welfare of greyhounds by exporting to those particular countries, but that they were indifferent to those risks and reckless as to the welfare of the animals.

73. It is said that the appellants' conduct directly put the greyhounds at risk of stress, exposure to substandard conditions, high rates of injury and euthanasia and inadequate animal welfare laws and enforcement. Particularly as the exports occurred, in the main, after GA had issued its review of 2014.

74. It is further said that the appellants initially denied any wrongdoing and sought to blame the respondent for its failure to inform them of their obligations. This could not be sustained because they had been or were registered and ought to have known of the rules.

75. It is also said that they initially failed to engage with the respondent and did not enter admissions of their breaches until the inquiry itself, in the case of Mark and Stephen Farrugia, and that Donna Farrugia did not ever engage with the inquiry Steward.

76. It was also submitted, in opening, that the Steward gave adequate allowance for mitigation in providing for suspension of parts of the penalties.

77. The respondent also emphasised the need to look to the future in relation to “general deterrence” and the need for a very strong message that the conduct in which the appellants engaged was unacceptable and that participants in the industry must ensure they are aware of, and abide by, all of their obligations under the rules to ensure the welfare of greyhounds.

78. The respondent’s written submission, as it did in oral submissions, took issue with the appellants’ submission that their conduct was accidental. In that regard it is said that a person engaged in an activity covered by the rules should know and abide by them. Otherwise ignorance of provisions could be excused, which is an unsustainable submission. It is also said that this submission of the appellants undermines any prior suggestion of remorse. It is submitted that the appellants must have been aware that the respondent was able to impose rules that would have some impact upon their greyhound business and accordingly they must have at least suspected that there may be obligations that applied to them when they engaged in the export of greyhounds. Yet it is submitted they did not make any inquiries, choosing instead to rely upon the fact that the respondent had not specifically and directly informed them about the passport requirements. This was said to show wilful blindness or reckless indifference. It is said that as they engaged in a commercial enterprise they ought to have reasonably sought out information from GRNSW or GA about their export operation, particularly as they were registered industry participants prior to the commencement of their exporting operation.

79. To support this submission the respondent identified in the 20 November 2015 interview a statement by Mark Farrugia which followed a discussion about the knowledge of others having exported for many years. In part, he said this:

> “It took a lot of work. We flew over there, tried to get in, tried to get in and then eventually they decided to give us a go and we sort of got in.”

And Donna Farrugia responded to a question whether this might be frowned upon as follows:

> “MS FARRUGIA: Don’t know. Because no one’s ever approached us. We were waiting for you guys to come.”

80. The respondent says that indicates that they knew they were doing wrong and were waiting for someone to come along and catch them. The appellants say that that is entirely out of context and what was being talked about was that the Farrugias anticipated that the stewards might come and talk to them as a result of interviews by the ABC journalists prior to the publication of the 7.30 Report. It is said, therefore, that that is no admission

of prior knowledge of wrongdoing and therefore prior knowledge that a rule applied to them or, alternatively, that it would go to their conduct demonstrating wilful blindness.

81. In the context in which this interview took place and those submissions were made, the Tribunal is unable to determine which of the two submissions is correct. Either conclusion is capable of adoption. However, there is nothing else about their conduct which would indicate that they had any such knowledge of wrongdoing. Indeed, the evidence is all to the contrary about their ignorance. Those statements do not establish a knowledge of wrongdoing.

82. The appellants, by their submissions, are not disputing that there was a lot of hard work involved in setting up the enterprise but maintain that it was all set up in absence of any knowledge of the requirement of the rules for a passport. The reasons for that lack of knowledge have been expressed a number of times already. It is said, therefore, they were not indifferent. The respondent submits that this was not a commercial undertaking they simply fell into, accordingly they have demonstrated wilful blindness.

83. In response to the appellants' submissions that they had not received communication, the respondent points out that they cannot rely upon ignorance of the rules and because of their conduct they should have made inquiries. Further, that the passport requirements imposed by GA predated their involvement in the industry.

84. On aspects of welfare, it is pointed out that the appellants had visited China and Macau in setting up their commercial exporting arrangements and were able to observe the substandard conditions experienced by greyhounds in those countries and that ought to have given rise to concerns as to welfare.

85. In this regard on the issue of welfare, in the 8 September 2015 interview, Stephen Farrugia seems to express ignorance about the way in which dogs were mistreated in China and expresses the opinion that someone should have told him. He goes on to say that what he saw was good and the dogs were "fat as fools". "Yeah, it wasn't clean. But…". Later in the same interview Mark Farrugia, having said he had been to Macau a couple of times, said they "looked good", "kennels were small" but "always walked them" and "looked healthy".

86. On the issue of welfare, the respondent submitted that the fact that all of the Commonwealth requirements were complied with was insufficient because the Commonwealth requirements did not address animal welfare.

87. In response, the appellants say on the issue of welfare there was no evidence that they were aware that there were welfare issues in either of the

countries and that to the contrary everything they did to comply with Commonwealth law indicated a desire to, and compliance with, necessary welfare standards. It was strongly submitted they did not ignore welfare for profit.

88. In oral reply, the respondent said the appellants ought to have been aware that welfare was a questionable issue in the countries. In particular, the size of kennels was important and that should have raised a red flag to them that there were welfare issues. It is said that the appellants have demonstrated no evidence that they ensured welfare standards in the countries to which they exported were okay.

89. On the issue of welfare, the respondent relies upon the identification of issues in the GA 2014 review as follows: housing and kennelling; injury rates; lack of exercise; lack of adoption.

90. On objective seriousness the respondent notes that the ABC 7.30 Report raised community concerns about animal welfare issues arising in connection with the export of greyhounds to countries with inferior animal welfare laws and standards.

91. It is said, therefore, that the conduct of the appellants undermined the reputation and image of the greyhound racing industry in the community and that they acted contrary to the welfare of greyhounds. Accordingly, it is submitted they have severely damaged the reputation and image of the greyhound industry and even threatened its existence in NSW. Accordingly, their conduct was serious.

92. The respondent reemphasised and again took issue with the submission that the appellants have cooperated. In that regard, the respondent points out the late admission of the breaches after the first proffering of charges and the blaming of the respondent in interviews for failing to give them more adequate advice or notice. It is pointed out that the appellants on several occasions in their interviews indicated that the respondent has failed them. Importantly, however, the Tribunal notes that the appellants confirmed that once they were aware of their wrongdoing they immediately stopped that conduct. The appellants say that is demonstrative of their belief that up until that point they had done nothing wrong.

93. The appellants in further reply submit that they willingly cooperated in both interviews and proffered documents which were incriminating and cooperated fully with the Stewards' inquiry and made ready admissions of their wrongdoing. It is said, therefore, in reply to the respondent's submissions that there was substantial utilitarian benefit to be gained by the respondent from the appellants' conduct involving cooperation. The appellants further submitted that a failure to "plead" is not a failure of cooperation and is not an "aggravating" factor. The appellants also point out

that they have accepted the findings of the Steward in relation to their breaches of the rules and that is a further sign of their cooperation.

94. On the issue of remorse, the respondent says that little weight should be given to this as it was a public shaming by reason of the ABC report that caused them to cease exporting, not an acceptance of their wrongdoing. The Tribunal rejects this as being contrary to the evidence. It is apparent that prior to the publication of the 7.30 Report that they had ceased their activity. There had been no public shaming. There is no evidence that at whatever date the interview by the ABC journalist took place prior to the broadcast of the report, that the interview itself led to any belief that they would be publicly shamed.

95. Next, criticism is directed by the respondent to the appellants by reason of their reliance upon the fact that they openly advertised their exporting business at Richmond and their facility. The respondent submits that this demonstrates the flagrancy and recklessness of their conduct. This is said to arise because the advertisements did not mention the countries to which they were exporting or the fact that anyone should be on notice that they did not have export licences. It is also submitted that the advertisement did not give the regulators any reason to investigate their conduct.

96. The appellants in reply say that this is an indication that there was no concealment by them. Indeed, to the contrary, it indicates that they were openly advertising.

97. The Tribunal notes that the wording of the advertisements may well have put an inquiring steward on notice that, as export was taking place and little was placed in the advertisement, it might have been prudent to at least make an inquiry of the advertiser as to whether or not compliance with the passport rules was being addressed or not. There is no evidence that such a thought occurred to a steward nor is there any evidence of any such follow-up taking place. Accordingly, it is not open to the respondent to criticise the appellants for any failure in the terms of their advertisement.

98. Next, the respondent submits that as Stephen Farrugia had previous fines for documentation failure that he should have been on more adequate notice of a need to inform himself about the passport rules. The appellants reply that that conduct was isolated from the facts here.

99. The Tribunal disposes of that argument by saying it does not have facts in relation to the prior breaches other than they related to rules and it is accepted by the parties that the breaches were minor, as it was by the Steward, and accordingly these matters are given no further consideration or weight. Certainly they do not cause a finding that Stephen Farrugia should have been on more notice about the export rules having regard to the totality of the facts here.

Parity

100. The next issue is parity.

101. The parties acknowledge that there are no direct parity decisions particularly relating to the passport requirement.

102. The respondent points out that there is certainly no parity with 166 export breaches.

103. The decisions raised are Pullman, an undated GRNSW decision, in which a disqualification of 10 years was imposed under Rule 86(q) for intentionally killing greyhounds other than emergency euthanasia with some 99 greyhounds involved. It appears that the animals were either shot or killed with a blunt object. Mr Pullman did not admit the breach and did not cooperate and intentionally tried to deceive the stewards.

104. The next case was Chalker, VCAT [2017] where a 10 year disqualification was imposed for live baiting offences.

105. The Steward referred to various other cases such as Dunphy, 29 September 2017, GRNSW inquiry panel, penalty $1000 for exporting a greyhound to the United Kingdom.

106. A similar matter in Victoria of Vassallo, 3 October 2017, stewards, fined $2000 for exporting two greyhounds to Ireland.

107. Other than emphasising the need for a general message to be sent and for as appropriate a specific message, those cases are not of great assistance so far as Pullman and Chalker are concerned. On the other hand, the matter of Dunphy has particular currency and appropriateness. In final submissions the respondent points out the need for "general deterrence" because of the need for welfare of the greyhound and the reputation of the industry.

108. The respondent accepts that the "principle of totality" should be applied.

109. The Tribunal notes that no submissions or any evidence were put on the issue of hardship.

110. The respondent says that the Tribunal should impose the same penalties that the Steward determined.

111. The appellants say that Mark and Stephen Farrugia should be penalised by wholly suspended disqualifications of 2.5 years and penalised

$440 and that Donna Farrugia should be penalised by a wholly suspended disqualification of 1 year.

The Tests

112. The Tribunal has set out in numerous decisions its approach to determining penalty. As the parties have not addressed these tests in detail they shall not be repeated.

113. In the appeal of Kavanagh v Racing NSW, RAT,13 August 2018, the Tribunal set out its most recent exposition of its approach to penalty. it adopts those expressions for this appeal.

114. To be clear to the appellants the Tribunal will take account of their character and antecedents, their admissions where they have made them and the denial of Donna Farrugia implied by the Steward. The Tribunal will assess the nature of the breaches, the circumstances, the seriousness of them and issues of negligence, recklessness and indifference - if any.

DETERMINATION

Objective Seriousness

115. The relevant considerations in this case relate to welfare of the greyhound and integrity of the industry. The relevant restrictions on exporting greyhounds are directed to welfare of the greyhound. The registration offences touch upon integrity. The misconduct and conduct prejudicial offences raise both welfare, because they are related to export, and integrity because they relate to the image of the industry.

116. The Tribunal has formed an opinion that the breaches do not have the level of seriousness attributed to them by the Steward. Because of the issues of welfare and integrity they do not have the low level of seriousness suggested by the appellants.

117. Welfare is the primary consideration.

118. The determination of GA to cease export to Macau and China was based upon welfare considerations. They were related to housing and kennelling, injury rates, lack of exercise and lack of adoption procedures. The likely failure to ensure welfare of the greyhound raises concerns about the risk of and exposure to stress, substandard kennel and racing conditions, high rates of injury and euthanasia, a lack of suitable post-racing arrangements and an environment with inadequate animal welfare laws and enforcement. These likely outcomes are established on the evidence. It is acknowledged that no evidence has been put in this case on an actual welfare concern of any greyhound exported by the appellants. However the objective seriousness relates to the potential for negative welfare outcomes.

119. Accordingly the actions of the appellants in exposing the greyhounds they exported to these welfare issues raises facts of objective seriousness.

120. It is found that the appellants did not deliberately ignore welfare concerns for the greyhounds they exported. To the contrary, the pre-exporting requirements of the Commonwealth laws, and compliance with those laws by the appellants, ensured that the exported greyhounds were physically fit and appropriately inoculated for export and then appropriately kennelled and transported.

121. In addition the appellants had attended China in seeking an export market and their subjective opinions did not identify welfare concerns with the exception of the possibility that the kennels were small. They observed the dogs to be walked and looking healthy. The fact they were "fat as fools" is not sufficient to establish by itself that they lacked exercise. The fact that the facility was not clean was dismissed on the basis of their opinion about cleanliness in China generally.

122. The Tribunal is satisfied that the appellants did not ignore welfare considerations. There was no reckless disregard having regard to their level of actual knowledge. They did not deliberately evade their welfare obligations to the greyhounds.

123. The next important consideration on objective seriousness is the knowledge, or lack of it, in respect of the export laws and the need to complete documentation.

124. It is an undisputed fact that the appellants did not know, and were totally unaware of, the rules relating to the requirement to obtain a passport and pedigree certificate.

125. However they seek to attribute that ignorance to the failure of the regulators and not to themselves. That passing off does not assist them and is an objectively serious fact.

126. The export rules were first introduced in 2004. Therefore when Mark and Stephen Farrugia were registered persons and subject to the rules those export rules were in place. Both in 2012 and 2014 when the restrictions in respect of Macau and China came into operation Stephen Farrugia was a registered person. Stephen Farrugia operated very closely with Mark and Donna Farrugia. It was essentially a family business despite its corporate structure and the fact that Donna Farrugia was neither a director or shareholder.

127. As the respondent pointed out, and it is trite, that ignorance of the law, and therefore a rule, is no excuse. It is accepted that none of the appellants were licensed persons and therefore subject to a higher level of duty than a registered or unlicensed participant in the industry and they cannot be clothed with the burden of a usual licensee who has taken the privilege of a licence and the duties that go with it.

128. Each of the appellants was closely associated with licensed persons in the business of educating and rearing greyhounds. They were in constant

contact with licensed persons. They were acquiring registered greyhounds from licensed persons. Both those licensed persons as vendors and the appellant's company as purchaser had a duty under the rules to complete the appropriate documentation on transfer. For named exported greyhounds Mark and Stephen Farrugia agree that they failed to complete the necessary documentation. The evidence does not establish whether they were ignorant of such a requirement. The facts and submissions did not touch upon the ignorance of these rules because the focus was upon the ignorance of the exporting rules.

129. There is no doubt that when GA changed the export rules in 2012 and 2014 it did not notify the appellants. There is no doubt that the respondent did not notify the appellants. It appears that the 2014 press release may not have been widely broadcast as the evidence establishes it did not come to the notice of the appellants. Little else is known about its publication or broadcasting.

130. The fact that the two regulators did not notify the appellants, as GA did for known exporters, explains the ignorance of the appellants but is a two-edged sword. While there is no evidence of the thinking of the regulators it can be implied that they could reasonably expect that the passport rules were being complied with and accordingly exporters would be appropriately known to them. Thus a failure to notify the appellants is as much the appellant's fault for failing to comply with the rules as it might have been for the two regulators in not more broadly notifying the 2012 in 2014 decisions. The fact that the appellants were advertising is relevant to this notification point and the failure of the stewards of the respondent to have acted in any fashion upon that advertising was the subject of comment earlier.

131. The appellants seek to distance themselves from any failure to know about the export rules on the basis that the respondent did not "educate" them during their registration periods. The evidence establishes that they were simply registered without having to sign any acknowledgement of rules forms or any agreement to be bound by the rules and were not told about the rules or given a copy. However they became registered persons in a regulated industry.

132. The Tribunal finds that as Mark Farrugia had been registered prior to this conduct, and Stephen Farrugia was registered during this conduct, that they having involved themselves in a commercial activity involving a regulated animal could not turn a wilful blind eye to the possibility that there may have been rules governing the conduct. They did nothing to inform themselves. They simply assumed, it appears, that by complying with Commonwealth law on export that nothing else could apply to them. It is accepted that as they did not require a licence for the education and breeding activities that that removed a trigger for greater awareness that the export activity might require one.

133. That is a level of recklessness and wilful blindness which has led to the breaching of the rules and which, while explicable, cannot be condoned.

134. It is accepted that that conduct was not done in deliberate flouting of rules or by adopting an interpretation of the rules that would exculpate them improperly. They did not engage in concealment of their activities. They had otherwise demonstrated a capacity to understand and comply with rules by reason of their compliance with the Commonwealth laws on export.

135. The gravity of that finding of recklessness and wilful blindness is reduced by the fact that the respondent had not engaged with them in relation to the conduct despite the frequent visits of the stewards to their commercial operation and the frequency of their advertising at the racing venue.

136. The subjective facts in this matter strongly overlap with an assessment of objective seriousness.

137. This was an open commercial operation well known to officers of the regulator and to licensed persons. It was of long-standing. The export part of the business was not its main income producer. A profit of some $50,000 over a number of years is confirmatory of that. There was no concealment of the operation at the business facility or at the export facility. The greyhounds were well looked after whilst in the care of the appellants.

138. Confirmation of the ignorance of the appellants about the export rules and their bona fides is demonstrated by the immediate cessation of the export conduct upon becoming aware that there were passport rules with which they were not complying. That is a strong factor on objective seriousness.

139. Likewise their subsequent admissions demonstrate their bona fides and confirms they acted on ignorance not underhandedness.

140. Objective seriousness must also be viewed on the fact that they voluntarily provided to the investigators documentation which implicated them, and which they knew would implicate them, in otherwise undetectable breaches-the China matters.

141. A key factor in the Steward’s determination was based upon the number of breaches.

142. The Tribunal has a different opinion. The repeated conduct, it being on export 166 times, was not engaged in in the knowledge of wrongdoing. Once the first breach had been committed the others naturally flowed in circumstances of a misplaced belief that it was permissible. Other circumstances and cases where a person the subject of multiple breach allegations continues to act in sure knowledge of wrongdoing must be distinguished. Each matter can be viewed individually. Each was just another act in a continuing commercial operation. Continued conduct where there is no mala fides is less serious than repeated wrongdoing in the knowledge it is wrong. Nothing was brought to the attention of the appellants between the first export and the last which might have specifically informed them that they were engaging in wrongdoing.

143. The same principles apply to each of the multiple breaches under the different rules.

144. The Tribunal is not assisted by the parity cases on objective seriousness with the exception of that in Dunphy. Vassallo appears to adopt Dunphy although there is no report to support that. It seems that the precedent for a single export matter to a permissible country is a monetary penalty of $1000.

145. The facts available to this hearing do not indicate any different starting point should be adopted for these appellants as against Dunphy. There is nothing to distinguish the conduct as to whether Dunphy was equally ignorant or blatantly breached. However blind adherence to parity is dangerous and each case , and breach, must be dealt with on its own facts and circumstances.

146. In respect of all of the alleged breaches there is nothing to distinguish the conduct in any one individual matter, when grouped, as against any other. The conduct is the same. The culpability is the same.

147. It is to be remembered that each individual breach must be separately dealt with on penalty. There is therefore no reason, on a principle of totality or its equivalent or otherwise, to impose a heavier penalty for a second or third or 166th matter as against the first.

148. The number of matters for which a penalty is considered appropriate can be addressed by the use of the cumulative power. This will particularly distinguish a person who breaches for one or a few matters as against a person who breaches for a greater number. In the latter the penalty must of course be greater.

149. In summary therefore the objective seriousness on the export matters is determined on the basis that the appellants acted in ignorance, for which there is some condemnation, and exposed the greyhounds to welfare concerns. In addition they engaged in regulatory breaches by reason of their ignorance.

150. There is no doubt that the conduct has the highest probability of bringing the industry into disrepute and therefore being harmful to its standing in the community.

151. In considering the message to be given to the community at large such welfare and regulatory breaches require a clear indication that they must not be tolerated and that substantial penalties will flow. This general message must be tempered by the fact that the conduct was driven by ignorance but otherwise involved proper treatment of greyhounds in a well recognised and open commercial activity.

152. So far as Donna Farrugia is concerned and being remembered there is only one breach alleged against her for aiding and abetting etc., the objective seriousness is much reduced.

153. The evidence against her is limited. Benefits from assisting the business have not been identified. There is no doubt she was ignorant of the rules with which the business should have complied. There is no doubt that she was involved in the export and other regulatory failures but that she had placed the welfare of greyhounds, whilst in her care, at an appropriate level. It is not clear whether she was an employee and could therefore lay some of the blame, and she does not do so, at the foot of the directors and shareholders of the business and therefore have some lesser liability for her conduct. At best it must be assessed that she was fully involved in all of the conduct that comprised the principal offence and as an aider and abettor is equally liable to penalty as the principals.

154. The conduct which her breach touches involves all of the conduct found against each of Mark and Stephen Farrugia. While it is but one breach it does involve numerous acts.

155. Her conduct on an objective seriousness basis is assessed on the finding that she was driven by ignorance but was otherwise well meaning in her actions. The objective seriousness is not relieved by her failure to participate in the inquiry.

Subjective Matters

156. Each appellant is entitled to have taken in to account their good character, although no referees have spoken for them.

157. As determined, they are also entitled to have taken in to account the fact they have no prior breaches that are relevant.

158. Any discount for admission of the breaches for Mark and Stephen Farrugia is tempered by the fact that once the Steward had proffered the charges on 21 November 2016 they did not in any fashion indicate they would admit those breaches until the hearing on 30 March 2017. Each of those appellants is entitled to have their conduct since that first hearing date taking into account on the basis that they admitted those breaches and also the breaches subsequently proffered on 20 June 2017 and determined on 22 June 2017.

159. For Donna Farrugia there is no discount to be given for an admission of her breach because she did not attend or communicate with the Steward. It was necessary for the Steward to make a finding of "guilt".

160. Each of the appellants is entitled to have taken in to account that they have not challenged the findings of the breaches of the rules on this appeal.

161. Their acceptance of non-compliance with the rules is an important subjective factor.

162. Each of the appellants is entitled to have taken in to account the ready admissions made to the investigators on 20 November 2015 and 8 September 2016 and to the Steward at both his hearings.

163. Most importantly the appellants are entitled to have taken in to account that they voluntarily provided to the investigators documents which

incriminated them in other breaches and which would not have been detected if they had not voluntarily provided those documents. The utilitarian value of those facts is substantial.

164. Each of the appellants ensured that laws about which they had knowledge were complied with.

165. Each of the appellants ensured, so far as they were aware of the issues, that the welfare of the greyhounds, in particular their preparation for and suitability for, export was appropriate.

166. The fact that they ceased exporting greyhounds immediately upon becoming aware of their failures is a major factor that goes to their credit.

167. The finding is made that they were open in their dealings and engaged in no concealment of their activities. This is reinforced by the fact that they openly advertised at a racetrack.

168. It is accepted that they acted from ignorance.

169. There is no express evidence of remorse. It can only be implied by the admissions of the breaches.

170. The need for a specific message to each of the appellants is much reduced on these findings and can be nominally considered.

Penalty

171. The determination is made that the objective seriousness of the overall conduct of each of the appellants warrants periods of disqualification.

172. That is based upon the findings that the ignorance of the rules found established cannot be condoned. It is further based upon the fact that the welfare of the greyhounds was put at risk by the export to two countries for which there are genuine concerns about greyhound welfare.

173. Those matters require that the general message to be given for the conduct in which the appellants engaged is one which makes it clear that an entitlement to be a participant in the industry will be forfeited.

174. Those findings distinguish the parity starting point for the export matters of the penalty of $1000 found appropriate in Dunphy. It is recognised that Dunphy related to an export to a permissible country.

175. The number of breaches does not mean that the starting point must be greater than that which is appropriate for each individual matter. Each matter will be assessed individually. Balance is to be found by applying the equivalent of the totality principle.

176. The Tribunal rejects the approach suggested by both parties that an in globo penalty be considered.

177. The more serious matters are the export offences and for those matters periods of disqualification will be imposed.

178. The appellants engaged in a commercial enterprise for which they made a profit. No hardship matters are advanced. The financial gains from the improper activities must be effected. There is no evidence of any

financial impact of a period of disqualification and accordingly it will be imposed as an appropriate disciplinary response in addition to monetary penalties. As the monetary rewards went to a commercial enterprise and the commercial rewards to each of the appellants is not known the monetary penalties will be evenly attributed to each of Mark and Stephen Farrugia.

179. It is not incumbent upon the Tribunal to specify a starting point for each breach and then apply to each breach finding a discount for subjective factors. In each matter the appropriate penalty for objective seriousness will be reduced by the findings on the subjective factors. Mathematical precision is not mandated.

180. The Tribunal finds that the Rule 86(o), misconduct, and Rule 86(q), conduct prejudicial matters establish no additional facts of objective seriousness than those which are embraced by the Rule 124, export, breaches. They do not warrant additional penalties. They could have been treated as alternatives. It is accepted that they are not alternatives but no additional penalties are required. If additional penalties had to be imposed they would have been made concurrent and the effect of that would be the same as if no penalty was imposed.

181. Rule 98 is enlivened and it provides:

> "(1) If-
>
> (a) a person is charged before the Controlling Body or Stewards with a breach of these Rules, and
>
> (b) the Controlling Body or Stewards are of the opinion that the charge is proved but that it is inappropriate to inflict any punishment or any more than a nominal punishment,
>
> the Controlling Body or Stewards may, without proceeding to record a finding of guilt and to impose a penalty, discharge the person.
>
> (2) A person discharged pursuant to sub-rule (1) is to be discharged on condition that the person does not commit any further breach of these Rules for a specified period or if no period is specified, a period of 12 months. The Controlling Body may at any time revoke or vary that condition.
>
> (3) If the person commits a further breach of these Rules in contravention of the condition of discharge, the person may be dealt with for the breach for which the person was discharged by the Controlling Body or by any Stewards dealing with the further breach."

182. The regulatory breaches of Rules 117(1) and (2), transfer of ownership forms, do not warrant periods of disqualification. They are appropriately dealt with by way of monetary penalties. They do not appear to be consequent upon the conduct embraced by the export offences although related to them.

183. Those regulatory breaches involve the same conduct on multiple occasions without apparent knowledge of the requirement to do so, with no

attempt at concealment or subterfuge and there is no evidence of any mischief as a result of those failures.

184. No parity cases are given for breaches of Rule 117.

DECISION

185. The severity appeals are upheld for each appellant.

186. The following penalties are imposed.

Mark and Stephen Farrugia

For each appellant

Rule 124, export breaches

(i) In each of the 98 breaches a period of disqualification of one year is imposed to commence on 23 October 2017.

(ii) Each of those 98 periods of disqualification is to be served concurrently.

(iii) In each of the 98 breaches a monetary penalty of $150 is imposed.

Rule 86(o), misconduct,

(i) In each of the two breaches pursuant to Rule 98(1) it is determined that it is inappropriate to inflict a punishment for these breaches and without proceeding to record a finding of guilt the appellants are discharged.

Rule 86(q), conduct prejudicial

(i) In each of the two breaches pursuant to Rule 98(1) it is determined that it is inappropriate to inflict a punishment for these breaches and without proceeding to record a finding of guilt the appellants are discharged.

Rule 117(1) and Rule 117(2), transfer of ownership

(i) In each of the 132 breaches a monetary penalty of $50 is imposed.

Donna Farrugia

Rule 86(n), aid and abet

(i) A period of disqualification of 6 months is imposed to commence 23 October 2017.

APPEAL DEPOSIT

187. The parties were not asked to make submissions on the appeal deposits. The Tribunal's function at the determination of the appeal is to order them refunded, forfeited or repaid in part.

188. In view of the fact that the severity appeals have been successful it is open to the Tribunal to order the appeal deposits refunded.

189. However as submissions have not been received on that order , or any other appropriate order, no such order will be made for a period of 7 days from the date of this decision to enable the respondent to make an application for forfeiture of the whole or part of those deposits. If no such written application is made within that period of 7 days then, without further order, the appeal deposits will be refunded. If such an application is made the appellants will be asked to respond.