

**DECISION ON AN INTERNAL REVIEW APPLICATION UNDER
SECTION 91 OF THE *GREYHOUND RACING ACT 2017***

Matter for determination	Decision dated 13 September 2021 of Mr Wade Birch, Director Race Day Operations & Integrity (Chief Steward), Mr Matthew Tutt, Director Compliance, Policy & Legal and Mr David OShannessy, Chief Inspector under section 59 of the <i>Greyhound Racing Act 2017</i> to disqualify Mr Wolfgang Kraeft for 9 months, with 3 months served concurrently with a disqualification imposed on Mr Kraeft on 8 September 2021, effective 13 September 2021.
Internal review decision date	28 January 2022
Internal review decision by	Commissioner Chris Wheeler Commissioner Peter Collins
Internal review decision summary	Vary the decision of 13 September 2021 of Mr Wade Birch, Director Race Day Operations & Integrity (Chief Steward), Mr Matthew Tutt, Director Compliance, Policy & Legal and Mr David OShannessy, Chief Inspector under section 59 of the <i>Greyhound Racing Act 2017</i> and impose the following penalty: To disqualify Mr Wolfgang Kraeft for 8 months, to be served concurrently with the disqualification that was imposed on Mr Kraeft on 8 September 2021 for an unrelated matter.

REASONS FOR DECISION

1. These are the reasons for decision following an application by Mr Wolfgang Kraeft (“**Mr Kraeft**”) for internal review under the *Greyhound Racing Act 2017* (“**Act**”) of a decision of Commission staff . That decision was to disqualify Mr Kraeft’s registrations for 9 months, with 3 months served concurrently with a disqualification imposed on Mr Kraeft for an unrelated matter on 8 September 2021, effective 13 September 2021.
2. This is a reviewable decision within the meaning of section 91(1) of the Act. As we were not substantially involved in making the reviewable decision, we have dealt with this application.
3. Under section 91(7) of the Act, an internal reviewer is empowered to:
 - Confirm the reviewable decision the subject of the application; or
 - Vary the reviewable decision; or
 - Revoke the reviewable decision.

Background

4. Mr Kraeft was charged with a breach of Rule 86(q) of the GWIC Greyhound Racing Rules (“**Rules**”), which reads:

Rule 86(q)

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

- (q) 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-

5. The particulars of the charge were:

1. That on 5 August 2021, Mr Kraeft engaged in conduct prejudicial to the control and promotion of greyhound racing by travelling to the Dapto Greyhound Club from a residence located in a Local Government Area of Concern for the purposes of participating in greyhound activities in contravention of the NSW Government Public Health Orders.
6. Mr Kraeft was invited to participate in a hearing in relation to the matter on 10 September 2021 at 1:45pm. A hearing proceeded on 13 September 2021.
7. At the hearing on 13 September 2021 Mr Kraeft admitted the charge and made submissions on his own behalf. The decision makers had regard to Mr Kraeft's long standing participation in the industry, Mr Kraeft's guilty plea and his disciplinary history.
8. Having considered the evidence and submissions, on 13 September 2021 the decision makers issued the Disciplinary Decision imposing a disqualification of 9 months. The decision makers determined that 3 months of this penalty be served concurrently with the period of disqualification that Mr Kraeft was serving, as imposed on 9 September 2021.

The internal review application

9. On 11 October 2021, Mr Kraeft's representative lodged an application for internal review on his behalf.
10. The internal review has been conducted on the papers in accordance with Mr Kraeft's request.
11. The submissions of Mr Kraeft's representative go to the severity of the penalty imposed.
12. Mr Kraeft's representative submitted that the penalty is excessively disproportionate when considering the details of the matter and the charges.
13. Mr Kraeft's representative requested that the internal reviewers consider:
 - a. That Mr Kraeft pleaded guilty to the charge and is extremely remorseful for his actions;
 - b. That Mr Kraeft has no access to internet and/or the GWIC website, which placed him at a significant disadvantage in terms of being aware of the protocols in place. It was also submitted that Mr Kraeft has a significant impairment in terms of using computer technology;

- c. That Mr Kraeft had had a conversation by an administrative employee of the Dapto Track the day prior to travelling in which she did not advise him against attending despite being aware of his residential address and that he resided in an “LGA of concern”;
14. Mr Kraeft’s representative asked the internal reviewers to consider the Commission’s matter of McKinley, dated 30 September 2021, which was a somewhat comparable matter to Mr Kraeft’s matter, noting:
 - a. That Mr McKinley faced three offences compared to Mr Kraeft’s one;
 - b. That Mr McKinley had prior knowledge of the protocols where Mr Kraeft did not;
 - c. That Mr McKinley’s attitude towards a steward further aggravated his matter;
 - d. That Mr McKinley’s matter resulted in a 3-month suspension.
 15. Mr Kraeft’s representative also referred to the matters of Carmody and Thompson which both resulted in a fine of \$18,750 in each instance. It was submitted that these penalties are significantly less than that imposed upon Mr Kraeft.
 16. Mr Kraeft’s representative submitted that Mr Kraeft’s penalty is significantly disproportionate when considered in light of previous matters.

Decision

17. As the internal reviewers, we have had regard to all the material provided as part of the Commission’s original Inquiry, together with the documentation provided by Mr Kraeft’s representative as part of the internal review application.
18. We find that the outlined conduct occurred, in breach of the Greyhound Racing Rules.
19. By his plea of guilty, Mr Kraeft has accepted the charge against him. Mr Kraeft’s representatives submit that the penalty imposed upon Mr Kraeft is disproportionate to the penalties imposed in other similar matters and that Mr Kraeft has mitigating factors that were not appropriately considered by the Steward’s Inquiry on 13 September 2021.
20. With respect to our decision, we note the guidance provided by the Racing Appeals Panel decision of John Sharah (“*Sharah*”),¹ to which we also had regard in the matter of *McKinley*². In *Sharah*, the participant obtained a test but did not self-isolate whilst awaiting the result and attended the racecourse for trackwork prior to obtaining the test result.
21. The principles that the Racing Appeals Panel relied on in *Sharah* can be summarised as follows:
 - That NSW Health Orders are necessary to protect individual and public health

¹ NSW Racing Appeal Panel 2 September 2021 – John Sharah.

² Greyhound Welfare and Integrity Commission 30 September 2021 - Glen McKinley.

- That compliance with NSW Health Orders and Covid protocols established by the relevant Controlling Body, in this instance the Commission, are necessary to protect the continued operation of the greyhound racing industry;
 - That a breach of NSW Health Orders or Covid protocols constitutes serious offending under the Rules,
 - That a breach of NSW Health Orders or Covid protocols will be subject to penalty, regardless of the effect of that breach.
22. These principles have been applied in other Racing NSW decisions including *Thompson* and *Carmody*,³ and by the Commission in *McKinley*.
23. Relevantly, in both *Thompson* and *Carmody*, Stewards were satisfied that the breaches in question were not intentional or a result of wilful disregard of the policies but that the trainers had failed to act diligently by informing themselves of the applicable policies of Racing NSW and the NSW Public Health Orders. This was also the case in *McKinley*.
24. With respect to Mr Kraeft's lack of access to the internet, we note that information available on the GWIC and other websites is available in other forms that a participant, acting diligently, would have been able to utilise, such as contacting the Controlling Body via telephone, or seeking advice from other authorities via telephone.
25. We have considered the submissions from Mr Kraeft's representative to the effect that the penalty imposed on Mr Kraeft was disproportionate in comparison to that imposed in the matter of *McKinley*, where a suspension was imposed. However, Mr Kraeft is currently subject to a disqualification imposed in another, unrelated matter, which was a factor when considering the appropriate starting point to be a disqualification and not a suspension, even though the disqualification for the unrelated matter was imposed after the offending conduct for this matter. In the present matter, Mr Kraeft's conduct was also aggravated by the fact he lived in a Local Government Area ("**LGA**") of concern which required all residents to remain with that LGA or within a short distance from their LGA's. Mr Kraeft travelled from outside his LGA of concern to an LGA that was not subject to the more severe restrictions.
26. We find that the original penalty was too high when viewed in total with Mr Kraeft's other disqualification. In all the circumstances, however, we are of the view that a period of disqualification remains appropriate, for the reasons outlined above.
27. In accordance with section 91(7)(a) of the Act, having reviewed all of the material and having conducted the internal review on the papers as elected by Mr Kraeft, we vary the original decision made on 13 September 2021 and impose the following penalty:

³ 2 Racing NSW decision of Thompson – 14 September 2021; Racing NSW decision of Carmody – 14 September 2021.

That Mr Kraeft be subject to an 8-month disqualification, to be served concurrently with the disqualification that was imposed on Mr Kraeft on 8 September 2021 for an unrelated matter.

28. The net effect of the penalty varied on review also takes into account the time Mr Kraeft has served under interim suspension, being a period from 6 August 2021. As such, the 8-month disqualification will be in place until 11:59pm 5 April 2022. Mr Kraeft will be eligible to reapply for a licence with effect from 6 April 2022.

Commissioner Peter Collins

Commissioner Chris Wheeler PSM

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