

**RACING APPEALS
TRIBUNAL
NEW SOUTH WALES**

TRIBUNAL MR D B ARMATI

EX TEMPORE DECISION

THURSDAY 24 NOVEMBER 2022

APPELLANT JESSICA WINDIATE

RESPONDENT GWIC

**Appeal against GWIC decision to impose two (2)
conditions on the appellant's certificate of
registration under the Greyhound Racing Act
2017, s49(4)**

DECISION:

- 1. Leave to appeal out of time granted by consent**
- 2. Appeal upheld**
- 3. Appeal deposit refunded**

1. The appellant, licensed trainer and breeder Ms Jessica Windiate, appeals against the decision of the Greyhound Welfare Integrity Commission (GWIC) of 8 June 2022 to impose two conditions on her certificate of registration. They are:

“1. Breeding condition. You must not cause any greyhound owned by you or in your custody to be served either naturally or by artificial insemination without the prior written approval of the Commission. If you are aware of any breeding females currently in your care that are currently in whelp, please advise the Commission as soon as possible.

2. Condition on incoming greyhounds. You must not accept any greyhounds into your care from other participants for any purpose, including for racing, breeding, rearing and/or whelping.”

2. The appellant, interestingly, when confronted with those conditions in June, consented to them, but tells the Tribunal today she felt a compulsion to do so and subsequently appealed, out of time. Leave was, by consent, granted to appeal out of time.

3. The evidence has comprised a substantial brief of some 150 pages which contains a considerable amount of correspondence to and from and a number of records of the operation of the business. The appellant has given evidence.

4. The statutory scheme which governs the decision to be made is found in the Greyhound Racing Act 2017, s 49 subsection (4) which gives the Commission authority to impose conditions on the registration of a greyhound racing participant. It may do so at any time or any later time. Of course, the condition may, consistent with matters of that nature, be varied or revoked by the Commission. Not surprisingly, s 44 says that the appellant must comply with any conditions to which her registration is subject.

5. The motivation for the imposition of the conditions was found in s 11 of the Greyhound Racing Act, which provides a duty on the Commission, and therefore on the Tribunal today, to promote and protect the welfare of greyhounds, safeguard the integrity of racing and betting and maintain public confidence in the industry.

6. The gravamen of the concerns of the respondent are threefold: welfare, in that the appellant could not be able to maintain the number of greyhounds she wishes to maintain; failure to maintain proper record-keeping; and the potential for the appellant to be incapacitated and therefore not able to operate the business.

7. The facts are these, that the actual date of first registration and continued registration of the appellant remains uncertain on the evidence the Tribunal has. It is possible that she became an owner trainer in March 2012 until June 2013 and granted registration as a public trainer and breeder in June 2021. The appellant says that in fact she has been an owner trainer for more than 10 years and, as the Tribunal understood it, a public trainer in 2021 would be an inaccurate statement. In any event, she has the appropriate registrations now.

8. What is not established is a lengthy period of time operating in her own name such that she has been able to demonstrate that the three concerns of the respondent have been addressed in the sense of being able to do so over a long period of time.

9. The appellant operates what appears to be on the evidence the largest breeding operation in New South Wales. The evidence appears to establish that another trainer, a Mr Bell, who also is a public trainer as much as a breeder, has 147 greyhounds on his property. The appellant at one stage had 160. There is no other evidence available to the Tribunal at this hearing on size of other breeding kennels to put the appellant's operation in greater context.

10. The appellant is basically operating a commercial business for breeding purposes. That is, that each of the stages of breeding, of rearing, of breaking in is engaged in and then the greyhounds are on-sold. In addition, greyhounds are reared on behalf of other owners.

11. The appellant's operation has been depicted in photographs and, with respect to the appellant and allowing for the Tribunal's limited knowledge of such matters, appears to be a superb facility. The respondent does not dispute the quality of that facility, it is not in issue.

12. The appellant has had up to three casual employees and, in addition, for herself, for a long period of time, worked part-time in this business and part-time elsewhere. Her de facto partner, Mr Toby Weekes, who was also an owner of the greyhounds jointly, and who also had a number of the greyhounds registered in his name, also worked in the business on a part-time basis, but also elsewhere.

13. The Tribunal briefly notes that Mr Weekes was the subject of a 6-month disqualification by the Tribunal as presently constituted on 20 April 2022 for a welfare issue involving failure to provide veterinary care to a greyhound.

14. It is relevant, but only touched on briefly, because the evidence does not establish that the appellant here was involved in that matter, nor is Mr Weekes able to be involved in the near future because he is currently a warned off person, as the Tribunal understands it, he having completed his

period of disqualification, because he has been charged with various criminal matters. Those do not require examination here.

15. The effect of that is that Mr Weekes is not able to assist in the operation of the business for the appellant. He is, however, exempted to reside at the premises but, in plain terms, have nothing to do with the appellant's operation.

16. Up until the time that Mr Weekes was excluded and each of them working part-time, with part-time employees, they had approximately 160 greyhounds on the property. As of 14 December 2021, they came under notice as a result of a kennel inspection, the inspectors noted to have assessed the kennels themselves, as the Tribunal as described them, as being proper facilities and a well-run facility. But also there was considerable concern about record-keeping. That does not require detailed examination, it is covered in considerable detail in the facts.

17. A number of greyhounds were not able to be identified. A number of them were not at the property whereas the returns said they were. Returns required when greyhounds are moved about, die, etc were not being kept up to date. And the appellant's second limb of concern, as the Tribunal described it, was activated.

18. The respondent's concern on record-keeping is that they are simply going to be too many greyhounds on the property for the appellant to be able to maintain her records properly, particularly as Mr Weekes cannot assist her. There is no evidence that the remaining casual employees, of whom there are three, plus a proposal to have a full-time employee if this appeal is upheld, will be involved in the record-keeping.

19. The appellant says that in basically accepting the records were not correct, she has been in contact with officers of the respondent as a result of which, with their assistance, she has been able to update all her records and bring them up to date and she gives evidence today that they are in order. There is no contrary evidence to indicate that since 17 May, when there was a last attendance at the property and greyhounds were scanned and some of the issues just referred to were identified, there is any present concern about current failure of record-keeping. Record-keeping is critical to integrity of the industry and has a side effect of welfare in ensuring that all greyhounds can be accounted for.

20. The appellant had expressed concerns that the GWIC records did not assist her in maintaining compliance but that issue did not arise in her evidence today.

21. The appellant, on the totality of her evidence and on that particular discrete point, satisfies the Tribunal that she will maintain records and is

maintaining records that are required by the regulator to an appropriate standard. Of course, she carries no burden and it is up to the respondent to satisfy the Tribunal that her record-keeping would not be adequate, and it does not do so.

22. The next and critical issue is her capacity, with the help of casual employees and a potential full-time employee, to operate the facility to ensure the welfare of the greyhounds and thus compliance with s 11 of the Act and without the burden of the conditions, which she previously agreed to, on her operation.

23. The evidence is that other than the issue of Mr Weekes' failure, dealt with by the Tribunal, and the failure of a former casual employee, Mr Prest, there have been no other actual welfare concerns in the period of time of this operation. Briefly dealing with Mr Prest, and he was dismissed as a result of his conduct, he was engaged within a very short space of time in two aspects of welfare concern involving injuries to greyhounds and he was involved in placing the greyhound, that Mr Weekes was found to have failed in his duty, in with other greyhounds when he should not have done so. So, essentially, whilst Mr Weekes was found to have failed to provide veterinary care, he was not and the appellant was not responsible for the actual failure that caused the injury and subsequent euthanasia from that injury of that particular greyhound. Prest also failed on another occasion on safety of a greyhound. So, with prest gone there are no other welfare concerns to be analysed which would require concern, in the Tribunal's opinion, about the capacity of the appellant to operate the business.

24. The concerns of the respondent essentially fall down to potential risk, and potential risk that this appellant will not be able to mitigate based upon, as submitted, the extraordinarily large number of greyhounds. There certainly are an extraordinarily large number of greyhounds. Two things: one, it has not been a problem when they were up to 160; it has not been a problem where, as a result of the imposition of the conditions and compliance, the numbers have dropped to probably fewer than 100 as of today, in any actual welfare issues arising.

25. The appellant has given evidence which, when the Tribunal considers the excellent nature of her operation, the lack of prior problems with it and a demonstration to the Tribunal of an understanding of how to operate a commercial business such as this, and has operated the business at a large size in the past with only that one issue, for which she was not responsible, that in fact the potential for that risk has been, in the Tribunal's opinion, substantially mitigated.

26. As to the third limb of the appellant potentially becoming incapacitated – for example, by illness – there is the fact that she is not operating this complex on her own, there are others, and that the respondent has the

capacity, under the Act, to come in at any time, whether by way of kennel inspection or welfare operation, to ensure that things are done properly. It is not as if, if these conditions are removed and the appellant becomes incapacitated, there will naturally flow from that welfare concerns for the greyhounds in this commercial operation.

27. As to whether a number of up to 160 or, indeed, as permitted by Council under its planning laws a ceiling of 200 is to be there, or some lesser number, the totality of the evidence so far as this appellant is concerned does not satisfy the Tribunal that there should be some consideration of a limit of 80 to 100 as being appropriate for one registered breeder in a commercial operation. The evidence simply does not go far enough to establish that.

28. There is a further factor which gives the Tribunal comfort and that is that the respondent has adduced no precedent cases where it has been necessary in the past to impose these types of conditions, and nor has it been considered necessary to come in on a welfare basis when those conditions have been imposed.

29. Just dealing with the conditions since they were imposed on 8 June 2022, the Tribunal notes that one application was made for breeding, which was refused, but a second application involving breeding with three greyhounds was approved. There is no evidence that as a result of that approval for those three to breed that any welfare concerns have been identified. As to the part of the condition about advising the Commission as to what the status was on 8 June 2022, there is no evidence and it does not need to be examined.

30. As to the second condition, the appellant is not racing greyhounds so really the focus would be on breeding, rearing and/or whelping, and there is no evidence of any concerns that have arisen since that condition was imposed or, indeed, is there any evidence of any concerns prior to it being imposed.

31. The totality of all that material is this: the burden is on the Commission, the respondent, to satisfy the Tribunal that it should exercise the powers under s 49(4) as outlined above. The Commission fails to do so.

32. The appellant, in other words – and there is no burden upon her – satisfies the Tribunal that she is well able and well understanding of how to operate this business, that there have not been concerns in the past, and that despite the potential for risk, which motivates the respondent at all times, and properly so, there have been no such potentials identified other than the extraordinarily large number of greyhounds.

33. In those circumstances, the Tribunal declines to impose the conditions prescribed by s 49(4) of the Act and the appeal is upheld.

34. The last issue for determination is the appeal deposit.

35. The Tribunal's function is to order it forfeited or refunded in whole or in part. This was an appeal against the imposition of conditions. That appeal has been completely successful and the decision set aside.

36. The Tribunal orders the appeal deposit refunded.