

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

Matter for determination	Decision dated 30 May 2023 of decision makers Peter Phillips, Steward, Kevin Adams, Senior Steward and Sam Woolaston, Steward
Internal review decision date	3 July 2023
Internal review decision by	Mr Brenton (Alby) Taylor Chief Commissioner, GWIC
Internal review decision summary	Confirm the penalty imposed as that of a suspension of 12 weeks.

REASONS FOR DECISION

1. These are the reasons for the decision following an application by Mr Peter Parker (**Mr Parker**) for internal review under the *Greyhound Racing Act 2017 (Act)* of a Commission decision. That decision was to find Mr Parker guilty of a breach of Rule 141(1)(a) of the Greyhound Racing Rules. The disciplinary action imposed was recorded as “*a suspension of three months, to commence midnight Saturday 3 June 2023 and end midnight Thursday 3 August 2023*”.
2. This is a reviewable decision within the meaning of section 91(1) of the Act. I confirm I was not involved in making the original decision, and I am a qualified person in accordance with section 91(5) of the Act. I lastly confirm I have dealt with this application for review.
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 Parker was a registered Owner Trainer within the greyhound racing industry at all material times.
5. On 7 March 2023 Mr Parker presented the greyhound ‘Cahya’ (**Greyhound**) to race at Temora. Prior to competing, the Greyhound was selected for a random pre-race swab. Upon analysis that swab was found to contain a prohibited substance, being theobromine. Theobromine is a prohibited substance pursuant to Rule 137 of the Greyhound Racing Rules.
6. On 17 May 2023 Mr Parker was issued with a Notice of Charge and Proposed Disciplinary Action (“**Notice**”) charging him with a breach of Rule 141(1)(a). The rule reads:

Rule 141(1)(a), Rules

- (1) The owner, trainer or other person in charge of a greyhound
 a. nominated to compete in an Event;

...

must present the greyhound free of any prohibited substance.

...

- (3) The owner, trainer or person in charge of a greyhound presented contrary to subrule (1) of this rule shall be guilty of an offence.

7. Mr Parker attended a hearing on 30 May 2023 with Stewards in company with his legal representative. At the hearing, Mr Parker entered a plea of guilty to the charge and made written and oral submissions in respect of that plea.
8. The Stewards formally found Mr Parker guilty of the charge and determined to impose a period of suspension. The period of suspension as reflected in the disciplinary action decision records that a suspension of three months would be imposed, *“to commence midnight Saturday 3 June 2023 and end midnight Thursday 3 August 2023”*.

Internal Review Application

9. On 5 June 2023 Mr Parker made an application for an internal review of the decision made by the Stewards. Mr Parker also requested a stay of the decision pending the finalisation of the internal review. On 6 June 2023 I granted a stay of the decision.
10. Mr Parker seeks an internal review in respect of the penalty imposed. The internal review has been conducted on the papers.
11. As the internal reviewer, I have had regard to all the evidence considered by the Stewards, together with the internal review materials provided by Mr Parker’s representative. The material I have had reference to includes:
- Notice of Charge and Proposed Disciplinary Action dated 17 May 2023, together with a Brief of Evidence;
 - Written submissions made by Mr Parker’s legal representative dated 27 May 2023;
 - Transcript of the hearing conducted between Stewards, Mr Parker and his legal representative on 30 May 2023;
 - Notice of Disciplinary Action dated 31 May 2023;
 - Disciplinary Action Decision dated 30 May 2023;
 - Application for Internal Review dated 5 June 2023;
 - Written submissions made by Mr Parker’s legal representative dated 5 June 2023, together with a number of decisions from both the Racing Appeals Tribunal and the High Court of Australia;
 - References written to support Mr Parker from Mr Fisher and Mr Adams;
 - Photographic evidence provided 5 June 2023;
 - The Commission’s Penalty Guidelines; and

- The registration and disciplinary history of Mr Parker.

12. The Disciplinary Action Decision from GWIC dated 30 May 2023 is imperfect, in that the disciplinary action taken states:

“To issue a suspension of three months, to commence midnight Saturday 3 June 2023 and end Midnight Thursday 3 August 2023.”

13. Clearly a ‘*suspension of three months*’ does not align with a period ‘*commencing on the 3 June 2023 and ending on the 3 August 2023*’ (which is a period of two months). Whilst one could refer this matter back to the Stewards for clarification, I note the significant submissions made by Mr Parker’s legal representative and in particular, the assertion that the Stewards failed to expose “their reasoning process” to an extent that a court would be able to consider whether any error of law existed. I am referred to the decision of *Wingfoot*¹ in this regard.
14. For expediency, I think it is more convenient for me to simply consider this matter de novo based on the papers and the significant submissions of Mr Parker’s legal representative, Mr Cleverley. Whilst I have considered all the issues raised by Mr Cleverley in his submission dated 5 June 2023, I will only address the points which I believe to be paramount in reviewing this matter for Mr Parker.

Consideration of submissions

15. Before outlining my reasons, I turn to the written submissions in support of the internal review application, made by Mr Cleverley on behalf of Mr Parker and dated 5 June 2023.

Submission One: Stewards failed to follow GWIC guidelines

16. The submission that the Stewards failed to follow GWICs guidelines, either by failing to consider or placing inappropriate weight on Mr Parker’s subjective circumstances is one that I have not considered, on the basis that any issue is rectified by me considering the matter de novo. Consideration to Mr Parker’s subjective circumstances is outlined further below.

Submission Two: Unlawful deployment of deterrence as a reason

17. The submission that the Stewards unlawfully cited deterrence as a reason for their decision is not accepted. Recent decisions by the Racing Appeals Tribunal have acknowledged that deterrence (both specific and general) is a factor to consider when determining an appropriate penalty.² Indeed, the High Court recently re-affirmed that the purpose of a civil penalty is primarily, if not solely, the promotion of the public interest in compliance with the Rules through deterrence of further contraventions.³ Further commentary about the role of deterrence in respect of this decision is outlined below.

¹ *Wingfoot Australia Partners Pty Ltd v Kocak* [2013] HCA 43; 252 CLR 480.

² Racing Appeals Tribunal decision of Mr Jason Mackay delivered 1 May 2023 at [104]; Racing Appeals Tribunal decision of Ms Charmaine Roberts delivered 7 December 2022 at [35].

³ *Australian Building and Construction Commissioner v Pattinson* [2002] HCA 13 per Kiefel CJ, Gageler, Keane, Gordon, Steward and Gleeson JJ at [9].

Submission Three: The Decision was defective

18. I have had consideration of the matter of *Wingfoot*⁴, referred to in the submissions of Mr Cleverley. The submission made suggesting the Decision was defective is one that I have given consideration. I am of the view that any issue regarding the original decision is rectified by me considering this matter de novo. As such no further analysis is entered into in respect of that submission.

Submissions Four and Five: Stewards failed to give any or enough weight to the references submitted and failed to give enough weight to the preventative measures

19. The submissions that the Stewards failed to appropriately apportion weight are ones that I have considered. However, I am of the view that any issue regarding the original decision is rectified by me considering the matter de novo. Further consideration of these references is outlined below.

Submission Six: Stewards failed to give enough weight to Mr Parker's submissions in respect of financial hardship

20. The submission that the Stewards failed to give appropriate weight to Mr Parker's submissions in respect of the financial impact that a period of suspension may have on him is one that I have considered. However, I am of the view that any issue regarding the original decision is rectified by me considering the matter de novo. Further consideration of this submission is outlined below.

Submission Seven: The penalty is excessive and unfair

21. The submission that the penalty is excessive and unfair is not accepted. Further analysis of the appropriate penalty will be undertaken below.

Decision**Relevant considerations**

22. A breach of Rule 141 (as outlined at [6] above) is an absolute liability offence. In competitive sport, both human and animal, various substances are prohibited to ensure a fair playing field, protect the health and welfare of athletes (including canine athletes), and to protect the sanctity of the sporting contest.

23. In human sport, it is well recognised that the presence of a prohibited substance or its metabolites or markers in an athlete's bodily specimen will constitute an antidoping rule violation, and it is an athlete's personal duty to ensure that no prohibited substance enters their body. In the case of greyhound racing, this duty of course falls to the owner or trainer who presents the dog to race. It is thus the owner or trainer who is responsible for a breach of the Greyhound Racing Rules if any prohibited substance, or its metabolites or markers are

⁴ *Wingfoot Australia Partners Pty Ltd v Kocak* [2013] HCA 43; 252 CLR 480.

found to be present in their greyhound's bodily specimens when the greyhound is presented to race, 'in competition'.⁵

24. The absolute liability nature of Rule 141 creates a position where an owner or trainer is in automatic violation of the rule when a prohibited substance is found in a greyhound's sample. There is no need to prove intention, knowledge, negligence or any other variety of fault in order to establish a breach of Rule 141.
25. The justification for this approach is that when a prohibited substance is present in a canine athlete's body, that greyhound may have an unfair advantage against "clean" greyhounds. Of course, the reverse circumstance applies where a prohibited or banned substance is introduced into the greyhound's system to inhibit a greyhound's performance, either to improve the chances for another greyhound to win, or to improve the betting odds of the 'doped' greyhound, in a future race, where it enters the competition 'clean' from any inhibiting substance. In both circumstances, the question of how the substance may have entered the greyhound's body then becomes irrelevant.
26. The concept of absolute and strict liability offences has long been the subject of discussion and conjecture in human sport and was considered by the Court of Arbitration of Sport in *Quigley v UIT*⁶ which provided the rationale that:

"[14] It is true that a strict liability test is likely in some sense to be unfair in an individual case...where the athlete may have taken a medication as the result of mislabelling or faulty advice for which he or she is not responsible...but it is also in some sense unfair for an athlete to get food poisoning on the eve of an important competition. Yet in neither case will the rules of competition be altered due to the unfairness. Just as the competition will not be postponed to await an athlete's recovery, so the prohibition of banned substances will not be lifted in recognition of its accidental absorption..."
27. In human sport it has long been recognised that in cases involving anti-doping rule violations it will be very difficult, if not impossible, to prove that the athlete involved acted with fault or negligence. Athletes would simply say that they have no knowledge or insight into how the substance got into their bodies. If this was to be accepted as an excuse or explanation, then these athletes would go unpunished, rendering anti-doping rules unenforceable and useless.
28. The principle of absolute liability creates a situation or a positive obligation whereby athletes must do everything possible to make sure they are clear of prohibited and banned substances in accordance with the anti-doping rules of their sport. To put it simply, the onus is upon an athlete to know the rules of their sport and he or she must implement necessary measures to make sure that they do not allow prohibited substances to enter their bodies. When considering this obligation in the context of greyhound racing, it is clear that the obligation rests with the greyhound's owner or trainer.
29. Having said that, a doping rule violation does not automatically lead to a punishment or sanction. It may be the case that an athlete will be able to avoid or reduce a sanction, if he

⁵ Or the detection of any permanently banned prohibited substances whether detected in or out of competition: see Rule 139 of the Greyhound Racing Rules.

⁶ *USA Shooting & Q. v Union Internationale de Tir (UIT)*, Arbitration CAS 94/129.

or she can establish to the satisfaction of a decision maker how the substance entered their system and can demonstrate that they were not at fault or, in certain circumstances, did not intend to enhance or inhibit their sporting performance. In greyhound racing, a participant who is able to establish blamelessness is said to fall into Category Three of the McDonough principles, and may face a nominal penalty, or even no penalty at all. Again in greyhound racing, establishing such facts falls to the person charged with the breach, usually the trainer of the greyhound. Where an owner or trainer can provide no insight as to how the violation occurred, then no concession can be provided for matters of unknown circumstance. This is the most common occurrence, whereby there is no evidence of administration, but no ability to establish blamelessness. This is classified as Category Two of the McDonough principles.

30. Although the concept of absolute liability is severe and exacting, it is the only viable option available to regulators such as GWIC, to combat doping and ensure compliance with the rules of the sport. Doping is a significant challenge for greyhound racing, and extreme measures must be taken to overcome and resolve this problem and ensure the integrity and continuance of the industry.

31. What then flows from this is as follows:

- Mr Parker presented the greyhound Cahya to compete in race 11 at Temora on 7 March 2023 (**the Event**).
- Prior to the Event, a urine sample was taken from Cahya by a registered official of GWIC in accordance with standard protocols;
- The Greyhound then competed and placed third;
- The pre-Event swab revealed the presence of theobromine.
- Theobromine is a prohibited substance under Rule 137 of the GWIC Greyhound Racing Rules.
- At a hearing conducted by GWIC Officials on the 30 May 2023, Parker and his legal representative entered a plea of guilty and made verbal submissions and tendered written submissions.

Penalty

32. With Mr Parker having entered a plea of guilty, and as this violation is an absolute liability offence, the question then turns to whether the participant is able to provide a satisfactory reason as to how the prohibited substance entered the greyhound's system, such that Mr Parker is able to demonstrate that he was not at fault or significant fault or in certain circumstances did not intend to enhance or inhibit the sporting performance of the greyhound.

33. Accordingly, the question then turns to penalty. The GWIC Penalty Guidelines (dated July 2022) provide advice to participants about the penalties that may be imposed where a disciplinary action offence is proven. For prohibited substance penalties, the guidelines distinguish three categories. Theobromine is a substance that falls into Category Two, which includes substances that are stimulants, depressants, anti-depressants, and bronchodilators.

34. The Penalty Guidelines outline that a minimum starting point following the detection of a Category Two substance is a four (4) month suspension. Mr Parker has a previous rule violation recorded for a Category Two prohibited substance following the detection of caffeine and its metabolites theophylline, paraxanthine and theobromine in three greyhounds across five race meetings between 27 June 2017 and 31 July 2017. This recorded rule violation means Mr Parker is not entitled to a further 25% reduction in penalty in accordance with the second limb of the GWIC Penalty Guidelines. As this violation occurred in 2017, which was some six (6) years ago, I have decided to treat this matter as a "First Offence" when considering the suggested minimum starting point regarding penalty.
35. For that reason, my starting point for penalty is that of a four (4) month suspension.
36. I note the GWIC Penalty Guidelines provide for a reduction of 25% to be applied to the minimum starting point for an early guilty plea. Mr Parker by entering a guilty plea at the first opportunity, is entitled to this discount. This brings the penalty to a period of a three (3) month suspension.
37. I also recognise that Mr Parker's period of suspension for the above mentioned offences ended on 3 July 2018, and he served a further period of disqualification arising from conduct relating to the detection of the prohibited substances. This period of disqualification ended on 1 April 2019 and Mr Parker became relicensed on 24 July 2019. This is less than four (4) years ago and Mr Parker is again facing a rule violation of a similar nature; again for a metabolite of caffeine, one of the prohibited substances detected in 2017.
38. Punishment by definition, is the imposition of an undesirable or unpleasant outcome upon an individual, meted out by an authority as a response and deterrent to a particular action or behaviour that is deemed undesirable or unacceptable. Moreover, the imposition of a penalty upon a person who has offended is justified on a number of bases including:
- (a) to ensure the person is adequately punished for the offence;
 - (b) to prevent violations by deterring the person concerned and deterring other persons from committing similar offences;
 - (c) to protect the community from the person;
 - (d) to promote the rehabilitation of the person;
 - (e) to make the person accountable for his or her actions;
 - (f) to denounce the conduct of the person; and
 - (g) to recognise the harm done to any victim or the community more generally.⁷
39. For the greyhound racing industry an additional basis and consideration is to ensure the integrity of greyhound racing and to provide for the protection and promotion of the welfare of the greyhound.

⁷ *Crimes (Sentencing Procedure) Act 1999* (NSW), s3A.

40. I note the submissions surrounding penalty and 'deterrence'. The NSW Government no doubt considered all of the above impacts in authorising GWIC to impose penalties and sanctions.
41. In considering the administration of civil penalties by regulators, the High Court in *Australian Building and Construction Commissioner v Pattinson*⁸ held that the object of civil penalties is entirely protective, in that they are aimed at promoting compliance through general and specific deterrence to promote the public interest in compliance. Indeed, the Court went further stating that a regulator is at liberty to impose the maximum penalty for less serious contraventions, if it is necessary, to deter further contraventions by the contravenor or by other members of the industry. At present the prevalence of greyhounds testing positive to prohibited and banned substances is a matter of significant concern and something which must be addressed and deterred across the industry. It is with all of these considerations in mind that I further consider penalty in this matter.
42. Mr Parker has engaged in speculation as to how the prohibited substance might have entered the greyhound's system. The submissions establish that Mr Parker is unable to provide any satisfactory reason as to how the prohibited substance entered the greyhound's system. Moreover, Mr Parker cannot demonstrate that he was not at fault or significant fault or in certain circumstances did not intend to enhance or inhibit the sporting performance of the greyhound.
43. I note to the proposition made in the written submissions of 27 May 2023 made to the original decision makers, where it is stated that in relation to the prohibited substance:
- "...the means by which it made its way into the animal is wholly unknown as a question of fact and must therefore be left to theory."*
44. There are further submissions as to the quantum of the prohibited substance detected within the greyhound's sample. These submissions are irrelevant. Like humans, greyhounds metabolise substances differently. It is hearsay to speculate on the significance of the indiscretion and whether there was or was not any "*purposeful administration*", particularly when no reason or explanation has been offered as to what, how and when the greyhound ingested the prohibited substance. Regardless, these submissions do not reduce in any way, Mr Parker's culpability, once the prohibited substance was detected.
45. On the facts of this matter, Mr Parker is unable to establish that he is blameless. Accordingly, he must be assessed as a Category Two under the McDonough principles. Even if it is accepted that Mr Parker is somewhere between Category Two - being 'unable to establish' and Category Three - 'blameless', this does not, in fact, mean that a nominal penalty is appropriate. General deterrence is a factor that must be considered.
46. The next submission I consider is that of the preventative measures implemented by Mr Parker. In considering this submission and in accordance with the principle of absolute liability, whilst Mr Parker undertaking preventative measures is both appropriate and admirable, clearly in this instance those measures were inadequate. Regardless of the measures undertaken by Mr Parker to mitigate the risk of his greyhound consuming or

⁸ *Australian Building and Construction Commissioner v Pattinson* [2022] HCA 13.

otherwise assimilating a prohibited substance into its system, on this occasion those measures nonetheless failed.

47. The question as to *'what Mr Parker can do to prevent a reoccurrence of the contamination'* on a future occasion is not a matter for the GWIC Stewards to resolve during the course of this disciplinary matter. Mr Parker's animal husbandry practices are for him to determine and implement. The positive obligation falls upon him and him alone. Whilst Mr Parker might choose to consult with GWIC Officials as to their insights and advice for the future, seeking the advice of the Stewards during the initial hearing is irrelevant to the outcome of the consideration of this historical event. To put it simply, it is not for the Stewards to provide solutions to Mr Parker's failings.
48. I next note the references tendered to support Mr Parker's good character. These references in my view generally support the assessment that Mr Parker is, all things considered, a person of good character, and a person who supports his friends and contributes to his community. I would have been more impacted had these references outlined any contribution made by Mr Parker to the sport of greyhound racing outside of his own racing interests. Regardless, I acknowledge the recommendations of the referees.
49. I turn to the submission in respect of the financial impact any period of suspension will have upon Mr Parker. It is my view in general that the greater a participant's reliance on any revenue derived from racing greyhounds, the greater the safeguards which a participant should put in place to protect their revenue and minimise any risk or threat to that revenue.
50. A professional driver of a truck or taxi for example, has a higher need to maintain the currency of their driver's licence compared to a citizen who uses their driver's licence solely to commute from place to place. For an ordinary citizen, losing their driver's licence, and the right to drive, will constitute an inconvenience. For a professional driver, as described above, not only will that person suffer a personal inconvenience, but they will also inevitably lose access to whatever revenue or income they derive from operating as a professional driver. For this reason, it is my view that a professional driver should implement best practice to ensure they neither accrue demerit points nor commit any offence which places their driver's licence in jeopardy.
51. Accordingly, a professional greyhound trainer, or a person who relies heavily upon the income they derive from the sport, has a significantly greater need to ensure they have taken all possible steps to protect their entitlement to 'race'. Importantly, Mr Parker's submissions reflect the additional steps he intends to implement in the future to ensure such a breach does not occur.
52. I do not accept the almost contrary view, that a greater need or reliance on being able to participate in greyhound racing, creates a justification for a lesser penalty compared to a participant who is less reliant on the income which flows from racing. To impose any such test, in my view, would be to not impose sanctions across the sport equably across all participants. Accordingly, I reject the suggestion that a lesser penalty is appropriate due to Mr Parker's greater reliance on the sport to support his life and/or lifestyle.

53. When considering the subjective factors submitted on Mr Parker's behalf as warranting him some leniency, I return to consideration of his disciplinary history. Mr Parker's disciplinary history does not aggravate the penalty to be imposed. However, it must be considered. This is the sixth time Mr Parker has presented a greyhound to race from which a prohibited substance was detected. When considering the objective seriousness of this matter, one must have regard to specific deterrence, and appropriately so. On the basis of his disciplinary history, Mr Parker loses leniency in respect of his subjective factors outlined above that he might have otherwise been entitled to, if this was the first or second time a greyhound in his care had returned a positive result. Indeed, the Racing Appeals Tribunal has commented on the need for a participant with prior disciplinary matters has identified themselves as having a need for more specific deterrence as an objective consideration.⁹
54. Having regard for all these matters, I believe that in the totality of the circumstances an appropriate penalty is a suspension of twelve (12) weeks. I note that Mr Parker has already served a period of eight (8) days, being from 30 May 2023 to 6 June 2023. Accordingly, the penalty remaining is a period of ten (10) weeks and six (6) days, commencing today, 3 July 2023 and conclude at 11:59pm on 17 September 2023.
55. In accordance with section 91(7)(b) of the Act and having considered all of the evidence and submissions made by Mr Parker and on his behalf, I confirm the decision of the Stewards made 30 May 2023 and issue a period of suspension for twelve (12) weeks.



Brenton (Alby) Taylor, MPPA, Dip Law (LPAB), GDLP, GCAM, GAICD
Chief Commissioner

⁹ Racing Appeals Tribunal decision of Ms Charmaine Roberts delivered 7 December 2022 at [67] – [68].