

**GREYHOUND WELFARE & INTEGRITY COMMISSION
DISCIPLINARY ACTION DECISION**

Date of decision: 20 September 2023

Decision-makers: Chief Commissioner Brenton (Alby) Taylor and Commissioner Chris Wheeler

Name of relevant person Mr Zeke Kadir

Date: Various dates across 2018, 2019 and 2020

Rule no.: Rule 86B(1)(g), Rule 95(8)(i), Charge 86(l)

Charges:

Charge One (Rule 86B(1)(g))
On 16 December 2020 Mr Kadir was sentenced by the Penrith District Court for the offence of committing a serious act of cruelty on an animal (rabbit) with the intention of inflicting severe pain, causing death to the animal.

Charge Two (Rule 95(8)(i))
On 16 December 2020 Mr Kadir was sentenced by the Penrith District Court for the offence of keeping an animal to be used as a lure, with the nature of this offending being such that his continued participation or association with greyhound racing would be detrimental to the proper control and regulation of greyhound racing.

Charge Three (Rule 86(l))
That between the dates of 22 August 2018 and 7 May 2019 Mr Kadir, an unregistered person, acted and or held himself out as the trainer of a greyhound entitled or intended to compete in an Event.

Plea: Guilty to Charges One and Three

Disciplinary action taken:

Charge One:	A lifetime warning off and a fine of \$16,500.00;
Charge Two:	Withdrawn;
Charge Three:	A warning off for period of 5 years, with the period of warning off backdated to 18 September 2020 to take into account the period of time spent under interim penalty.

The periods of warning off are to be served concurrently.

DECISION:

Background

1. Mr Kadir was previously registered with Greyhound Racing New South Wales (“GRNSW”) as a greyhound racing participant in various capacities.
2. In February 2015, the RSPCA obtained footage and conducted an investigation into the use of animals for baiting purposes in the breaking in and training of greyhounds by Mr Kadir.
3. On 16 February 2015 GRNSW suspended Mr Kadir on an interim basis while the RSPCA investigation was undertaken. This suspension remained in place until 12 February 2016, when it was lifted by GRNSW. During that period of suspension, the registration held by Mr Kadir at that time lapsed. He has not held any type of registration within the greyhound racing industry since that time.
4. Between 22 August 2018 and 7 May 2019 Mr Kadir acted as, and held himself out as, the trainer of several greyhounds that were entitled or intended to compete in an Event. This conduct included Mr Kadir attending at the Richmond Greyhound Racing Club on multiple occasions where he trialed registered greyhounds on behalf of their respective owners.
5. On 7 May 2019, as part of their investigation into his activities, Commission Inspectors attended the registered premises of Mr Kadir and conducted an inspection of the property. During this inspection several items of evidence were seized, including the mobile telephone of Mr Kadir.
6. On 16 May 2019, Mr Kadir was issued with a notice of proposed disciplinary action in respect of his activities in trialing and training greyhounds whilst being unregistered to do so.
7. The Commission continued to conduct an investigation into this activity of Mr Kadir, and on 14 June 2019 Mr Kadir was issued a second notice of proposed disciplinary action that included further charges as a result of that investigation.
8. During the investigation undertaken by the Commission, the criminal proceedings brought against Mr Kadir were ongoing. Mr Kadir requested that the Commission adjourn its disciplinary proceedings until his criminal matter had been concluded. This request was granted.
9. On 18 September 2020 the Commission issued Mr Kadir with an interim warning off until such time that the disciplinary action could be considered. Mr Kadir has been subject to that interim warning off since that time.
10. Following a trial where he was found guilty by a jury, on 16 December 2020 Mr Kadir was sentenced by the Penrith District Court for two animal cruelty offences under the *Prevention of Cruelty to Animals Act 1998*.
11. In April 2022, the Commission issued a third notice of proposed disciplinary action which included charges stemming from the criminal conviction recorded against Mr Kadir.
12. In May 2023, a final notice of proposed disciplinary action was issued proposing the three charges outlined in this decision (“**final notice**”).

13. The Commission alleged that Mr Kadir had breached the following Greyhound Racing Rules (“Rules”):

Rule 86B(1)(g)

(1) A person who, in the opinion of the Stewards or Controlling Body-

...

(g) is convicted in any Court of an offence in relation to the use of, or having in their possession, any live animal, animal carcass or part of an animal in connection with greyhound training, education or preparation to race, or racing

shall be disqualified for a period of not less than 10 years and, in addition shall be fined a sum not exceeding such amount as specified in the relevant Act or Rules, unless there is a finding that a special circumstance exists, whereupon a penalty less than the minimum penalty

Rule 95(8)(i)

(1) A person found guilty of an offence pursuant to or a breach of these Rules shall, at the discretion of the Controlling Body or the Stewards be liable to any one of the combination of a-

- (a) fine not exceeding such amount as specified in the relevant Act or Rules for any one offence;
- (b) suspension;
- (c) disqualification;
- (d) cancellation or registration; or
- (e) warning off

as the Controlling Body or Stewards see fit.

...

(8) The Controlling Body may impose on a person any one or more of the penalties referred to in sub-rule (1) if-

- (a) the person has been convicted of an offence by any court and the Controlling Body is satisfied that
 - i. the nature of the offence is such that the person’s continued participation or association with greyhound racing would be detrimental to the proper control and regulation of greyhound racing; or
 - ii. the continued enjoyment of the rights and privileges conferred by the person would be prejudicial or contrary to the interests of the Controlling Body

the person fails to satisfy the Controlling Body, after being called on to do so, that he or she has no connection or association with any person who is disqualified.

Rule 86(I)

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

...

- (I) being a person who is not registered with a Controlling Body or an approved Registration Controlling Body as an owner or trainer, acts or holds himself out as the owner or trainer of a greyhound entitled or intended to compete in an Event.

14. The three charges ultimately issued against Mr Kadir in the final notice are summarised on the first two pages of this decision.
15. On 8 June 2023 the legal representative for Mr Kadir entered a plea of guilty with respect to Charges One and Three. The decision makers accepted those pleas in full satisfaction of the total charged conduct against Mr Kadir, and subsequently withdrew Charge Two.
16. On 30 June 2023 the legal representative for Mr Kadir made further written submissions in respect of the circumstances surrounding the offending conduct, and what the appropriate penalty should be.
17. On 6 September 2023 the legal representative for Mr Kadir made final written submissions as to why 'special circumstances' should be found in favour of his client to allow less than the mandatory penalty to be imposed.

Consideration of submissions

18. In determining the ultimate penalty in this matter, the decision makers had regard to all material collated as evidence during investigation into conduct by Mr Kadir since 2018, in addition to the written submissions provided on behalf of Mr Kadir by his legal representatives.
19. In respect of the written submissions provided on behalf of Mr Kadir, the decision makers found the following with respect of the particular submissions made therein.

Allegation of lack of procedural fairness

20. The submission was made that there had been a lack of procedural fairness awarded to Mr Kadir as a result of the final notice including a proposed penalty as a starting point for each of the three charges ultimately issued against him in that same notice.
21. Section 58 of the *Greyhound Racing Act 2017* ("**GRA**") provides the grounds for the Commission to take disciplinary action. Sub-section (3) relevantly requires that:

The Commission is not to take any disciplinary action against or in respect of a relevant person under this Division without first giving the person notice in writing of the proposed action and a reasonable opportunity to be heard and to make submissions about the matter.
22. The legislative requirement to provide written notice to a defendant of both the charge and proposed penalty necessitated the inclusion of both in the final notice.
23. It is the view of the decision makers that Mr Kadir did not suffer any procedural disadvantage as a result of the final notice issued including both the notice of proposed charges, and proposed penalty for same in the event those charges were found proven.
24. Mr Kadir was afforded the opportunity to respond, and indeed did provide written submissions in response, to both the charges and the proposed penalty. As a result of those submissions, not only was Charge Two withdrawn, but the penalty issued for Charge Three was significantly reduced as a result of those representations.

Clarification as to what Rules are applicable

25. The submissions made on behalf of Mr Kadir questioned which Rules should be applied to this disciplinary matter, as the proceedings have spanned some period of time.
26. The decision makers confirm that with respect to Charge One, as the date of criminal conviction was entered against Mr Kadir on 16 December 2020 then the Rules in effect at that point of time should be applied. Therefore, the applied Rules are those commencing 18 November 2018.
27. The conduct the subject of Charge Three occurred over a period of time from August 2018 to May 2019. While there was an amended version of the Rules introduced in November 2018, this amendment did not affect in any way the specific rule found to be breached by the conduct of Mr Kadir. Therefore, the applied Rules are also those commencing 18 November 2018.

Limitation on what conduct is considered when applying penalty

28. The decision makers in this matter have limited their consideration on penalty to the conduct found to be the subject of Charges One and Three.

Clarification as to the conduct the basis of the conviction for Charge Three

29. The submissions made on behalf of Mr Kadir complained that it was unclear as to what conduct evidenced the breaching of Rule 86(l) with respect to Charge Three.
30. The evidence that the decision makers consider to be proof of this charge is as follows:
 - Video footage of Mr Kadir attending at the Richmond Greyhound Racing Club on 11 April 2019 and participating in the trialing of several greyhounds;
 - Video footage of Mr Kadir attending at the Richmond Greyhound Racing Club on 16 April 2019 and participating in the trialing of several greyhounds;
 - Video footage of Mr Kadir attending at the Richmond Greyhound Racing Club on 2 May 2019 and participating in the trialing of several greyhounds;
 - Video footage of Mr Kadir attending at the Richmond Greyhound Racing Club on 7 May 2019 and participating in the trialing of several greyhounds;
 - Text messages between Mr Kadir and registered participants making arrangements for Mr Kadir to educate or 'break-in' registered greyhounds between 18 April 2018 and 4 May 2019 inclusive.

Submission to excuse requirement to pay a fine

31. Rule 86B(1) mandates that upon a finding of guilt both a minimum period of disqualification (or warning off) and a fine **must** be imposed as penalty, unless special circumstances were found to allow otherwise.
32. Submissions for Mr Kadir state that due to the fact that Mr Kadir suffered significant expense in defending his criminal matter, he should not be required to pay a fine as part of the ultimate penalty imposed.

33. The evaluation of special circumstance considerations are outlined later in this decision at [38], however the ultimate position of the decision makers was that they did not agree that there was any basis to find that special circumstances exist in this matter.

Purpose of penalty to be imposed

34. It was submitted that despite Mr Kadir understanding the seriousness with which the Commission considers this type of offending, he wished to have the ability to re-engage with the greyhound racing industry at a later date.
35. It was further submitted that the outcome of any penalty handed down to Mr Kadir should be rehabilitative in nature and not equate to a 'crushing penalty'.
36. In considering the administration of civil penalties by regulators, the High Court in *Australian Building and Construction Commissioner v Pattinson*¹ held that the object of civil penalties should be entirely protective, in that any penalty should be aimed at promoting compliance through general and specific deterrence to promote the public interest in compliance.
37. Given the objective seriousness with which the Commission considers Charge One in particular, the decision makers do not accept that the primary goal of any penalty given to Mr Kadir should be to rehabilitate him personally. Rather decision makers preferred the view offered in *Pattinson* stating that deterrence, both general and specific, is the primary objective of penalty.

Decision

Charge One – Evaluation of special circumstances

38. In order to contemplate a penalty less than that prescribed in Rule 86B(1), the decision makers considered whether there could be a finding of 'special circumstances' in favour of Mr Kadir.
39. In the Racing Appeals Tribunal appeal matter of *Holly Speed*² the Tribunal President Armati gave consideration as to what factors would equate to a finding of special circumstances. During this matter, President Armati had the benefit of reviewing several matters across multiple jurisdictions that considered what constitutes a finding of special circumstances.³
40. At [67] of the *Speed* appeal, President Armati states:
- ... the Tribunal is satisfied that the words "special" and "circumstance" must be read in conjunction and that it must require something that is not necessarily exceptional or distinguishable but which is not something which is merely a subjective factor or something idiosyncratic to a particular person. It needs something which is unusual or uncommon.*
41. President Armati then continued at [68]:

¹ *Australian Building and Construction Commissioner v Pattinson* [2022] HCA 13.

² Racing Appeals Tribunal decision of Ms Holly Speed delivered 8 December 2021.

³ Victorian Racing Tribunal decision of Divirgilio delivered on 4 November 2021; South Australian Appeals Tribunal decision of Schadow determined 16 October 2021; Greyhound Racing New South Wales decision of Stedman delivered on 19 April 2021; Victorian Civil and Administrative Tribunal decision of Ms Dianne Dooley determined on 1 October 2019; Victorian Civil and Administrative Tribunal decision of Noy determined on 11 November 2019.

The respondent has put various precedent cases on which special circumstances have been found. The Tribunal, with no disrespect to any of those decision-makers, consider they have been unduly lenient. It forms that conclusion because in each of the matters, when looked at in isolation on the summaries the Tribunal has been given, the individual factors are nothing but standard subjective factors.

That is not to say they cannot cumulate – and it is proper that they should – but in essence there is nothing unusual or uncommon about any of them. They are straightforward facts. Not unusual length of time in the industry, a standard subjective factor. No prior matters, standard subjective factor. Hardship, a standard subjective factor. The fact that there are no aggravating circumstances, in the Tribunal’s opinion, is a matter which goes to objective seriousness and is not a special circumstance.

42. Having had regard to the totality of the submissions made on behalf of Mr Kadir, the decision makers could find no basis upon which a finding of ‘special circumstances’ could be made. Therefore, the mandatory minimum penalty of a minimum ten (10) year disqualification, and associated fine, remains as the minimum starting point when determining objective seriousness.

Charge One – objective seriousness

43. As previously stated, Rule 86B(1) mandates that upon a finding of guilt both a minimum period of disqualification (or warning off) for not less than ten (10) years, and a fine must be imposed as penalty, unless ‘special circumstances’ were found to allow otherwise.
44. In relation to Charge One, the decision makers had consideration of the gravitas of the nature of the offending criminal conduct for which the conviction was recorded. Namely committing a serious act of cruelty on an animal (rabbit) with the intention of inflicting severe pain, causing death to the animal.
45. The charge for that conduct has been brought under Rule 86B(1)(g) of the Greyhound Racing Rules as in force on 16 December 2020 when the conviction was confirmed.
46. In the view of the decision makers, the construction of Rule 159(1) of the current version of the Rules is helpful when assessing the objective seriousness of which the industry now views the offending conduct.
47. Rule 159 (1) provides that anyone found guilty of luring or baiting offences where a live animal is used must be disqualified for life. In comparison, Rule 159(3) relates to the use of an animal carcass or part of an animal, and requires a person found guilty of such offences to be disqualified for not less than ten (10) years.
48. Importantly, a finding of ‘special circumstances’ may reduce the mandatory minimum penalty required under Rule 159(3) to a lesser period of disqualification. However, if a person is found guilty under Rule 159(1), there is no provision as to the establishment of ‘special circumstances’ – that is, a life disqualification must be imposed if guilt is established, regardless of the individual person’s circumstances.
49. Further, in addition to the particulars of the offending conduct the decision makers also considered the impact that particular criminal conduct had on the greyhound racing industry as a whole.
50. As is widely known, the use of the rabbit as a live lure by Mr Kadir was captured on video by an animal welfare activist. That footage was then aired on the ‘*Making a Killing*’ episode of the ABC’s *Four Corners* program.

51. Shortly after, the NSW Government banned greyhound racing within New South Wales as a result of the public response to the footage captured.
52. It is the view of the decision makers that given the notoriety of this offending, and in particular the impact that this conduct had upon the NSW greyhound racing industry as a whole, that this charge must be found at the highest end of the scale of objective seriousness.

Charge Three – objective seriousness

53. The offending conduct the subject of Charge Three occurred at a time in which the industry had only just re-opened following the statewide shut-down in 2015.
54. Mr Kadir engaged in this activity at a time that he was defending criminal animal cruelty charges and was well aware that he lacked the necessary and required registration within the greyhound racing industry that would allow him to participate in any training activities.
55. The decision makers determined that such a flagrant breach of the Rules, by an individual perceived by the wider public community as a reason as to why the NSW greyhound racing industry should have been shut down, significantly elevates the objective seriousness of this conduct.
56. As a result of the above factors, the decision makers have determined that the conduct subject of Charge Three should be considered mid-range on the scale of objective seriousness.

Penalty determination

57. In taking this disciplinary action, the decision makers considered all evidence and submissions before them, including:
 - The Commission’s objectives pursuant to the GRA, being to:
 - Safeguard the integrity of greyhound racing and betting; and
 - Maintain public confidence in the greyhound racing industry;
 - The objective seriousness of the conduct;
 - The plea of guilty entered to both charges;
 - The need for general and specific deterrence;
 - Submissions made on behalf of Mr Kadir, which in addition to the specific submissions outlined earlier, further included:
 - that Mr Kadir has been subject to an interim warning off period since 18 September 2020 in respect of these charges;
 - that prior to his interim suspension in 2015 for the conduct the subject of the criminal charges relating to Charge One, Mr Kadir had no prior relevant disciplinary history;
 - that there had been significant delay in finalising these matters, due in part to Mr Kadir’s own request that the regulatory matters be postponed until the criminal matter was finalised;
 - that Mr Kadir has suffered from personal health issues;

- that the sentencing District Court found that he had good prospects of rehabilitation in respect of his criminal conduct;
 - that the sentencing District Court elected not to impose a prohibition order following his criminal conviction.
 - The length of time that Mr Kadir had been registered prior to his registration lapsing in 2016.
58. The decision makers ultimately determined that the penalties to be issued in respect of Charges One and Three were:

Charge One: A lifetime warning off and a fine of \$16,500.00;

Charge Three: Warning off for period of five (5) years, with the period of warning off backdated to 18 September 2020 to take into account the period of time spent under interim penalty.

Life time ban on registration

59. It is important to note that Section 40 of the GRA reads as follows:

40 Life ban for committing live baiting offence

(1) If a court finds a person guilty of committing a live baiting offence—

- (a) The person's registration (if any) under this Act is automatically cancelled, and
- (b) The person is permanently disqualified from being registered under this Act in any capacity.

(2) In this section—

live baiting offence means—

- (a) An offence under section 21(1)(d) or (e) of the *Prevention of Cruelty to Animals Act 1979*, or
- (b) An offence under section 530 of the Crimes Act that involves using an animal as a lure or kill in the manner referred to in section 21(1)(d) of the *Prevention of Cruelty to Animals Act 1979*.

60. By virtue of this section, Mr Kadir is permanently prevented from being registered by the Commission under the GRA in any capacity. This section of the GRA is mirrored by Rule 86C⁴ and Rule 159(2) of the current Greyhound Racing Rules, which respectively read:

R86C Reporting and other matters

Any person penalised under Rule 86A, Rule 86B or Rule 86C (or any equivalent Rule) in any jurisdiction shall not be entitled to make any application to the Controlling Body for any licence or registration or to be an owner of any registered greyhound.

159 Offences relating to luring and baiting

⁴ In force from 20 April 2015 – 30 April 2022.

Any person who pleads or is found guilty of an offence under subrule (1) of this rule is not eligible to make any future applications for any licence or registration to a Controlling Body, or to be an owner of any registered greyhound.

61. Therefore, irrespective of the penalty imposed for the current offences, Mr Kadir will never be entitled to hold a registration within the greyhound racing industry.

.....End.....