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

Matter for determination	Decision dated 22 August 2023
Internal review decision date	28 November 2023
Applicant	Mr Anthony Andrews
Internal review decision by	Mr Alby Taylor, **Chief Commissioner**
Internal review decision summary	Vary the decision of 22 August 2023 and impose a 4-week suspension for each charge.

REASONS FOR DECISION

1. These are the reasons for decision following an application by Mr Anthony Andrews for internal review under the *Greyhound Racing Act 2017* ("**Act**") of a decision of the Commission on 22 August 2023. That decision was to find Mr Andrews guilty of four breaches of Rule 156(f)(ii) of the Greyhound Racing Rules.

2. The decision makers determined to impose the following penalty:

   - Charge 1 (156(f)(ii)): To issue a 3-month suspension,
   - Charge 2 (156(f)(ii)): To issue a 3-month suspension,
   - Charge 3 (156(f)(ii)): To issue a 3-month suspension,
   - Charge 4 (156(f)(ii)): To issue a 3-month suspension,

   with the penalties to be served concurrently, resulting in a total penalty of 3 months' suspension.

3. This is a reviewable decision within the meaning of section 91(1) of the Act. As I was not substantially involved in making the reviewable decision, I have dealt with this application.

4. 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

5. On 13 October 2021, Mr Andrews became the registered owner of two unnamed greyhounds (**Greyhound 1** & **Greyhound 2**).

6. On 22 February 2023, Mr Andrews applied, through the Commission's online portal, to name Greyhound 1. The portal requires an applicant to nominate preferred names for the greyhound and Mr Andrews provided four (4) possible names.

7. The names nominated by Mr Andrews were double entendres, or colloquial terms, that were inappropriate.

8. On 27 February 2023 Mr Andrews was advised by the Commission that his nominated names could not be accepted, and was asked to provide alternative names.

9. On 2 March 2023, Mr Andrews emailed the Commission's registration team to provide a further eight (8) preferred names for Greyhound 1. These names were also inappropriate.

10. On 9 March 2023, Mr Andrews emailed the Commission's registration team to provide additional preferred names for Greyhound 1. These names included further inappropriate names of the same nature as those submitted on 22 February and 2 March 2023.

11. On 9 March 2023, Mr Andrews also submitted a proposed name for Greyhound 2 through the Commission's online naming portal. This name was also inappropriate.

12. Following the Commission charging Mr Andrews, and Mr Andrews having the opportunity to make both oral and written submissions, on 22 August 2023 the decision makers finalised the matter, imposing a total penalty of a 3-month suspension.

The internal review application

13. On 29 August 2023, Mr Andrews lodged an application for internal review of the decision made on 22 August 2023. Mr Andrews also sought a stay of penalty pending the outcome of the internal review application.

14. On 31 August 2023 I granted a stay of penalty pending my final determination in this internal review.

15. In his internal review application, Mr Andrews submitted that:

    - He was contacted by a senior officer of the Commission on 9 March 2023 and not advised by that senior officer that he was under investigation;
    - He was advised by the decision makers prior to the hearing that the Commission intended to provide him with a series of questions, and this did not occur;

- The Commission sought to add material to the Brief of Evidence without providing him with an opportunity to consider and respond to the material;
- The decision makers did not have regard to his written submissions during the hearing;
- The penalty imposed by the decision makers was manifestly excessive.

16. On 18 September 2023, Mr Andrews provided extensive written submissions as part of the internal review. In summary, Mr Andrews submitted that:

- The decision makers' finding was contrary to the evidence and incorrect at law;
- The decision makers engaged in conduct that was contrary to the principles of natural justice and procedural fairness;
- The decision makers erred in finding that all of the names submitted were offensive;
- The decision makers imposed a penalty that was manifestly excessive.

17. On 18 October 2023, Mr Andrews attended a hearing conducted via Microsoft Teams. At the hearing, Mr Andrews expanded on his written submissions.

Decision

18. As the internal reviewer, I have reviewed all of the material provided and considered all the submissions made by Mr Andrews.

19. Mr Andrews made submissions in respect of a number of procedural matters, alleging that he had been denied procedural fairness. It is not necessary to address these submissions in detail as the conduct of an internal review provides an opportunity to remedy any procedural errors in the handling of the matter and I am satisfied that where any error may have arisen, this internal review has allowed for it to be remedied.

20. In respect of Mr Andrews' submission that the decision makers erred in law, I note that the standard established in *Briginshaw v Briginshaw* [1938] HCA 34 does not bind administrative decision makers such as the Commission, although it does offer guidance when making findings of fact. The decision makers are not bound by the rules of evidence and, as the *Briginshaw* principle is an evidentiary rule, no error of law can arise from a failure to apply it.[1] The task of the decision makers is to make findings of fact based on the material before them. *Briginshaw* principles are, however, used in administrative disciplinary matters as a guide in assessing the probative value of the evidence. On this basis, the decision makers found the charges against Mr Andrews proven.

[1] *Sullivan v Civil Aviation Safety Authority* (2014) 226 FCR 555.

21. No evidence has been presented in the course of this internal review that would cause me to come to a different finding of fact and overturn the original decisions to find Mr Andrews guilty.

22. Mr Andrews noted that some of the proposed names were, in fact, accepted by the Commission's online portal. The submission was made that because the portal accepted the name, the Commission could not now find that the names were inappropriate. On review, this contention is not accepted for two reasons: firstly the online portal is an automated system; it is not designed to filter out any name that may be considered inappropriate. Mr Andrews submitted that the online portal has the capacity to accept or reject names.

23. In the context that this submission is made, I do not accept this submission. The online portal contains automated naming logic where the inputting of certain characters in the free text field will provide a reply that states '*the entered name does not match criteria*'. This comment relates to the name not meeting the naming logic, such as including additional full stops at the end of the name or inserting another symbol such as an asterisk or question mark. It is this type of criteria that the online portal does not accept, not the appropriateness in the meaning of the name that is provided. Secondly, all names provided through the online portal must undergo an assessment by Commission staff to determine their suitability. In the present case, the manual process occurred on all four occasions and resulted in the current disciplinary action.

24. Another submission put forward was that some of the names submitted by Mr Andrews are either the same, or very similar, to names accepted by other racing control bodies in both the greyhound industry and the other racing codes. Whilst it is true that some of the names were the same, or similar, as names approved by other controlling bodies, this does not change the fact that the Commission now considers the names inappropriate and/or offensive. For example, some of the names submitted included '*Pillow Biter*', '*Shirt Lifter*' and '*Peta File*', *Pillow Biter* and *Shirt Lifter* are names that have well understood colloquial meanings and '*Peta File*' is a double entendre. I consider that on any objective view, these names are inappropriate by contemporary standards. Mr Andrews submits that '*Peta File*' is a play on words, and this may be so, but it is this play on words, that makes it inappropriate and offensive.

25. I do not accept that just because previous names have been approved by another controlling body that this can somehow render the names acceptable in the NSW greyhound industry now. Further, the submission that these similar names have not be the subject of disciplinary action and indeed, have been approved to race, does not mean that the Commission cannot take a different view.

26. Mr Andrews also submitted that community standards change and to paraphrase, that what some people find offensive may not be offensive to others. This might be correct, but the Commission is required to consider what is appropriate against current community standards. The Commission's decision makers are required to assess a proposed greyhound name, and

a participant's conduct in submitting a proposed name, in relation to prevailing community standards.

27. Community standards, values and opinions vary from person to person, and may not be shared by every member of the community or apply in the same way in all contexts. Nonetheless, they can be fairly said to exist and community standards in relation to appropriate names for racing greyhounds are expressed in the Greyhounds Australasia Naming Policy.

28. The requirements of the Greyhounds Australasia Naming Policy reflect prevailing community standards. As Mr Andrews noted in his submissions, the Greyhounds Australasia Naming Policy was amended during the course of this matter. However, it continues to provide that names that are derogatory, degrading, offensive, obscene or vulgar will be refused as they are clearly inappropriate.

29. The fact that an inappropriate name may have been inadvertently approved by the Commission on another occasion, or by another controlling body on another occasion is, in my view, not relevant to the culpability of Mr Andrews in this matter.

30. The Commission is a relatively new racing control body. It was set up by the NSW Government at a time when public confidence in greyhound racing in NSW was waning. The Commission is vested with maintaining public confidence in the industry. Indeed, one of the three principal objectives of the Commission under the *Greyhound Racing Act 2017* is to maintain public confidence in the greyhound racing industry. Maintaining this confidence includes implementing strong welfare and integrity strategies but equally, it includes ensuring the Commission recognises and meets appropriate contemporary societal standards.

31. I consider the names submitted by Mr Andrews fall short of these standards and that the original decision-makers were correct in their finding of guilt.

Penalty

32. Having confirmed the decision on liability, this review turns to questions of penalty.

33. Mr Andrews submitted that the penalty imposed by the decision makers was manifestly excessive and made a number of arguments to support his submission.

34. Mr Andrews also made submissions to the effect that, as names submitted by other participants have been accepted despite the fact that these names may be considered inappropriate, the penalty imposed upon him for doing so was excessive.

35. Mr Andrews deliberately submitted inappropriate names. Further, after being advised that the names would not be accepted, he submitted more names that were inappropriate, eventually submitting inappropriate names on four (4) separate occasions.

36. The Commission's administrative processes and indeed, the greyhound racing industry as a whole, rely upon participants transacting with the Commission appropriately and in good faith. In repeatedly submitting preferred names that were inappropriate, Mr Andrews was plainly not acting in good faith.

37. Mr Andrews further argued to the effect that the names which he submitted are colloquial terms that may not be considered offensive or were not, simply put, as offensive as they could have been.

38. The fact that Mr Andrews continued to contravene the Policy until he was contacted by a senior officer of the Commission indicates, in my view, an awareness on his part that the names he was inclined to submit would, at the very least, contravene the Policy. It is however, very much in his favour that immediately after been contacted about the inappropriateness of the names he desisted and submitted names that were appropriate and complied with the Greyhounds Australasia Naming Policy.

39. When considering the appropriate penalty to be applied in respect of this breach, an assessment of the objective seriousness of the conduct must be made. I consider the objective serious of the conduct to be moderate. The Commission's name assessment process is such that the inappropriate names were captured, and no greyhound was given an inappropriate name. Having said that though, a degree of faith is placed in participants that they will apply sensible naming selections as part of this process – whilst the robustness of the naming assessment process is encouraging, should an inappropriate or offensive name unintentionally get through undetected then any such inappropriate name has the real potential to impact adversely on the greyhound industry and its 'brand'. Ridicule and condemnation would rightly be visited upon the industry and its regulators if a greyhound named *Peta File*, for example, was competing regularly at nationally broadcasted events.

40. I note Mr Andrews' genuine contrition in respect of the charges and his remarks to the effect that, "*If I had my time over again, I would do things very differently*." This must be taken however against a backdrop where he pleaded not guilty, notwithstanding that it appears he has developed a significant level of insight into his conduct.

41. Mr Andrews has, at all times, cooperated with the Commission's inquiries in relation to this matter.

42. I further note evidence relating to Mr Andrews' otherwise good character and particularly, the significant volunteer work that he undertakes for the benefit of the community. His volunteer work is commendable, and he is otherwise a person of impeccable character. The current matters have clearly brought home to Mr Andrews the importance of acting appropriately and I am confident that Mr Andrews will not find himself in this position again.

43. For these reasons, in determining an appropriate penalty I do not consider specific deterrence has any part to play. General deterrence, however, has some application. The

Commission's naming processes could not withstand participants continually submitting inappropriate names: it would frustrate the naming process which should be uncontroversial and uncomplicated. Fortunately, this is not something that occurs frequently. This is the first time the Commission has had to deal with such a matter, which allows me to temper the need for a significant penalty to promote the need for general deterrence.

44. Noting above that Mr Andrews has demonstrated a level of contrition, albeit maintaining a plea of not guilty, and that he has now a level of insight into his conduct, I am satisfied that the penalty should be varied.

45. The factors in mitigation including his volunteering work, his lack of any prior disciplinary matters, his acceptance that '*he would do things differently*' and the fact he desisted immediately upon been told by the senior GWIC official that the names were inappropriate are sufficient reasons to vary the penalty imposed. On the material before me, it is apparent that the level of insight into his conduct was significantly higher before me on the internal review than it was before the original decision makers. I place considerable weight upon this factor.

46. I consider that an appropriate starting point for this conduct is a suspension for a period of three (3) months but that Mr Andrews' strong factors in mitigation warrant a significant reduction. His volunteer work and lack of history are very strong indicators no repeat conduct will occur. The lack of a plea of guilty does not allow me to reduce the penalty any further – that would have been an unequivocal and tangible demonstration of remorse. Had there only been one occasion on which an inappropriate name was submitted; this too would have resulted in no period of actual suspension. The facts here are however that there were multiple occasions.

47. For all of these reasons, I vary the penalty imposed by the decision makers and determine to instead apply the following penalty:

Charge 1 (156(f)(ii)):	To issue a four (4)-week suspension,
Charge 2 (156(f)(ii)):	To issue a four (4)-week suspension,
Charge 3 (156(f)(ii)):	To issue a four (4)-week suspension,
Charge 4 (156(f)(ii)):	To issue a four (4)-week suspension,

with all suspensions to be concurrent with each other.

48. I note that Mr Andrews served a suspension period of one (1) week prior to the granting of a stay of the penalty. Accordingly, the balance of three (3) weeks is to be served.

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

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