IN THE RACING APPEALS TRIBUNAL

RENEE WILSON
Appellant

v

GREYHOUND WELFARE AND INTEGRITY COMMISSION
Respondent

REASONS FOR DECISION

Date of hearing:	**9 April 2024**
Date of decision:	**15 April 2024**
Appearances:	**Mr J Bryant for the Appellant**
	Ms A Summerson-Hingston for the Respondent
Decision:	**1. The appeal is upheld.**
	2. The determination of the Respondent of 13 February 2024 refusing the Appellant's application for registration is quashed.
	3. The appeal fee is to be refunded.

INTRODUCTION

1. By a Notice filed on 14 February 2024,[1] Renee Wilson (the Appellant) has appealed against a determination of the Greyhound Welfare and Integrity Commission (the Respondent) made on 13 February 2024, refusing her application for registration as a Greyhound Attendant on the grounds that she is not a fit and proper person.

2. The Grounds of Appeal[2] are stated in the following terms:

   > *(1) The decision maker erred in the decision not to grant the Appellant a Greyhound Attendance licence.*
   >
   > *(2) The decision maker:*
   > *(a) did not take into consideration the length of time since the offences were committed;*
   > *(b) did not take into consideration the nature of the offences;*
   > *(c) did not take into consideration the penalty and sentenced [sic] imposed by the Local Court;*
   > *(d) did not request further information from the Appellant when determining the matter;*
   > *(e) erred in not considering the Appellant as a fit and proper person.*

3. The hearing of the appeal took place on 9 April 2024, at which time judgment was reserved. For the purposes of that hearing I was provided with an Appeal Book (AB) containing relevant documentary material. The Appellant provided further evidence at the hearing, to which I have referred in more detail below.

FACTUAL BACKGROUND

4. The factual background to the appeal is not in dispute, and is as follows.

5. On 10 December 2023, the Appellant filed an application with the Respondent for registration as a Greyhound Attendant.[3] In answer to the question *"[Have you been] charged with a criminal offence?"* the Appellant stated *"Yes"* and provided the following particulars:

   > *"Midrange drink driving in 2019".*

[1] AB 1 – 3.
[2] AB 3.
[3] AB 26.

6. That answer was a reference to an offence contrary to s 110(4) of the *Road Transport Act* 2013 (NSW) of which the Appellant was convicted in 2018 (not in 2019 as stated in the application).

7. The Respondent's practice upon the lodgement of an application for registration is to obtain a Digital National Police Certificate in respect of the applicant in question. In the Appellant's case, that Certificate disclosed the following criminal history:[4]

COURT	**DATE**	**OFFENCE**	**OUTCOME**
1. Maitland Local	26 February 2018	Resist or hinder police officer in the execution of duty contrary to s 60(1AA) of the *Crimes Act 1900* NSW (the hinder offence).	Bond for a period of 2 years pursuant to s 10 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) conditioned to accept supervision by NSW Probation Service.
2. Maitland Local	26 February 2018	Stalk or intimidate with the intention of causing the other person to fear physical or mental harm (the stalk offence).	Bond for a period of 2 years pursuant to s 10 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) conditioned to accept supervision by NSW Probation Service.
3. Dungog Local	14 November 2018	Drive with middle range prescribed concentration of alcohol (the PCA offence).	Community Correction Order pursuant to Part 7 of the *Crimes (Sentencing Procedure Act 1999* (NSW) for a period of 12 months, with conditions as to supervision and accept directions of Community Corrections NSW.
4. Dungog Local	14 November 2018	Call up for breach of first bond imposed on 26 February 2018 for the hinder offence (breach constituted by drink driving offence).	Community Corrections Order in same terms with additional condition as to service treatment programs.
5. Dungog Local	14 November 2018	Call up for breach of second bond imposed on 26 February 2018 for the stalk offence (breach constituted by drink driving offence).	Community Corrections Order in same terms with further condition as to service treatment programs.

[4] AB 28-29.

8. The only matter disclosed by the Appellant in her application was the offending in [3] in the Table above. She did not disclose the matters in [1] and [2] (although they were not, when they were originally dealt with, the subject of convictions). The matters in [4] and [5] were not, of themselves, separate offences, but were the result of the Court taking action under s 107C(1) and 108C(1) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) for a breach of the two bonds imposed on 20 February 2018 in respect of the offending in [1] and [2], such breach being constituted, in each case, by the PCA offence. In each case, the Court convicted the Appellant upon the breach, and imposed a Community Corrections Order.

9. On 13 February 2024, the Respondent wrote[5] to the Appellant, saying:

> *The Commission's Application Assessment Panel … have determined to refuse your application under Criteria [sic] 10 and Criteria [sic] 12 of the Fit and Proper Person framework.*

10. By reference to the matters in [1] and [2] above, the Respondent's letter stated:

> *Under the 'fit and proper person' framework, **criteria** [sic] **10** – applicant was previously convicted of a serious offence involving violence, dishonesty, drug offences and/or sexual offences.*

11. It should be noted that the matters in [1] and [2] were ***not*** originally the subject of convictions.

12. By reference to each of the matters in [1], [2], [4] and [5] in the Table above, the Respondent said:

> *Under the 'fit and proper person' framework, **criteria** [sic] **12 –** applicant has previously been charged or convicted of [sic] and criminal offence but did not disclose this on their application.*

13. The Respondent then stated:

---

[5] AB 4 – 5.

> *On your application to register as a Greyhound Attendant, when asked the question 'have you ever been charged with a criminal offence' you declared 'Yes', however only declared 'midrange drink driving in 2019.'*

14. When read as a whole, there is a degree of ambiguity in the Respondent's correspondence. On one interpretation, it suggests that the Respondent refused the Appellant's application in light of criterion 10 and/or criterion 12 of the "*Guidance to applicants regarding the Commission's application for 'Fit and Proper' person test for registration as a greyhound racing industry participant"* (the Framework). On another interpretation, it suggests that the Respondent refused the Appellant's application because she was not truthful in her application as to the entirety of her criminal history. As set out below, the Respondent's case on the appeal was ultimately put on the second of those two bases.

THE APPELLANT'S EVIDENCE

15. The Appellant was present at the hearing of the appeal, and provided a statement which was before me,[6] but which was not before decision-maker(s) who refused her application.

16. In terms of her offending, the Appellant said the following in her statement:[7]

> *[6] At various times I was the carer for my brother, Paul Hugg, who is intellectually disabled and requires full time care.*
> *[7] The resist or hinder police in the execution of duty occurred after I was the victim of a domestic violence incident.*
> *[8] The [stalk offence] occurred after a family disagreement involving my brother Paul.*
> *[9] I was sentenced to a section 10 bond for these two offences.*
> *[10] However, the s 10 bond was revoked following my conviction for mid-range PCA.*
> *[11] I was sentenced to a 12 month community corrections order and entered a full time residential facility.*
> *[12] Prior to these charges, I had never been charged or convicted of any offence.*
> *[13] Although there is no excuse for my poor behaviour, it was a very traumatic and emotional chapter in my life.*
> *[14] It is a chapter of my life that I deeply regret and it is extremely triggering, reliving this chapter of my life.*

[6] AB 18 – 19.
[7] AB 18 at [6] – [14].

17. In terms of the information provided in the application form, the Appellant said the following in her statement:[8]

> *[15] When I was filling out the online form, I was unsure if the two offences were on my record due to the s10 bond.*
>
> *[16] I honestly believed that when I chose the 'yes' option for the 'have you ever been convicted with any criminal convictions question' and that by choosing yes and listing my mid-range PCA that if the resist or hinder police or the [stalk offence] was on my record that it would be linked to my PCA offence.*
>
> *[17] I also believed by choosing the 'yes' option, that I was flagging to GWIC that I had a criminal record.*
>
> *[18] I did not intend to mislead GWIC.*

18. The Appellant was asked further questions in the course of the hearing of the appeal, firstly by me and subsequently by Mr Summerson-Hingston who appeared on behalf of the Respondent. The exchange between myself and the Appellant was as follows:[9]

> *TRIBUNAL: Can I ask this, and this is along the same lines, your client has been the carer for her brother for a period of time, at least on an ad hoc basis, is it?*
> *MS WILSON: So, yes, he's got an intellectual handicap.*
>
> *TRIBUNAL: Okay.*
> *MS WILSON: So therefore I cared for him, I was his full-time carer working with NDIS.*
>
> *TRIBUNAL: Right. And if you want to tell me, and only if you want to tell me, Ms Wilson, and if you want to talk to Mr Bryant, I'll give you that opportunity, but are you able to tell me anything about this [stalk offence] that you've got?*
> *MS WILSON: Yes, hundred percent. Yeah, so, I got divorced. My father died around the same period. I entered into a relationship which was quite toxic, and I wasn't in a very good frame of mind, and there was domestic violence taking place, he was putting his hands on me, and it all came to a head one night and I called the police because I was really upset, because he was hitting me, and when the police came, I was the one that was carrying on because I've never been hit before and none of that ever happened, and they arrested me and not him.*
>
> *TRIBUNAL: Okay. And in terms of the [stalk offence], you said that that involved your brother. Was that while you were caring for your brother?*
> *MS WILSON: So my brother, he's quite – he gets very – he's on a lot of medication, and when my father died, he was really bad and he would get quite violent as well, so we got into a – he was saying things about Dad, and things that weren't true, and – or things came up at when we were sort of around that time, and I – my brother started to hit me or come at me, and so I, because he's got a mental illness and*

[8] AB 18-19 at [15] – [18].
[9] At T4.35 – T 5.46.

I've always cared for him, and I'm like, it was, this is just like, we've always been a very close family, but he perpetrated the violence on me, but then he is very scared of police and he doesn't understand police and it just makes the situation really bad. So I said that I hit him and said that I – well, not hit him, but I said that I was the aggressor in that situation, and to protect him. Because of – it was all, yeah, of what was happening in that situation.

MR BRYANT: But there was no violence?
MS WILSON: Oh, there was no violence, like, as such, but there was yelling and screaming, I don't know if you'd call that, it was just a very heated, and the police got called -----

TRIBUNAL: Okay.
MS WILSON: ----- and then it was – yeah, it was just one of those crazy – yeah. I didn't get dragged away or anything, I just had to come down to the police station later in the day.

TRIBUNAL: All right. So you got bonds for each of those matters without convictions, and, Mr Bryant, my understanding is that there was then the mid-range PCA, that triggered a call-up -----
MR BRYANT: Yes.

19. Further evidence was then given by Appellant in answer to a question from Ms Summerson-Hingston:[10]

> *MS SUMMERSON-HINGSTON: Ms Wilson, can you explain what occurred when the police attended the domestic violence incident?*
>
> *MR BRYANT: Resist arrest.*
>
> *MS WILSON: Yeah, so I had barricaded myself and my son into a bedroom where the person that was attacking me was trying to break in. My son had phoned the police from his iPad. I think he was eight at the time, I'm not quite sure of his age. And I had never been in that situation before.*
>
> *So when the police – the police spoke to him first, and then they finally got me to open the door of the room and I was absolutely hysterical, like, completely, I had injuries on my head. I was completely just in shock and I was, like, I couldn't speak properly, and so, yeah, and because I was making such a, I don't know, I suppose I was, at the time I was in shock, I wasn't making any sense in what I was saying because I was just so, that they took me, they took me to the police station.*
>
> *And so, yeah, I was – like I said, I've never been in so much as a jail or even in a lockup cell, and since then I had to go back, too, and try and fight it and get an AVO on him and, you know, and then, yeah. But that was just – I just – I don't know what more you want me to clarify on that.*

[10] At T 11.43 – T12.42.

And then also the police came, sorry, yeah, so that's – the police came and, like I said, I was just crying and they asked me to come down and I – when she went to grab my arm, I said – I put – like, I went like that and pushed my arm away and then she tried to pick me up and I fell down and I grabbed her arm and then they tried to put me in the car and I was just – I suppose I look back on it now and, yes, I was in it would have been just a very chaotic situation, you know what I mean, so, yeah

So then that sort of triggered the snowball effect that happened from there. Like I sort of just kind of had a bit of a breakdown, I think that's a better word for it, without rounding it out too much.

MS SUMMERSON-HINGSTON: All right. Thank you, Ms Wilson. That does clarify this situation for me. I appreciate you giving that evidence. Thank you.

THE FRAMEWORK AND THE APPLICABLE CRITERIA

20. The intention of the Framework, as I understand it, is to provide applicants with an indication of, or a general guide to, the approach which is likely to be taken by the Respondent, in given factual situations, when determining an application for registration. It is appropriate at this point to set out the 2 criteria within the Framework which are relevant to the present case:

CRIMINAL HISTORY OR BACKGROUND OF THE APPLICANT	RESPONDENT'S LIKELY POSITION GIVEN THE HISTORY AND BACKGROUND OF THE APPLICANT
10 Applicant was previously convicted of a serious offence involving violence, dishonesty, drug offences and/or sexual offences.	Application may be refused but the decision will take into account whether the convictions occurred more than 5 years ago, and the penalty that was imposed.
12 Applicant has previously been charged or convicted of any criminal offence but did not disclose this on her application.	Applicant will be asked for further information. Application may be refused.

THE RELEVANT LEGISLATIVE PROVISIONS

21. Section 47(1) of the *Greyhound Racing Act 2017* (NSW) (the Act) imposes an obligation on the Respondent to exercise its registration functions so as to ensure that any person who registered is, in the Respondent's opinion, a fit and proper person.

22. Section 47(1) is generally consistent with, and complements, s 11 of the Act, which sets out the objectives of the Respondent. Those objectives include safeguarding the integrity of greyhound racing, and maintaining public confidence in the greyhound racing industry.

23. Section 47(2) of the Act expressly provides (without limiting subsection (1)) that a person is not to be registered if the person has a conviction, and the Commission is of the opinion that the circumstances of the offence concerned are such as to render the person unfit to be registered. In the present case, this provision assumes less significance in light of the basis on which the Respondent's case was put at the hearing.[11]

SUBMISSIONS OF THE PARTIES

Submissions of the Appellant

24. Mr Bryant submitted that leaving aside a number of difficulties and anomalies arising out of the application of criteria 10 and 12, I should come to the conclusion that the Appellant was, in any event, a fit and proper person to be registered. Mr Bryant submitted that, properly viewed, the Appellant did not make a false statement in her application, but truthfully disclosed the fact of a conviction which, she believed, would "lead" the Respondent to the remaining matters which were recorded on her criminal history.

25. Mr Bryant urged me, when considering the evidence, to have particular regard to the testimonial material, and also to have regard to the fact that the Appellant was a person of limited education, and little sophistication. Needless to say, Mr Bryant did not put those submissions in a pejorative or offensive way. His purpose in doing so was to support the proposition that the level of any dishonesty on the part of the Appellant was to be assessed with those matters in mind.

Submissions of the Respondent

26. Ms Summerson-Hingston ultimately put the Respondent's case essentially on the basis that the Appellant was not a fit and proper person because of what was submitted to be her lack of honesty in completing the application form.[12] In that sense, the case put by Ms Summerson-Hingston did not, at least directly, engage s 47(2) of the Act, or the circumstances of the offending. Rather, it focussed firstly, upon the information provided by the Appellant in the application itself, and

---

[11] Set out at [26] and following below.
[12] T 12.39 – T 12.45.

secondly, upon criterion 12 (rather than criterion 10). In terms of those criteria, Ms Summerson-Hingston emphasised that the Framework was only a guide, and that common law principles, and the authorities which established them, still had a role to play in deciding any question of fitness.

27. In advancing these submissions, Ms Summerson-Hingston emphasised the Respondent's statutory responsibilities in carrying out its registration function which are embodied in s 47(1) of the Act. She emphasised, in particular, that the Respondent's functions encompassed the need to ensure the integrity of, and to maintain public confidence in, the greyhound racing industry, and submitted that ensuring that only fit and proper persons were registered formed an integral part of those functions.

28. Bearing in mind the provisions of criterion 12, Ms Summerson-Hingston fairly acknowledged that no explanation had been sought by the Respondent from the Appellant for her failure to disclose the totality of matters in her criminal history. Ms Summerson-Hingston also acknowledged, with commendable candour, that in that respect I was in a very different, and arguably better position, than the original decision-maker(s), because I had the benefit of the Appellant's explanation which I could take into account in determining the appeal.[13]

29. Finally Ms Summerson-Hingston submitted that the onus lay on the Appellant to satisfy me that she was a fit and proper person, rather than the onus being on the Respondent to satisfy me that she was not. I have addressed that submission separately below.

CONSIDERATION

30. The position ultimately adopted by Mr Summerson-Hingston at the hearing of the appeal has substantially narrowed the issue for determination. Bearing in mind the basis on which the Respondent's case is now put, I am essentially left to determine whether the Appellant is a fit and proper person to be registered having

[13] T 13.25 – T 13.43.

regard to the circumstances surrounding the information she provided (or perhaps more specifically, did not provide) in her application.

31. However, in light of some of the matters which were canvassed in submissions at the hearing of the appeal, it is appropriate that I make some observations about the terms, and application, of criteria 10 and 12 of the Framework. I consider that it is part of the function of the Tribunal to assist regulators in their administration of disciplinary and related matters, and I make the following observations with that in mind.

32. On one interpretation of the correspondence to the Appellant of 13 February 2024,[14] one of the bases on which the decision-maker(s) refused the Appellant's application stemmed from the application of criterion 10. The terms of criterion 10 will apply to an applicant for registration only if that applicant has been "*convicted of a serious offence involving violence*". It follows that in order for criterion 10 to apply, the offence(s) in question must incorporate 2 elements, namely:

    (a) seriousness; and
    (b) violence.

33. Obviously, in the circumstances of the present case, the PCA offence did not incorporate at least the second of those elements. That left the hinder offence and the stalk offence as the only offences which could possibly attract the application of criterion 10. That being the case, the following matters are of some significance.

34. To begin with, and in the absence of being provided with the charge sheets or the Statement of Facts tendered in the Local Court, it is not clear to me whether, in terms of the hinder offence, the Appellant was charged with hindering on the one hand, or resisting on the other. That is so, because s 60(1AA) of the *Crimes Act*

[14] AB 4 – 5.

1900 (NSW) creates the offences in the alternative. Similarly, it is not clear to me whether, in terms of the stalk offence, the Appellant was charged with stalking on the one hand, or intimidating on the other. Section 13 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) similarly creates offences in the alternative. I assume that the decision-maker(s) did not have such material either.

35. It follows that I have little information (other than what the Appellant said in her evidence which was of a general nature) as to the nature of the offending, and the act(s) which constituted the hinder offence and the stalk offence. I again assume that the decision maker(s) were in the same position.

36. If such assumptions are correct, it follows (given the reference in the Respondent's correspondence to criterion 10) that the decision-maker(s) must have inferred, purely from the description of the offences themselves, that each amounted to a *"serious offence involving violence"*. In my view, it is doubtful whether such an inference was reasonably open in either case.

37. The Framework provides no guidance as to what is meant by a *"serious"* offence. In *Lazarus v Greyhound Welfare and Integrity Commission,*[15] I made the uncontroversial observation that the maximum penalty which is prescribed for any offence represents the Parliament's assessment of its seriousness.[16] In that regard, the hinder offence carries a maximum penalty of 12 months' imprisonment, and/or a fine of $2,200.00. The stalk offence carries a maximum penalty of 5 years' imprisonment and/or a fine of $5,500.00. Viewed in isolation, it might be open to conclude from such prescribed maximum penalties that both offences are "serious", particularly given that such penalties include terms of imprisonment.

38. At the same time, imprisonment is a sentencing option of last resort, and the objective seriousness of any offence will necessarily vary according to its circumstances. It is particularly relevant that in the present case, the Court

[15] A decision of the Tribunal of 1 March 2024 at [31].

[16] See for example *Elias v R* (2013) 248 CLR 483 at [13]; *Gilson v R* (1991) 172 CLR 353 at 364.

initially dealt with both the hinder offence and the stalk offence pursuant to s 10 of the *Crimes (Sentencing Procedure) Act 1999* (NSW), without recording a conviction. The discretion under s 10 to decline to record a conviction is a wide one which can be exercised in a range of circumstances. Those circumstances include where the Court concludes that the offending was trivial, or was committed under extenuating circumstances.[17] I have no information available to me (and I infer that the decision-maker(s) were in the same position) as to what the Magistrate relied upon when applying s 10 in the Appellant's case. However, if the Magistrate relied on either of the factors to which I have referred, it would tend against a conclusion that either offence was properly regarded as "serious".

39. The significance of this lies in the fact that criterion 10 of the Framework required the decision-maker(s) to take into account the penalty which was imposed. The fact that both the hinder offence and the stalk offence were dealt with in the absence of a conviction at first instance, and were dealt with by the imposition of a convictions and Community Corrections Orders only when the bonds which were imposed at first instance were breached by the PCA offence, were all matters to be taken into account by the decision maker(s) in the Appellant's favour when considering the application of criterion 10. It is not clear on the material before me whether those matters were taken into account, and if so, how they were taken into account.

40. Moreover, even if a conclusion was reached that either offence was serious, there remains a real issue as to whether either involved violence so as to engage the application of criterion 10.

41. The Appellant's evidence before me (which I acknowledge was not before the decision maker(s)) was that no violence was involved in the commission of either offence.[18] Further, specifically in terms of the hinder offence, I consider it significant that the Appellant was not charged with *assaulting* police, an offence

[17] See s 10(1) and (3).
[18] At T 5.32 – T 5.34.

which obviously *does* incorporate an element of violence. The absence of such a charge is an objective fact which is capable of supporting an inference that whatever the Appellant did which gave rise to the hinder offence, it did not involve any violence at all.

42. Similarly, given the definition of the terms of *"intimidation"* and *"stalking"* in s 7 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW), the stalk offence may not have involved any element of violence.

43. It would be difficult in all of these circumstances to be satisfied that either the hinder offence or the stalk offence involved any element of violence so as to engage the application of criterion 10.

44. There is a further issue arising from the application of criterion 10 to the facts of the present case which warrants comment. In foreshadowing how the Respondent might approach a case to which it applies, criterion 10 makes express reference to the fact that the Respondent will, in such a case, take into account the fact (if it be the fact) that any conviction was recorded more than 5 years ago. That carries with it the unequivocal suggestion that such a conviction is likely, given its age, to be given less weight in the assessment process than would be the case if it had been recorded at a time more proximate to the filing of the application for registration. In the present case, the convictions for both the hinder offence and the stalk offence were recorded at the Dungog Local Court on 14 November 2018. The application for registration was lodged by the Appellant on 10 December 2023, more than 5 years later, and it is not suggested that the Appellant deliberately waited for the expiration of 5 years before lodging her application in an attempt to derive some benefit if criterion 10 were applied.

45. The Respondent's letter to the Appellant advising that her application had been refused gives no indication of whether this aspect of criterion 10 was taken into account at all. One available inference is that it was not. The terms of criterion 10 make it clear that it was the Respondent's obligation to do so.

46. Difficulties also arise in the present case in terms of criterion 12. Although it clearly applies, it specifically contemplates that in that event, an applicant "*will be asked for further information*". On the material before me, that did not occur in the case of the Appellant. Why that is so is not explained.

47. Ms Summerson-Hingston correctly pointed out in her submissions[19] that nothing may now turn on this omission, given that this appeal proceeds by way of a hearing *de novo*, and I have been provided with an explanation by the Appellant which I can take (and have taken) into account. However, even when full weight is given to the fact that the Framework does not promulgate fixed procedures and is only intended to operate as a guide, any applicant for registration is entitled have a reasonable expectation that the Respondent will, in determining any application, act generally in accordance with the terms of any applicable criterion in the Framework. There would otherwise be no utility in having the Framework at all. That does not appear to have occurred in the present case, at least as far as criterion 12 is concerned.

48. All of that said, I accept the submission of Mr Summerson-Hingston that, the Framework aside, common law principles continue to have a role to play in determining whether an applicant is a fit and proper person to be registered in the industry. The authorities which have developed those common law principles make it clear that the scope for considering the issue of fitness is wide. It involves composite considerations of the honesty, knowledge, ability, character and reputation of the person in question.[20]

49. Nothing has been put to me in the present case on behalf of the Respondent which is directed towards the Appellant not having the ability to carry out the functions of an Attendant (that being the position for which she has sought registration). Rather, the focus has been upon the Appellant's honesty, character and reputation. The essence of the Respondent's case is that, taking into account the

[19] At T 13.45 – T 14.5

[20] See generally *Hughes and Vale Pty Limited v New South Wales [No. 2]* [1995] HCA 28; (1995) 93 CLR 127; *Australian Broadcasting Tribunal v Bond* [1990] HCA 33; (1990) 170 CLR 321.

information provided by Appellant in her application, I should conclude that she is lacking in honesty and that, as a consequence, she is not a fit and proper person to be registered as an industry participant.

50. In all of the circumstances, I am unable to accept that submission. For the reasons that follow, I have come to the view that the Appellant, despite the circumstances surrounding the information she provided in her application for registration, is a fit and proper person to be registered.

51. First, it is necessary to emphasise that the Appellant did not represent to the Respondent that she had no criminal history at all. The answer she gave to the question in the application was not, of itself, false.

52. Secondly, the Appellant's evidence before me was that in providing that answer, she was not intentionally seeking to mislead or deceive the Respondent.[21] I accept that to be the case. The Appellant's evidence is unchallenged in that respect. Moreover, as a matter of common sense, had the Appellant set out to intentionally mislead or deceive the Respondent, it could be reasonably assumed that she would simply have answered "no" to the question.

53. Thirdly, whilst the *particulars* the Appellant provided of her criminal history were (at best) misleading, I am satisfied that this was not intentionally so. The Appellant's explanation for providing those particulars was that she thought that all of her offending would be "linked" to her PCA offence,[22] and would thus come to the attention of the Respondent as a consequence of the PCA offence having been disclosed. In my view, that explanation is both cogent and plausible for two reasons. The first, is that the PCA offence constituted the breach of the bonds which resulted in the convictions and Community Corrections Orders being imposed for the hinder offence and the stalk offence. The second, is that all three matters were dealt with by the same Magistrate, in the same Court, on the same

[21] AB 19 at [18].
[22] See the Appellant's statement at [16}.

day. Given all of those circumstances, it is entirely unsurprising that the Appellant was under the impression that all three matters were linked.

54. Fourthly, all of these factors are entirely consistent with the Appellant's specifically expressed belief,[23] which I accept, that in providing the particulars she did, she considered that was "flagging" her criminal history to the Respondent.

55. Fifthly, all of these factors support a conclusion that in completing the application as she did, the Appellant acted carelessly, rather than in a way which was intentionally deceptive or dishonest. I have already noted the submissions of Mr Bryant regarding the Appellant's background. I am satisfied that the Appellant is not a particularly sophisticated person, and is someone who is largely, if not entirely, unfamiliar with regulatory regimes of this nature.[24] All of these matters, and her presentation before me at the hearing, support a conclusion that she did not complete the application with the intention of deliberately deceiving or misleading the Respondent.

56. Sixthly, in circumstances where the authorities to which I have referred make it clear that it is relevant, in a case such as this, to consider a person's reputation, I have been provided with a large body of evidence of the Appellant's generally good character. That evidence comes from a range of people who have known the Appellant in different capacities over different periods of time, and who have variously described her as "trustworthy",[25] "respectable",[26] "honest",[27] "well respected",[28] "trustworthy and loyal",[29] and "a good person".[30] A conclusion that the Appellant was not a fit and proper person for registration would require the entirety of that evidence to be given little or no weight. There is no basis on which

---

[23] See the Appellant's statement at [17].
[24] Cf *Mabbott v Greyhound Welfare and Integrity Commission* (30 November 2021) at [13].
[25] Reference of Jamie Smith at AB 10.
[26] Reference of Emily Miller at AB 11.
[27] Reference of Dan Russell at AB 12.
[28] Reference of Garry Norman at AB 13.
[29] Reference of Lorraine Payne at AB 14.
[30] Reference of Allan Thomas at AB 15 and Paul Hugg at AB 16.

to take that course. Leaving aside the fact that it is unchallenged in its entirety, such evidence, which I accept, is entirely antithetical to the proposition that the Appellant is not a fit and proper person to be registered.

57. Finally, and to the extent that it might be suggested that the Appellant's criminal history is inconsistent with the evidence of her character which is before me, and is a factor which, absent anything else, mitigates against a finding that she is a fit and proper person, I should make it clear that I am satisfied that the entirety of that offending was committed at a time when the Appellant faced turbulent and traumatic personal circumstances, which involved acts of domestic violence perpetrated against her. Further, it is not without significance that the Appellant is:

    (i) now 54 years of age;
    (ii) spent the first 48 years of her life without any interaction with the criminal law at all;
    (iii) has not committed any offences since those which are connected to this appeal, and occurred more than 5 years ago; and
    (iv) successfully completed a period of rehabilitation under the supervision of Community Corrections NSW as part of her Community Corrections Orders.

58. These are all objective factors which, apart from being to the Appellant's general credit, support the conclusion that her offending is properly regarded as an aberration, brought about by the personal circumstances with which she was confronted. They also support the conclusion that the Appellant's prospects of continued rehabilitation are excellent, and that her likelihood of re-offending is low.

59. Although the offending per se was not ultimately relied upon by the Respondent as a factor which rendered the Appellant unfit, I should record the fact that I do not regard such offending as being determinative of the issue of fitness. In other words, in the circumstances of this case, I do not regard such offending as

mandating a conclusion that the Appellant is not a fit and proper person to be registered. Needless to say, it is necessary that I take into account all of the evidence which is before me. For all of the reasons I have outlined, the just result in this case is that the appeal should be upheld.

<u>THE ONUS OF PROOF</u>

60. As I have previously noted, Ms Summerson-Hingston submitted that I should revisit the determination I made in the matter of *Bilal v Greyhound Welfare and Integrity Commission*[31] as to the issue of the onus of proof in a matter of this kind and that, having done so, I should reach a different conclusion. This matter was not addressed in the written submissions, and was only raised in oral submissions by Ms Summerson-Hingston in the course of the hearing of the appeal. That gave Mr Bryant very little opportunity to properly address it.

61. I unequivocally respect that the importance of this issue is such that the Respondent may wish to revisit it at some point. I also unequivocally respect that the Respondent's position is contrary to mine. If I am persuaded at some time in the future that my previously expressed view is wrong, I should depart from it. However, those matters can only be properly ventilated where I have the benefit of comprehensive written submissions, where I am taken *in detail* to any authorities which are relied upon, and where I have the benefit of supplementary oral submissions. That did not occur in the present case, the matter having been raised at a late stage in the course of oral submissions, apparently absent any notice being given to Mr Bryant that there was an intention to do so.

62. In those circumstances, this is not an appropriate case in which to revisit the issue of the onus of proof. No doubt the Respondent will be able to identify a case in the future where the same issue arises, and which presents as an appropriate vehicle through which to reconsider it.

---

[31] A decision of 28 February 2024.

63. I should also make it clear that in the circumstances of the present case, I would have come to the decision that the appeal should be upheld irrespective of what conclusion was reached as to what party bore the onus of proof.

ORDERS

64. For the reasons given, I make the following orders, and I do so on the understanding that the Respondent will give effect to such orders by approving the Appellant's application and effecting her registration forthwith:

    1. The appeal is upheld.
    2. The determination of the Respondent of 13 February 2024 refusing the Appellant's application for registration is quashed.
    3. The appeal fee is to be refunded.

THE HONOURABLE G J BELLEW SC

15 April 2024