

CITATION: *Ball v Queensland All Codes Racing Industry Board* [2017] QCAT 72

PARTIES: Ronald Douglas Ball
(Applicant)
v
Queensland All Codes Racing Industry Board
(Respondent)

APPLICATION NUMBER: OCR039-16

MATTER TYPE: Occupational regulation matters

HEARING DATE: 5 December 2016

HEARD AT: Brisbane

DECISION OF: **Member Guthrie**

DELIVERED ON: 3 March 2017

DELIVERED AT: Brisbane

ORDERS MADE:

1. **The reviewable decision is set aside and a new decision substituted that:**
 - a) **Grounds 1, 3 and 4 are established in that Mr Ball has breached GAR 86(af), 86(q) and 86(d) as worded at the date of the conduct;**
 - b) **Ground 2, the alleged breach of GAR 86(aa) is not established; and**
 - c) **For the breaches of the GAR, Mr Ball is warned off for 10 years from the date of the original decision, 26 May 2015.**

CATCHWORDS: PROFESSIONS AND TRADES – LICENSING OR REGULATION OF OTHER PROFESSIONS, TRADES OR CALLINGS – Greyhound Trainers – where greyhound trainer sought review of decision to warn him off for ten years – where reviewable decision found greyhound trainer engaged in live baiting – where reviewable decision found greyhound trainer breached Greyhound Australasia Rules – where tribunal conducts fresh hearing on the merits – whether greyhound trainer engaged in

live baiting – whether greyhound trainer breached Greyhound Australasia Rules

EVIDENCE – PROOF – STANDARD OF PROOF – STANDARD OF SATISFACTION – SUFFICIENCY – GENERALLY – where tribunal considering occupational regulation matter – where greyhound trainer attended stewards inquiry – where transcript of stewards' inquiry admitted before tribunal – where video footage from two separate cameras – where quality of video footage imperfect – where timestamps on footage from two separate cameras inconsistent – where video footage admitted before tribunal – whether evidence sufficient to make findings of fact

Queensland Civil and Administrative Tribunal Act 2009 (Qld) s 10, s 20, s 21(2), s 24, s 33
Racing Act 2002 (Qld) s 4(1), s 149, s 149S, s 152A

Greyhound Australasia Rules rule 86 (aa), 86(af), 86(q) and 86(d)
Local Rules of Racing (Greyhound Racing) LR2, LR3A

Ball v Queensland All Codes Racing Industry Board [2016] QCAT 369, applied
Briginshaw v Briginshaw (1938) 60 CLR 336, applied
Connolly v Greyhound Racing Victoria Stewards (Review and Regulation) [2016] VCAT 1180, considered
Edmondson v Queensland All Codes Racing Industry Board [2016] QCAT 70, discussed
El-Issa v Racing Queensland Limited [2011] QCATA 280, applied
Green v Racing Queensland [2012] QCATA 269, cited
Gurnett v Macquarie Stevedoring Co Pty Ltd (1955) 72 WN (NSW) 261, applied
Kennedy v Deputy Commissioner Ian Stewart [2012] QCAT 66, cited
Kunde v Queensland All Codes Racing Industry Board [2016] QCAT 430, discussed
Lawlor v Racing Queensland Limited [2012] QCAT 255, cited
McKenzie v Acting Assistant Commissioner Tony Wright [2011] QCATA 309, cited

New South Wales Bar Association v Evatt
 (1968) 117 CLR 177, applied
Re Confidential v Commissioner of Taxation
 [2013] AATA 112, cited
Seymour v Racing Queensland Limited [2012]
 QCAT 241, cited
Thomas v Racing Queensland Limited [2012]
 QCAT 436, applied

APPEARANCES & REPRESENTATIVES:

APPLICANT: Ronald Douglas Ball represented by Mr C Nyst of Nyst Legal

RESPONDENT: Racing Queensland represented by Mr J Horton of Queen's Counsel and Mr D D Purcell of Counsel instructed by Clayton Utz lawyers

REASONS FOR DECISION

Background

- [1] Mr Ronald Ball has been a trainer of greyhound dogs for racing for over 50 years. Prompted by Racing Queensland being provided with video footage of training methods used at a property at 9 Wotan Road, Churchable ('the Churchable property'), Racing Queensland stewards conducted an investigation into matters recorded in the footage which were considered of concern.
- [2] Following an inquiry conducted by Racing Queensland stewards on 18 March 2015, the Queensland All Codes Racing Industry Board ('Racing Queensland') decided, on 26 May 2015, that Mr Ball had breached certain of the *Greyhound Australasia Rules* (GAR) and, as a consequence:
- a) Mr Ball was warned off for life from all Queensland greyhound racecourses;¹ and
 - b) All greyhounds owned by him (wholly or partly) were prohibited from competing in any event, subject to the following:
 - i) Any such greyhound may be permitted to compete in any Events and/or be used for breeding purposes under the protocols to be advised by the Stewards on the basis that Mr Ball has no further interest or involvement in any such greyhound²; and

¹ Local Rules of Racing (Greyhound Racing), rule 3A.

² Greyhound Australasia Rules, rule 14(1)(c).

- ii) Any transaction for the sale of the greyhound must be a legitimate transaction with appropriate evidence as required by the Stewards to be provided by Mr Ball to demonstrate the legitimacy of the sale.
- [3] Mr Ball appealed that decision and, on 3 March 2016, the Queensland Racing Disciplinary Board ('the QRDB') varied the decision by reducing the period for which Mr Ball was to be warned off to 10 years. In so doing, it was submitted by Racing Queensland that the QRDB did not have jurisdiction in respect of Racing Queensland's decision under GAR 14(1)(c) which related to the greyhounds owned by Mr Ball. It was submitted that s 149S of the *Racing Act 2002* (Racing Act) made it clear that such a decision was not an 'appellable decision' as defined. It appears from the reasons of the QRDB that, in respect of the issue of the appropriate sanction, it regarded itself as confined to a consideration of Racing Queensland's decision under rule 3A of the *Local Rules of Racing (Greyhound Rules)* (the Local Rules), to warn off Mr Ball for life.
- [4] In reaching its decisions, Racing Queensland and the QRDB considered primarily the transcript of Mr Ball's attendance at the stewards' inquiry on 18 March 2015 and video footage said to be taken at the Churchable property. Mr Ball did not give evidence before either Racing Queensland or the QRDB. During the stewards' inquiry, Mr Ball was shown the video footage. The video footage comprises long shot footage and button shot footage.
- [5] Mr Ball applied to the Tribunal for review of the decision of the QRDB. Mr Ball argued that the transcript of the stewards' inquiry and the video footage should not be admitted into evidence before the Tribunal. On 14 October 2016, I decided that the audio of conversations or spoken words recorded on the video footage was not admissible. I determined that otherwise the video footage was admissible as was the transcript of the stewards' inquiry. In my written reasons, I stated that at the resumed hearing, the parties were entitled to make submissions about the weight I should give to the evidence.³
- [6] At the resumed hearing on 5 December 2016, no oral evidence was led by either party. I accepted into evidence the documents (including compact discs recording the footage) filed in the Tribunal by Racing Queensland pursuant to s 21(2) of the *Queensland Civil and Administrative Tribunal Act 2009* (the QCAT Act)⁴ subject to my orders regarding admissibility of the audio. I also accepted into evidence an affidavit of Matthew John Jackson provided to the Tribunal by Mr Ball on the day of the hearing.⁵

³ *Ball v Queensland All Codes Racing Industry Board* [2016] QCAT 369 at [56] and [63].

⁴ Exhibit 1: s 21(2) documents dated 22 April 2016; Exhibit 2: Supplementary s 21(2) documents dated 11 July 2016.

⁵ Exhibit 3: Affidavit of Matthew John Jackson signed 2 December 2016 with annexures 'MJJ1' to 'MJJ5' (inclusive).

- [7] During the hearing, Mr Ball's legal representative sought to tender an affidavit of Mr Ball that had not been previously filed in the Tribunal. Ultimately, it was not tendered into evidence as, following submissions and interactions between the Tribunal and the parties' representatives and the Tribunal and Mr Ball himself, as well as adjournments for Mr Ball's representative to obtain his instructions, Mr Ball's representative informed the Tribunal that Mr Ball no longer sought to rely on it.
- [8] I have considered the admitted evidence as well as the written submissions filed by the parties in this proceeding and the oral submissions made at the hearing.

The Tribunal's review

- [9] Mr Ball may apply for a review of a decision of a constituted board pursuant to s 152A of the Racing Act. The application to the Tribunal was made under s 33 of the QCAT Act. In exercising its review jurisdiction, the Tribunal has all the functions of the QRDB.⁶ Section 20 of the QCAT Act provides that the purpose of the review is to arrive at the correct and preferable decision and that the Tribunal must hear and decide the review by a fresh hearing on the merits.
- [10] I am satisfied that the terms of s 149S and s 149(2)(a) of the Racing Act at the relevant time meant that the other orders made by Racing Queensland on 26 May 2015 pursuant to GAR 14(1)(c) in relation to greyhounds owned by Mr Ball did not form part of the appellable decision to the QRDB. As I am reviewing the decision of the QRDB and have all the functions of the QRDB, I do not consider that I have the power to make any determination under GAR 14(1)(c) of a type set out in s 149S(2) of the Racing Act.⁷
- [11] Section 24 of the QCAT Act provides that the Tribunal may confirm or amend the reviewable decision or set aside the reviewable decision and substitute its own decision or set aside the decision and return the matter to the disciplinary board for consideration with appropriate directions.

Racing Queensland's regulatory role

- [12] Racing Queensland was, at the time of the reviewable decision, the control body for greyhound racing pursuant to the Racing Act. Section 4(1) of the Racing Act outlined the main purpose of the legislation to be:⁸

⁶ QCAT Act, s 19.

⁷ *Racing Act* 2002 (Qld), s 149S(2)(a) a decision relating to the eligibility of an animal to race or the conditions under which an animal can race.

⁸ Similar purposes are reflected as the main purposes of the *Racing Integrity Act* 2016, s 3. The *Racing Integrity Act* commenced in 2016 and its enactment was reflected in amendments to the *Racing Act* 2002 (Qld). The *Racing Integrity Act* established the Queensland Racing Integrity Commission which has become the regulator in matters of Queensland racing. This proceeding, however, continued under the previous regime.

- a) to maintain public confidence in the racing of animals in Queensland for which betting is lawful; and
- b) to ensure the integrity of all persons involved with racing or betting under the Act; and
- c) to safeguard the welfare of all animals involved in racing under the Act.

- [13] In order to perform its functions the control body makes policies about the management of its code of racing and rules.⁹ Indeed the legislation provides that a control body must make rules of racing, including matters that it believes necessary for the good management of racing under the code¹⁰. The policies and rules made by a control board are statutory instruments.¹¹
- [14] At the relevant time, the Local Rules stated that Racing Queensland may, subject to the Racing Act, make rules governing and relating to the control of greyhound racing in Queensland.¹² Racing Queensland shall have the exclusive control and general supervision of greyhound racing in Queensland.¹³
- [15] The rules that apply to every participant include the Local Rules and, most relevantly here, the GAR.¹⁴ Mr Ball does not dispute that the GAR and the Local Rules relied upon by Racing Queensland apply to him.
- [16] I consider that in interpreting the relevant rules of the GAR, the purpose of the Racing Act and its objects are of assistance. They provide context for the rules.

The alleged breaches of the GAR

- [17] Racing Queensland issued Mr Ball a show cause notice on certain grounds, the terms of which have not changed since the issue of the notice. The grounds and their particulars as well as the relevant rule to which each ground refers follow:

1. [Mr Ball] used the live baiting of animals for a purpose connected with greyhound racing that was improper in breach of GAR, Rule 86(af), including on or about 22 August 2014 at [the Churchable property].

Particulars: In an interview with Racing Queensland in Deagon, Brisbane on 18 March 2015 [Mr Ball] made certain statements regarding [his] conduct and the conduct of others in respect of live baiting.

⁹ *Racing Act 2002 (Qld)*, s 78(2) (revised version as at 1 July 2014).

¹⁰ *Racing Act 2002 (Qld)*, s 91.

¹¹ *Racing Act 2002 (Qld)*, s 79.

¹² *Local Rules of Racing (Greyhound Racing)*, LR2.

¹³ Local Rules, LR 3(1).

¹⁴ *Greyhound Australasia Rules*, rule 1, definition of "Rule", "These Rules" and rules 3 to 10 (inclusive).

Rule 86(af): A person (including an official) shall be guilty of an offence if the person uses an animal for any purpose connected with greyhound racing in a manner which is improper.

2. [Mr Ball] used the live baiting of animals for the purpose of affecting the performance of a greyhound in breach of GAR, Rule 86(aa), including on or about 22 August 2014 at [the Churchable property].

Particulars: In an interview with Racing Queensland in Deagon, Brisbane on 18 March 2015 [Mr Ball] made certain statements regarding [his] conduct and the conduct of others in respect of live baiting.

Rule 86(aa): A person (including an official) shall be guilty of an offence if the person tampers with any gear used on a greyhound, or uses any substance or item to affect the performance of a greyhound or greyhounds.

3. [Mr Ball] engaged in conduct which is detrimental or prejudicial to the interest, welfare, image, control or promotion of greyhound racing in breach of GAR, Rule 86(q), including on or about 22 August 2014 at [the Churchable property].

Particulars: In an interview with Racing Queensland in Deagon, Brisbane on 18 March 2015 [Mr Ball] made certain statements regarding [his] conduct and the conduct of others in respect of live baiting.

Rule 86(q): A person (including an official) shall be guilty of an offence if the person commits or omits to do any act or engages in any conduct which is in any way detrimental or prejudicial to the interest, welfare, image, control or promotion of greyhound racing.

4. [Mr Ball] provided in an interview with Racing Queensland in Deagon on 18 March 2015, evidence that was false and misleading in breach of the GAR, Rule 86(d).

Particulars:

(i) [Mr Ball] misrepresented that [he] had never participated in live baiting when in fact [he] participated in live baiting including on or about 22 August 2014 at [the Churchable property].

(ii) [Mr Ball] misrepresented that [he] had never witnessed live baiting when in fact [he] witnessed live baiting including on or about 22 August 2014 at [the Churchable property].

Rule 86(d): A person (including an official) shall be guilty of an offence if the person being an owner, trainer, attendant or person having official duties in relation to greyhound racing, makes a false or misleading statement in relation to an investigation, examination, test or inquiry, or makes or causes to be made a falsification in a document in connection with greyhound racing or the registration of a greyhound.¹⁵

Standard of Proof

- [18] It is agreed by the parties, and I accept, that the standard of proof in relation to the matters in dispute is the balance of probabilities, in light of the comments of the High Court in *Briginshaw v Briginshaw*¹⁶. In my view, the submissions made by the applicant as to the level of persuasion I must feel before finding a material fact are not consistent with the Court's reasoning in *Briginshaw*. I consider it worthwhile to set out what the Court said:¹⁷

The truth is that, when the law requires the proof of any fact, the tribunal must feel an actual persuasion of its occurrence or existence before it can be found. It cannot be found as a result of a mere mechanical comparison of probabilities independently of the belief in its reality. No doubt an opinion that a state of facts exists may be held according to indefinite gradations of certainty; and this has led to attempts to define exactly the certainty required by the law for various purposes. Fortunately, however, at common law no third standard of persuasion was definitely developed. Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of the given description, or the gravity of the consequence flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony or indirect inferences.

- [19] The applicant submits that I must reach a positive conclusion of guilt and that I could not be reasonably satisfied of a fact unless there was no other reasonable conclusion that could be reached. It is not enough, the applicant submits, for me to be satisfied that a fact probably did occur. I do not consider that that is consistent with the court's reasoning. The court was clear that no third standard of persuasion was developed. I consider that the applicant's submissions urged me to apply a standard of proof akin to the criminal standard of proof.
- [20] I accept that when determining the material facts in this case, I must consider the evidence and also consider the gravity of the consequences for Mr Ball. Mr Ball was initially warned off greyhound tracks for life, later reduced to 10 years. He has been a greyhound trainer for 56 years. It is his livelihood. I must be reasonably satisfied of a material fact based on the evidence before me and I accept that reasonable satisfaction should not be produced by inexact proofs, indefinite testimony or indirect inferences. I accept that I must feel an actual persuasion on the evidence to arrive at a material fact. However, I do not consider that it is necessary for me to also

¹⁶ *Briginshaw v Briginshaw* (1938) 60 CLR 336.

¹⁷ *Briginshaw v Briginshaw* (1938) 60 CLR 336, 362.

remove any possibility of an alternative fact to reach the appropriate level of satisfaction.

The reliability of the video footage

[21] I am aware of the decision of this Tribunal (differently constituted) in *Kunde v Queensland All Codes Racing Industry Board*.¹⁸ It was not alleged that Mr Kunde had himself engaged in live baiting as is the case here but rather that he had witnessed it and failed to report it to Racing Queensland.

[22] In the decision of *Kunde*, the learned member formed the view that the video evidence before him was not of great value and could not be construed as evidence that the applicant in that case was aware at the time he was present at the property that live baiting was taking place.¹⁹

[23] The learned member said:

The Respondent relied upon the video evidence which it says puts the Applicant in the vicinity and sufficiently close to the live piglet depicted in the video to establish direct knowledge. That also requires a finding from the Tribunal that the videos are ‘in sync’²⁰

[24] Similarly in this case, from my viewing of the extended long shot footage, a piglet is visible on the lure arm each time the dogs said to be those of Mr Ball run on the track.²¹ However, it is not clear from the long shot footage whether the piglet is alive. It is clear from the button shot footage that the piglet on the lure arm is alive. It makes audible noises for extended periods (of seconds) and it moves in a voluntary manner.²² Therefore, it is necessary for both sets of footage to be considered in order to determine the facts in this case.

[25] I do not share the same view as the learned member in *Kunde* that a finding is required by the Tribunal that the long shot footage and the button shot footage are ‘in sync’.

[26] Both the long shot footage and the button shot footage bear the date 22 August 2014. I accept that the footage is imperfect. In some parts there is no vision at all and in other parts vision flickers in and out. Further, it is clear, from a comparison of the footage that the long shot footage and the button shot footage are not perfectly ‘in sync’ in that the time stamp on the long shot footage and that on the button shot footage for the same action or moment in time is not identical. The button shot footage timestamp is about 28 seconds behind the long shot footage. I do not consider that a significant difference. A comparison of the two pieces of footage reveals that the difference in the time stamps is consistent throughout the footage.

¹⁸ *Kunde v Queensland All Codes Racing Industry Board* [2016] QCAT 430.

¹⁹ *Kunde v Queensland All Codes Racing Industry Board* [2016] QCAT 430 at [29].

²⁰ *Kunde v Queensland All Codes Racing Industry Board* [2016] QCAT 430 at [23].

²¹ Exhibit 1: extended long shot footage, for example at 11:07:34, 11:12:20, 11:13:28.

²² Exhibit 1: button shot footage 2 at 11:11:30-54 and 11:13:13-30.

I do not consider that the discrepancy in the timestamps must mean that the footage is not an accurate record of what is shown in the footage or that what is shown on the long shot footage and the button shot footage cannot be the same events occurring on the same day over the same period of time.

[27] In the button shot footage, the person alleged by Racing Queensland to be Mr Ball walks into shot and positions himself close to the fence near the track so that I am satisfied that the same person is present in both the button shot footage and the long shot footage. The individual is identically dressed in both sets of footage.²³ Similarly, another gentleman wearing an orange jacket appears in both the long shot footage and the button shot footage.²⁴ The animal, a black piglet, shown on the lure in the button shot footage looks identical to the animal on the lure shown in the long shot footage. The animal is shown attached to the lure along with some wool or sheepskin in both sets of footage. The footage appears to be continuous. There are no obvious breaks in the action other than the issues with loss of vision as I have previously mentioned. The events depicted in both sets of footage appear to me to be the same events. I consider it highly unlikely that the two sets of footage were not taken on the same day and over the same period of time.

[28] It is submitted by the applicant that the footage could have been tampered with by changing the time stamps. Mr Ball relies on the report by Forensic computer scientist, Dr Bradley Schatz dated 27 October 2015 to argue that the footage is not reliable.²⁵ Racing Queensland did not require him for cross-examination. I accept Dr Schatz's qualifications and expertise in the area of forensic computer science. I accept the opinions he expressed in his report. In response to the question: Is it possible to change or manipulate times and dates on recording devices and digital video recordings, Dr Schatz states:

...it is possible to edit a video to contain an arbitrary overlaid time and date.

...it is possible to modify the time and date metadata to arbitrary times and dates.

In regard to all of the above, one may make a video recording reflect a false time and date by setting a false time and date to the internal clock of the recording device.

[29] Dr Schatz was unable to form a concluded opinion regarding whether the particular videos in question were shot at the time and date indicated in the overlaid video. He refers to points of consistency which are, he says, consistent with the file being the unaltered original file, whereby the times

²³ Exhibit 1: button 0243 shot footage 2 at 11:11:09 and the extended long shot footage between 10:48 and 11:17.

²⁴ Exhibit 1: button shot footage 0243 2 at 11:13:23 and, for example, long shot footage 10:58:14 and 10:58:28 through to 10:59:06 and 11:00:33 through to 11:00:54.

²⁵ Exhibit 1: pp.181-199 (inclusive).

and dates reflect the time and date the internal clock of the recording device at the time the video was recorded. He goes on:

As for the accuracy of the internal clock of the recording device with respect to the actual time of filming, the information provided and the file are insufficient for forming a concluded opinion.

- [30] Dr Schatz further states that access to the original recording devices and associated storage devices would assist in forming a concluded opinion regarding when the video footage was created.
- [31] I do not consider that Dr Schatz's report is support for the proposition that the events depicted in both sets of footage did not occur on the same day and over the same period of time on that day but, rather that, as a general proposition, date and time stamps may not be accurate because they reflect the internal clock of the recording device. In this case, Dr Schatz is unable to state that the internal clock on the video recording device was accurately set.
- [32] It is not essential that I be satisfied that the events occurred on 22 August 2014. The wording of the grounds refers to 22 August 2014 as a date that Mr Ball engaged in live baiting but the ground is not confined to that particular date. One would have thought that if the video had been tampered with, the person would have done a better job of synchronising the timestamps. In any event, I consider that it is more likely than not that the events depicted in both the long shot footage and the button shot footage occurred on 22 August 2014 as stated on both set of footage. I am satisfied that what is shown in both sets of footage occurred on the day the footage was recorded. I am also satisfied that the same events in each set of footage occurred at the same time despite the timestamps being slightly different between the two sets of footage.
- [33] I do not regard the video footage to be of little value as found in *Kunde*. I have had careful regard to it.

The reliability of the transcript of the stewards' inquiry

- [34] In determining that the transcript of the stewards' inquiry was admissible, I made certain findings about Mr Ball's attendance at and participation in the inquiry. Some of those findings are relevant to reliability of the answers he gave and the weight I should give to those answers. I consider it worthwhile restating the relevant findings.
- [35] I consider that the statements Mr Ball made to the inquiry were given voluntarily and were not induced by any threat or promise by any person in authority.²⁶ In reaching that conclusion, I noted that there was nothing in the

²⁶

Ball v Queensland All Codes Racing Industry Board [2016] QCAT 369 at [39].

transcript that caused me to be concerned that Mr Ball felt overborne by the panel to answer questions.²⁷

- [36] I did not consider that the transcript of the inquiry was inadmissible on the grounds that it was procedurally unfair.²⁸ In reaching that conclusion, I noted that the stewards' inquiry was not the end of the process. The show cause notice followed but there was also a show cause hearing and a Board hearing. Mr Ball has had multiple opportunities to give evidence but has not done so.²⁹
- [37] I consider that I am entitled to rely on the answers Mr Ball gave at the inquiry. I consider that in the absence of any other evidence or information obtained directly from Mr Ball and based on my findings that he was not overborne, that the answers he gave to the inquiry should be given significant weight.
- [38] During the stewards inquiry Mr Ball was shown the video footage and he answered questions while viewing the footage. As a consequence, I do not consider that the evidence before me should be considered in a piecemeal fashion. In my view, as much of the evidence is inter-related, it should be considered as a whole. The video footage and the transcript should be considered together.

Ground 1: [Mr Ball] used the live baiting of animals for a purpose connected with greyhound racing that was improper in breach of GAR, Rule 86(af), including on or about 22 August 2014 at [the Churchable property].

- [39] Rule 86(af) states: *A person (including an official) shall be guilty of an offence if the person uses an animal for any purpose connected with greyhound racing in a manner which is improper.*
- [40] In relation to this ground I must be satisfied that:
- a) Mr Ball was present at the Churchable property on a day on or about 22 August 2014 with his greyhounds;
 - b) Mr Ball's greyhounds, or at least one of them, trained with a live animal on the lure arm.
 - c) Mr Ball knew that there was a live animal on the lure at the time his greyhound/s trained.
- [41] Certain findings can, due to the state of the evidence, only be made by inference. An inference is a "reasonable conclusion drawn as a matter of strict logical deduction from known or assumed facts. It must be something which follows from given premises as certainly or probably true, and the

²⁷ Ibid at [48].

²⁸ Ibid at [55].

²⁹ Ibid at [54].

mere possibility of truth is not sufficient to justify an inference to that effect".³⁰ In *Re Confidential v Commissioner of Taxation*³¹ the Administrative Appeals Tribunal set out some guiding principles, taken from various authorities, that should be followed when drawing inferences from the evidence.³² The AAT said:

- (1) "... the search is always for the existence of a body of evidence which might, reasonably, sustain a relevant finding of fact or, conceivably, permit a particular inference to be drawn."³³
- (2) "It is important to bear in mind also that the inferential process is not one where speculation, guesswork or mere assumption is accommodated. So far as the work of courts is concerned, where the application of a judicial method is expected, the process of drawing an inference from available facts is not to be equated with conjecture, surmise or guesswork. The arbitrary selection of one possibility over others from an available number of possibilities by such a method is not merely lacking in logic; it fails to conform to the necessity that inferences be drawn as matters of legitimate deduction, based on probative values."³⁴
 - (a) "A conjecture may be plausible, but it is effectively still a mere guess. An inference is a deduction from the evidence, and if reasonable can be treated as part of the legal proof to be considered in making a factual determination in any particular proceeding. Whilst sometimes it may be difficult to distinguish between conjecture and inference, nevertheless the distinction is an important one."³⁵
 - (b) "...Of course as far as logical consistency goes many hypotheses may be put which the evidence does not exclude positively. But this is a civil and not a criminal case. We are concerned with probabilities, not possibilities. The difference between a criminal standard of proof in its application to circumstantial evidence and the civil is that in the former the facts must be such as to exclude reasonable hypotheses consistent with innocence, while in the latter you need only circumstances raising a more probable inference in favour of what is alleged. In questions of this sort, where direct proof is not available, it is enough if the circumstances appearing in evidence give rise to a reasonable and definite inference: they must do more than give rise to conflicting inference of equal degrees of probability so that the choice between them is mere matter of conjecture... But if circumstances are proved in which it is reasonable to find a

³⁰ *Gurnett v Macquarie Stevedoring Co Pty Ltd* (1955) 72 WN (NSW) 261 at [264].

³¹ [2013] AATA 112.

³² [2013] AATA 112 at [415].

³³ Taken from *Tisdall v Webber* [2011] FCAFC76; (2011) 193 FR 260 per Greenwood, Tracey and Buchanan JJ at [127]; 297 per Buchanan J with whom Tracey J agreed.

³⁴ *Ibid* at [128], 297.

³⁵ *Bell IXL Investments Ltd v Life Therapeutics Ltd* [2008] FCA 1457 at [14] per Middleton J.

balance of probabilities in favour of the conclusion sought, though the conclusion may fall short of certainty, it is not to be regarded as mere conjecture or surmise..."³⁶

Was Mr Ball present at the Churchable property including on or about 22 August 2014 with his greyhounds?

[42] The respondent relies on particular parts of the transcript of the Stewards Inquiry on 18 March 2015 to submit that Mr Ball when shown the footage, identified himself as the person shown in the relevant footage, including a particular shot from the button shot footage.

[43] It is argued for Mr Ball that any claimed identification of himself as the person in the footage is equivocal. Mr Ball relies on the following part of the transcript of the Inquiry:³⁷

THE CHAIRMAN: So we are just fast forwarding it here just to save some time. As you can see, there's a lot of footage. Just pause it there. So that's at 10:40.34. Mr Ball, do you have any idea who that person is?

MR BALL: No, not really.

THE CHAIRMAN: We'll go back and give you another opportunity.

MR BALL: Sorry?

THE CHAIRMAN: We'll give you another opportunity to look at it.

MR TORPEY: I won't pause it this time.

MR BALL: Well, you could have. It might have – it could have been me.

THE CHAIRMAN: Yeah.

MR BALL: I'm not - I'm not really sure. It's not ----

THE CHAIRMAN: Does that look like you?

MR BALL: Yeah it could be.

[44] The applicant says that he essentially acquiesced to the stewards suggestion to him that he is the person shown in the footage but there was no clear admission on his part. The applicant also relies on the absence of any other evidence before the Tribunal that puts Mr Ball at the Churchable property on that particular day. The respondent has not, for example, called any other witnesses to give evidence regarding Mr Ball's presence at the property.

³⁶ *Bradshaw v McEwans Pty Ltd* [1951] HCA 48 quoted with approval in *Luxton v Vines* [1952] HCA 19; (1952) 85 CLR 352, 358 per Dixon, Fullagar and Kitto JJ.

³⁷ Exhibit 1: p.70: T35, lines 25-47.

[45] The part of the transcript upon which the applicant relies comes almost immediately before the first of the passages from the transcript relied upon by the respondent:

THE CHAIRMAN: All right. Blue shirt. So it's safe to say that is you and Mr Nutley?

MR BALL: Yes³⁸

...

THE CHAIRMAN: Which was pretty late in the morning. Is that you there?

MR BALL: I'd say it would be.³⁹

...

THE CHAIRMAN: Yeah. if you just take it back, Mr Torpey. So you're standing there watching the trials with your arm up.

MR BALL: Mmm.

THE CHAIRMAN: You hand something to the guy in the orange shirt, and to me it looks like a dog lead. Would that be fair to say?

MR BALL: Yeah. Yeah. Yeah. But I don't really know whether they are my dogs or not.

THE CHAIRMAN: What makes you say that?

MR BALL: Well, I don't know. I really don't know whether they -----

THE CHAIRMAN: Is it normal practice for you to be handing leads to the workers?

MR BALL: No No, not normally. But the thing is – the thing is, I'm not convinced that that's - thing's alive, anyway. So it doesn't become live baiting.

THE CHAIRMAN: All right. So – this is at 11:31.

MR BALL: Yeah.

THE CHAIRMAN: We've shown you this footage before where you are crouched down in front of the boxes.

MR BALL: Yeah

THE CHAIRMAN: You've got a lead in your hand.

³⁸ Exhibit 1 pp.71-72: T36 lines 45-46 and T37 line 1.

³⁹ Exhibit 1 p.72: T37, line 15.

MR BALL: Yep.⁴⁰

...

THE CHAIRMAN: So would it be fair to say they're your greyhounds?

MR BALL: Yeah, they would be my greyhounds, yeah, but I'm not convinced that that animal is alive, okay.

THE CHAIRMAN: Okay. All right. So that's at 11:14, virtually 00, when they go to retrieve your dogs. We established on the other footage -----

MR BALL: Yep.⁴¹

- [46] In term of other evidence going to the issue of identification of Mr Ball, I have before me a copy of photographic identification of Mr Ball.⁴² I also have the transcript of the appeal hearing before the QRDB. At that hearing, Mr Torpey, one of the stewards who conducted the inquiry gave evidence and was cross-examined by counsel for Mr Ball. Mr Torpey was cross-examined about how Mr Ball was identified. Mr Torpey gave the following response:⁴³

MR TORPEY: No, the situation being is that that may become – trying to recall six months ago exactly how we've come to the conclusion that that's Ron Ball, but Mr Ball was sitting opposite at the time of the inquiry and it was the footage that we played, I'm certainly of the view that the person that was sitting opposite me was the person that walked across the screen.

- [47] The applicant argues that Mr Torpey's identification is unreliable because he identified Mr Ball by simply looking at the footage and then at the man in front of him. He did not identify Mr Ball as the man from the footage by selecting him from a number of people as is done in criminal matters where a witness is asked to identify an alleged offender from a line up of people.
- [48] I have viewed the footage. I have accepted that the video footage is imperfect. It is not possible to clearly discern all facial features but it is clear that the gentlemen in the dark blue shirt or coat has white/grey hair and is elderly. The identification photograph shows an elderly man but the colour of his hair is not white, possibly due to the quality of the copy of the photograph provided.
- [49] I have also considered other parts of the transcript of the Inquiry which I consider relevant to the issue of identification. In it, Mr Ball admits that he

⁴⁰ Exhibit 1 p.83: T48 lines 11-44.

⁴¹ Exhibit 1 p.84: T49 lines 27-35.

⁴² Exhibit 1 p.97.

⁴³ Exhibit 1 p.271: T52, lines 34-40.

trains his dogs regularly at the Churchable property.⁴⁴ He states that another individual assists him and he identifies that person on the footage.⁴⁵

[50] Before seeing the footage, he explains to the stewards his usual practice when attending the Churchable property to train greyhounds. He describes that he usually tries to arrive last and that the owner of the property usually puts the tractor around the track to cover any holes.⁴⁶ He says that he usually stands at the side of the boxes and he crouches down to ensure that greyhounds are down properly and that he gets assistance from the other identified man or workers at the Churchable property to handle his dogs as he has an impaired wrist.⁴⁷ He also says that he takes multiple dogs with him when he attends the property, usually four but might take more if he takes two vehicles but never one dog.⁴⁸ He says he muzzles his dogs.⁴⁹ He says he always attends the track with the muzzles on.⁵⁰

[51] The long shot footage shows a tractor on the track at a time before the person suggested to be Mr Ball is seen in the long shot video footage.⁵¹ The long shot footage shows that five out of the six dogs that run shortly after the tractor has ceased are being watched by the man claimed to be Mr Ball.⁵² Mr Ball is not in shot at the time the first dog runs. In respect of the other five dogs, the long shot footage shows a white haired, elderly man either standing to the side of the boxes, on the track, or in a crouch on the track at the side of the boxes when each greyhound starts.⁵³ All six dogs are muzzled.⁵⁴ The video footage shows the elderly man hand the leads of the dogs to two other males who put the leads on the dogs on the track. What is seen in the video footage is consistent with Mr Ball's description of his usual practice when he attended the Churchable property to train his dogs.

[52] The applicant says that such evidence is of some assistance only if it is a known fact that Mr Ball is the only trainer who follows that routine. It is submitted that it could be that every male trainer who trials his dogs there does the same thing. It was submitted that bearing in mind that there is no evidence as to how many other people attended the property, I must ask myself whether someone else with similar features to Mr Ball could have visited the track. If I answer that question in the positive I cannot be reasonably satisfied that the man claimed to be Mr Ball in the footage is in

44 Exhibit 1 pp.47-48: T12, lines 31 to 45 and T13, lines 1-5 and Exhibit 1 p.50: T15, lines 4-31.

45 Exhibit 1 p.49: T14, lines 11 to 28; Exhibit 1 p.71: T36, lines 14 to 46 and Exhibit 1 p.72: T37 line 1-7.

46 Exhibit 1 p.50: T15 lines 24-46; Exhibit 1 p.51: T16 lines 1 to 46.

47 Exhibit 1 pp.64-65: T29 to T31, lines 1-8.

48 Exhibit 1 pp.48-49: T13 lines 44-45 and T14 lines 1-4; Exhibit 1 p.67: T32 lines 27-44.

49 Exhibit 1 p.80: T45 lines 12-14; Exhibit 1 p.82: T47, lines 27-29.

50 Exhibit 1 p.85: T50 lines 35-36.

51 Exhibit 1: long shot footage, for example, at 10:53:28.

52 Exhibit 1: long shot footage at 11:03:38.

53 Exhibit 1: long shot footage at 11:09:52, 11:11:32, 11:13:29 and 11:14:38. The fifth and sixth dogs start while the man in the footage is in a crouch like position.

54 Exhibit 1: long shot footage at 11:09.

fact Mr Ball. In short, the applicant submits that if there is a possibility of doubt, I should not be satisfied it is Mr Ball in the footage.

[53] I accept that Mr Ball's initial response to the suggestion that he is the white haired man in the footage was not a clear and definite admission that he is the man in the footage. However, as the inquiry continued and further footage was shown to Mr Ball, I consider, by his responses, that he accepted that he was the man in the footage seen observing the dogs. In my view, he admitted that the dogs shown in the footage were his. It follows from his admission in that regard that he also admitted he was the man seen in the footage watching the dogs. I do not consider that his statements suggest he was simply acquiescing. I consider it highly improbable that Mr Ball would say they were his dogs but at the same time maintain a denial that he was the man in the footage. That would mean that he allowed some other person to train them. He did not make any such statement at the Inquiry. I also consider it unlikely that Mr Ball, an experienced trainer, would allow someone else to be engaged in the training of dogs he had been engaged to train and that such a person would so resemble himself that he might mistake himself for that person.

[54] Further, the level of consistency between what Mr Ball told the Inquiry regarding his usual practice when attending the Churchable property and what is shown in the footage together with Mr Ball's responses in the Inquiry as set out above, actually persuade me that the man in the footage alleged to be Mr Ball is in fact Mr Ball.

[55] I do not consider that it is necessary for me to rule out the possibility that there is some other white haired, elderly man with similar features who trains greyhounds and follows the same routine at the Churchable property. To do so would be inconsistent with the principles set out in *Re Confidential* above. I consider it improbable that there is such an individual. I am reasonably satisfied that Mr Ball is the man in the footage, that the dogs he is watching are his and it follows that he was at the Churchable property when the video footage was taken. There is nothing in the transcript that indicates that Mr Ball denied the footage was taken at the Churchable property. I find that it was. I have already found that while I do not consider it necessary to make a firm finding as to the date the events depicted in the footage occurred, I accept that it was 22 August 2014 as shown on the button shot and long shot footage.

Did Mr Ball's greyhounds or at least one of them train with a live pig on the lure arm?

[56] The respondent submits that I can find that there was a pig on the lure arm from parts of the Transcript of the Inquiry and certain parts of the button shot footage. The relevant parts of the transcript relied upon follow:⁵⁵

⁵⁵ Exhibit 1 p.76: T41, lines 39-42.

THE CHAIRMAN: Okay. I'll run that back. What do you say that is on the arm there?

MR BALL: Yeah. it's a pig, yeah.

[57] Based on my viewing of the button shot and long shot footage, I am reasonably satisfied that there was a pig on the lure arm. The piglet is on the lure together with some 'wool' or sheepskin that hangs from it.⁵⁶

[58] The respondent submits that I can find that the piglet was alive based on certain parts of the transcript and parts of the button shot footage. The relevant part of the transcript states:⁵⁷

MR TORPEY: It's moving isn't it?

MR BALL: Mmm

MR TORPEY: So it's alive?

MR BALL: Yeah, it must be.

[59] Pig noises are audible on the button camera footage. The footage shows the piglet moving in a manner that is not involuntary. The piglet is clearly alive. Pig noises are audible and, to the extent that there is vision, movements can be seen on the button shot footage at 11:11:30-54 and 11:13:13-30. It is clear that the movements are not the result of the piglet bobbing on the lure but are movements of the live animal. According to the long shot footage and consistently with the sound of the lure moving off that can be heard on the button shot footage, the first of Mr Ball's greyhounds ran at about 11:05:30 and the last one shown in the long footage commenced its run at around 11:13:28. Based on the footage, I am reasonably satisfied that the piglet on the lure was alive at all times that Mr Ball's greyhounds were training.

[60] The respondent submits that parts of the transcript and the long shot footage support a finding that Mr Ball was in a position to see what was on the lure arm and, if I make that finding, I can reach the conclusion that he has engaged in live baiting at the Churchable property. The relevant parts of the transcript follow:

THE CHAIRMAN: Whereabouts do you normally position yourself at the track to watch these dogs trial?

MR BALL: Well, it could be up from the boxes or around the front of them. I might – I might view it from there. I usually go down and have a look to make sure my dogs are down properly. Or I could be up the -----⁵⁸

⁵⁶ Exhibit 1, extended button shot footage at 11:11 and 11:13.

⁵⁷ Exhibit 1 pp.78-79: T43 line 46 to T44, lines 1-5.

⁵⁸ Exhibit 1 p.52: T17 lines 1-6.

...

THE CHAIRMAN: Okay. I understand what you say. Mr Ball, if you're standing that close to the track, if there was anything untoward happening on that track, you would know, wouldn't you?

MR BALL: I would, yeah.⁵⁹

...

THE CHAIRMAN: So if anything untoward was on that arm, you would see it?

MR BALL: Yep.⁶⁰

...

MR BALL: That is – was my dogs that were on it, was it?

MR TORPEY: We are just saying – we are talking at this stage to 11:13 at that time and you've go, as Mr Dart said, at this same time you are standing at the boxes crouched down.

MR BALL: Yeah.⁶¹

...

MR TORPEY: Mr Ball, when you first came here, thought that's – you were right on top of the lure as far as that goes, you made no mention of the fact of any live or dead animal until we showed you the film.

MR BALL: Mmm.⁶²

[61] The respondent also points to the long shot footage at 11:13 as referred to in the transcript set out above.

[62] In addition to those parts of the transcript relied upon by the respondent, I have considered the following parts to be relevant to resolving the issue of whether Mr Ball knew at the relevant time that the piglet was alive:

THE CHAIRMAN: And what is live baiting, though, in your words? You've said that - just the footage that you've viewed?⁶³

MR BALL: Yeah, well, it was – well, greyhounds onto an animal. Yep.⁶⁴

...

⁵⁹ Exhibit 1 p.52: T17 lines 33-36.

⁶⁰ Exhibit 1 p.73: T38 lines 15-18.

⁶¹ Exhibit 1 p. 79: T44 lines 9-15.

⁶² Exhibit 1 p.85: T50 lines 42-46.

⁶³ The footage referred to is the footage shown on the ABC television show, 'Four Corners' which Mr Ball says earlier in the transcript he had seen.

⁶⁴ Exhibit 1 p.46: T11 lines 39-42.

THE CHAIRMAN: So the practices of live baiting and bleeding, do you believe this practice to be animal cruelty?

MR BALL: Oh, there's no doubt, yeah.⁶⁵

...

THE CHAIRMAN: Mr Ball, have you ever participated in live baiting -----

MR BALL: No.

THE CHAIRMAN: ----- practices?

MR BALL: No.

THE CHAIRMAN: Have you ever witnesses live baiting?

MR BALL: No. See, I'm one that goes there and normally – and I mind my own business. I go to the dogs, When I do go, I sit by myself. Okay. I don't have much to do with anybody. It's a convenient place to trial, both places and that's why I use it.⁶⁶

...

THE CHAIRMAN: Whereabouts do you normally position yourself at the track to watch these dogs trial?

MR BALL: Well, it could be up from the boxes or around the front of them, I might – I might view it from there. I usually go down and have a look to make sure my dogs are down properly. Or I could be up the -----

THE CHAIRMAN: When you say "down", you are talking about when they are in the boxes?

MR BALL: Yeah, when they are in the boxes.

THE CHAIRMAN: So you actually stand out the front, do you?

MR BALL: Well, no, not at the front of the boxes. I go the side. You know and I look like this to make sure that they are down properly, see, because that's – you know, I've got a little box at home. If a dog plays up, it's what you call boarding down.⁶⁷

...

THE CHAIRMAN: Okay. I understand what you say. Mr Ball, if you're standing that close to the track, if there was anything untoward happening on that track, you would know, wouldn't you?

MR BALL: I would, yeah.

⁶⁵ Exhibit 1 p.47: T12 lines 26-29.

⁶⁶ Exhibit 1 p.49: T14, lines 30 to 43.

⁶⁷ Exhibit 1 p.52: T17 lines 1-18.

THE CHAIRMAN: So when your dogs go round the track, what's on the lure arm?

MR BALL: Well most times it's just the wool.

THE CHAIRMAN: Yep.

MR BALL: Yep. Sometimes I've had my squeaker there. But Tommy uses a lot of sheepskin.

THE CHAIRMAN: And what about other times?

MR BALL: What do you mean?

THE CHAIRMAN: Well, has there been anything other than the squeaker or the sheepskin?

MR BALL: No, not to my knowledge, no.

THE CHAIRMAN: Okay. So if you had been to the track a dozen times -----

MR BALL: Mmm.

THE CHAIRMAN: And you're standing in that position, if there was what we've seen on the footage on that Four Corners show -----

MR BALL: Yep.

THE CHAIRMAN: What did you see on that show?

MR BALL: What did I see?

THE CHAIRMAN: Did you see sheepskin and squeakers on that show?

MR BALL: Yeah. Yeah. I didn't see the squeakers but I seen the – I think he had the wool on.

THE CHAIRMAN: Did you see piglets?

MR BALL: Yeah. Yeah. I did, Yeah, I told you I viewed that, yeah.⁶⁸

...

THE CHAIRMAN: So you never witnessed live baiting, in your evidence?

MR BALL: No.

THE CHAIRMAN: At [the Churchable property]?

MR BALL: At 9 – no. No.⁶⁹

⁶⁸ Exhibit 1 pp.52-53: T17 lines 1-46 and T18 lines 1-31.

⁶⁹ Exhibit 1 p.55: T20 lines 21-27.

...

[63] The following parts of the transcript record what Mr Ball told the stewards whilst viewing the footage:

MR TORPEY: That's the crouch that you refer to that you get down to?

MR BALL: Mmm. I always get down and have a look to see my dogs are ---

THE CHAIRMAN: If we just take that shot back again. If we can get it so the lure arm is in – and once more. So at 11:11:33 – that's the time, 11:11 in the morning on 22 August 2014, would that be you crouching down like how you explained to us that you do?

MR BALL: Yeah, Yeah.

THE CHAIRMAN: You are watching them in the boxes.

MR BALL: Yep.

THE CHAIRMAN: What's on the arm there?

MR BALL: Well, I don't know, only the fur as far – what do you call it – um, sheepskin.

THE CHAIRMAN: Sheepskin.

THE CHAIRMAN: Okay. So you're standing inside the track there?

MR BALL: Yep.

THE CHAIRMAN: You would have full view of what's on the arm?

MR BALL: Yeah – oh, well, I'm – yeah, I would have, yeah. But I don't know – I don't – I'm pretty certain that it would be only the – only the – what do you call it? The -----

THE CHAIRMAN: Sheepskin.

MR BALL: Sheepskin, yeah. Because normally I just leave the muzzles on my dog.

THE CHAIRMAN: Yep. So in regards to that, the width of that track probably 10 metres? If.

MR BALL: Yeah, probably, about that, yep.

THE CHAIRMAN: So if anything untoward was on that arm, you would see it?

MR BALL: Yep.⁷⁰

⁷⁰

Exhibit 1 pp.72-73: T37 lines 17-45 and T38 lines 1-18.

[64] Later, it is put to Mr Ball that there is a piglet on the lure arm with the sheepskin, to which he responds that he does not remember it and then he seeks and is granted an adjournment to obtain legal advice.⁷¹ Upon returning to the Inquiry, he is again asked whether or not he has ever participated in, or witnessed, live baiting practices at the Churcharable property to which he responds, 'No'⁷². He is then shown the button shot footage of the piglet on the lure. He agrees he can identify the piglet on the lure.⁷³ It is put to him that the piglet is alive at a time when he is crouching down to watch his greyhound.⁷⁴ The transcript continues:⁷⁵

THE CHAIRMAN: Do you have any comments you wish to make there?

MR BALL: Well, I – I would presume it would have been dead. Okay.

THE CHAIRMAN: The pig?

MR BALL: Yeah.

THE CHAIRMAN: You thought -----

MR BALL: If it was me that did that, well, I usually have the muzzles on, because I don't want them to grab onto the flesh, okay.

THE CHAIRMAN: You told us earlier that you only use sheepskin or a squeaker.

MR BALL: Mmm. Yeah, I do. I do. Yep.

THE CHAIRMAN: So what do you say in relation to the live pig being on the arm now then?

MR BALL: Well, I don't – I don't think it – I don't think it was – I don't think it was alive.

THE CHAIRMAN: You don't think it was alive?

MR BALL: No.

[65] The footage is again shown to Mr Ball. The transcript continues⁷⁶:

MR BALL: I don't believe that I would have put my dogs on that, because I always put them on with muzzles, and not on live stuff, it's normally – if I did do that, it would have been dead. Okay. Is there more footage?

THE CHAIRMAN: There is.

71 Exhibit 1 pp.74 to 75.

72 Exhibit 1 p.75: T40 lines 27-35.

73 Exhibit 1 p.77: T42 lines 33-36.

74 Exhibit 1 pp.77-78: T42, lines 42-46 and T43, lines 1-10.

75 Exhibit 1 p.78: T43 lines 14-40.

76 Exhibit 1 pp.79-80: T44 lines 19-47 and T45 lines 1-14.

MR BALL: All right.

MR ADAMS: Just pause it there, Mr Torpey, please. Lay it all out there for us. So before you said it was just squeakers and wool.

MR BALL: Yeah.

MR ADAMS: Now you're saying there's animals as well?

MR BALL: Well, there, but you're talking about live baiting, right.

MR ADAMS: You never mentioned anything before about dead animals.

MR BALL: No.

MR ADAMS: So what are you saying now?

MR BALL: Ah well, I'm just – what I just said before, I don't – that's normally dead and that's it.

MR ADAMS: "Normally dead"?

MR BALL: Yep. If I do it, yeah.

MR ADAMS: I you do what, sorry? Can you explain it for us?

MR BALL: Put my dogs on that.

MR ADAMS: On what?

MR BALL: On – on the arm.

THE CHAIRMAN: So you do use animals on the lure arm?

MR BALL: Oh, I have gone onto dead stuff, yeah, somebody else has used maybe, you know, I just put their muzzles on and it's been there or something when I've rolled up, yep.

[66] And later:

THE CHAIRMAN: There was a live pig on the arm at 11:08 up to 11:14 ----

MR BALL: Mmm.

THE CHAIRMAN: Well, I don't – I don't think it was.

THE CHAIRMAN: What do you mean you don't know it was?

MR BALL: Well, I'm sure it wasn't.

THE CHAIRMAN: How can you be sure after viewing that footage?

MR BALL: Well, I always go with the muzzles on and I – I'm pretty certain it wasn't.⁷⁷

...

MR TORPEY: Mr Ball, when you first came here, though, that's – you were right on top of the lure as far as that goes, you made no mention of the fact of any live or dead animal until we showed you the film.

MR BALL: Mmm

MR TORPEY: Why is that?

MR BALL: Because I don't think it is alive.

MR TORPEY: No. But live or dead, even if you said it was a dead one -----

MR BALL: Well, if it's dead, it's not live baiting, is it?

MR TORPEY: Yeah, but when questioned as to what you use, you said squeakers and sheepskin.

MR BALL: Mainly, I said, squeakers, right.

MR TORPEY: What, you just felt not to tell us about any dead animals, because you didn't think that was relevant?

MR BALL: Well, I didn't think so, because it's not live baiting, is it.

MR ADAMS: It is when the pig's alive, like that one clearly is.

MR BALL: Well, in my opinion it's not – I did not participate there in live baiting.

MR ADAMS: What reason do you have?

MR BALL: Because – well, I mean, the thing is, I've got the muzzles on the dog, anyway, for a start.

THE CHAIRMAN: So you believe if the dog has got a muzzle on -----

MR BALL: Yep.

THE CHAIRMAN: And there's a live pig on the arm, that's not classified as live baiting?

MR BALL: No.

MR ADAMS: So on that point then, is that usual practice for you?

MR BALL: What to do that? No, it's not. No, it's not. No.

⁷⁷ Exhibit 1 pp.85: T50 lines 21-36.

MR ADAMS: Would you consider that's cruel – animal cruelty – a muzzle on a dog chasing a live pig that's strapped to a lure arm?

MR BALL: Mmm. Well, look, you've got footage there and I'm denying that it was alive, okay, because I don't think it is live baiting, right. That's my honest opinion.⁷⁸

- [67] During the stewards' inquiry, Mr Ball admits that the piglet shown in the button shot footage is alive. However, he does not admit that he knew the piglet was alive when his dogs ran on it. In order to find that he had that knowledge I must draw an inference from the facts I find based on the evidence before me. I have reached the conclusion that the inference can be drawn from material facts to the requisite standard of proof.
- [68] In my view, after Mr Ball is again shown the button shot footage and the long shot footage, Mr Ball admits to the stewards that he has allowed his dogs to run at the Churchable property with an animal on the lure.⁷⁹ That evidence was in my view significantly different to what he told the stewards before seeing the footage. In response to what were very clear questions posed to him by the stewards, he gave, in my view, equally clear responses that he only used wool or a squeaker on the lure for his dogs and that, at the Churchable property, the owner used wool or sheepskin. He made no mention of animals being used on the lure, whether alive or dead.⁸⁰ What he told the Inquiry, before seeing the footage, was untruthful. That he has been untruthful impacts the credibility of statements he made subsequently to the inquiry that he did not believe the piglet on the lure was alive. Clearly, it was in Mr Ball's interests to deny knowledge that the piglet was alive after it appeared the footage showed his greyhounds running on a lure holding an animal.
- [69] I have already found that, at all relevant times, while Mr Ball's dogs were training, the piglet was alive. I have already found that the piglet was moving and that the movements were those of a live animal.
- [70] It is not disputed that Mr Ball is a trainer with 56 years experience. He is referred to as a 'Hall of Famer'. Indeed, those facts together with the damage that would be caused to Mr Ball's professional reputation are matters which the applicant's representative submitted were part of the grave consequences for Mr Ball if I were to find the grounds established.
- [71] Mr Ball had a particular routine when he attended at the Churchable property to train his greyhounds. He was particular about the state of the track when his dogs ran. He preferred to be the last trainer on the day. He was particular about where he stood and how he positioned himself. I find that when training his greyhounds, Mr Ball was firmly in control of the

⁷⁸ Exhibit 1 p.86: T51 lines 1-47.

⁷⁹ See the parts of the transcript at [65] of these reasons.

⁸⁰ See the parts of the transcript at [62] of these reasons.

training. I consider that as part of that control, he would have made himself aware of what was on the lure when his dogs ran.

[72] Based on my viewing of the long shot footage showing Mr Ball's proximity to the boxes when five out of the six dogs ran, I consider he was sufficiently close to the lure to know that there was a piglet on the lure and it was alive. He watches the dogs start from their boxes. He watches as they run around the track before handing the leads to the handlers not long before the dogs finish their respective laps. It is at that point that he moves out of shot but I do not consider that he could have moved very far from the track as his dogs run one after the other within a relatively short space of time. For example, the time between when Mr Ball moves out of shot after watching the second dog run and when he is again in shot to watch the third dog come out of the boxes is approximately one minute.⁸¹ The longest period between Mr Ball walking out of shot and then reappearing to watch the next dog is approximately one and a half minutes.⁸² When Mr Ball is out of shot the two handlers remove the dog from the lure, put the leads on the dogs and the lure returns back to the starting position, back past the boxes. I consider that Mr Ball was close enough to the track and the lure while each of his dogs trained on the track and while the lure was stationary before each dog commenced its run, as well as at the end of each dog's run to observe that the piglet on the lure was alive.

[73] Mr Ball told the stewards that he would be able to see what was on the lure arm from where he stood near the boxes and on the track. He did so after agreeing that the width of the track was 10 metres.⁸³ I consider that the live piglet would have been obvious to Mr Ball at that distance. Once the lure arm moves, I accept that it does move very fast and that Mr Ball, as shown in the footage, is primarily focussed on his dogs coming out of the boxes and running on the track. However, I do not consider it probable that Mr Ball's attention over the entire period that he observed his six dogs run including the periods in between each run, could have been so blinkered that he would not have clearly observed what was on the lure arm being used to train his dogs.

[74] I have made findings about what is seen in the footage. I have found that his evidence to the Inquiry was that he would have known what was on the lure arm from the positions he adopted when his dogs ran. I have found that his likely proximity from the lure at all relevant times while his dogs were training including periods between each dog's run was sufficiently close to observe what was on the lure. I have made findings as to the movements of the animal on the lure and that it was alive at all relevant times. I have made findings about Mr Ball's training experience and his particular training

⁸¹ Exhibit 1: extended long shot footage 11:07:24 Mr Ball out of shot and then 11:08:26 when Mr Ball is back in shot when the second dog comes out of the boxes.

⁸² Exhibit 1: extended long shot footage Mr Ball out of shot after third dog runs at 11:08:46 and then back in shot when fourth dog runs at 11:09:50, then Mr Ball out of shot at 11:10:17 and back in shot when fifth dog runs at 11:11:29. He is then out of shot at 11:11:52 and back in shot when the sixth dog runs at 11:13:23.

⁸³ See those parts of the transcript set out at [63] of these reasons.

methods. Based on those findings I do not consider it plausible that Mr Ball, an experienced trainer, watching his six greyhounds run from close proximity to the boxes, and for some runs, while standing on the track, could have mistaken all of the movements of a live animal on the lure for movement of a dead animal caused by its being moved by the lure arm. I do not consider it plausible that he did not know that the piglet on the lure arm was alive.

- [75] I have referred to the pig noises audible on the footage. Mr Ball relies on a report from Wesley Ong, audiologist, dated 20 November 2015 accompanying audiometry and speech audiometry results.⁸⁴ The report states that Mr Ball's left ear has mild sloping to severe sensorineural hearing loss above 1kHz and his right ear showed a mild sloping to severe sensorineural hearing loss above 250Hz. The speech audiometry conducted with both ears in quiet showed excellent improvement with amplification and was consistent with the audiogram. The report further states: *Mr Ball's hearing loss may affect his ability to obtain full clarity of normal conversational speech. He has been fitted with hearing aids (on 20/11/2015) in both ears accordingly.*
- [76] I do not know the extent of Mr Ball's hearing loss as at 22 August 2014. I do not know whether Mr Ball had the benefit of hearing aids at a date earlier than 20 November 2015. It is also unclear whether his reported hearing loss would be likely to impact his ability to hear a piglet squealing from a distance of 10 metres. Due to this level of uncertainty, I have not placed any weight on Mr Ball's ability to hear the piglet in making my finding about whether Mr Ball knew the piglet on the lure was alive.
- [77] Based on the findings I have made, I conclude that Mr Ball knew that the piglet on the lure was alive when the footage was taken of his greyhounds training at the Churchable property. I consider that the circumstances in the evidence give rise to a reasonable and definite inference on the balance of probabilities in favour of the conclusion I have reached.
- [78] Mr Ball essentially suggested to the stewards that due to his use of muzzles on his dogs he had not engaged in live baiting even if the animal on the lure were alive⁸⁵. Neither party submits that the presence of a muzzle on a greyhound running on a lure holding a live animal prevents a finding that live baiting has occurred and I accept that that is the case. The fact that the animal on the lure is alive when the greyhound runs on it is all that is required. The focus of the rule 86(af) is the use of an animal. Mr Ball has engaged in live baiting on or about 22 August 2014 at the Churchable property. I find that the use of the live piglet on the lure was an act which clearly harmed the piglet.

⁸⁴ Exhibit 1 pp.303-306.

⁸⁵ Reasons at [66].

- [79] Mr Ball has used an animal (the piglet) for a purpose connected with greyhound racing (training) which is improper as it caused harm to the piglet. Mr Ball has breached GAR rule 86(af).
- [80] I am aware that at one stage it appeared that Mr Ball would seek to rely on a statement from Mr Nutley.⁸⁶ Mr Nutley's statement does not appear in the material before the Tribunal and it does not appear that it was formally tendered in any of the earlier proceedings before Racing Queensland or the QRDB. At one point it seemed that Mr Nutley was going to give evidence before the QRDB but the appeal was adjourned due to Mr Nutley's unavailability for cross-examination. Ultimately, Mr Nutley did not give evidence. It is my understanding that Mr Ball does not rely in this review proceeding on any statement from Mr Nutley. I raise this matter for completeness only and to make it clear that, in assessing the evidence, I have completely disregarded, any record of what the contents of Mr Nutley's statement might have been. Further, I have not regarded Mr Ball's failure to rely on Mr Nutley's statement or evidence as a relevant consideration in any aspect of these proceedings.

Ground 2: [Mr Ball] used the live baiting of animals for the purpose of affecting the performance of a greyhound in breach of GAR, Rule 86(aa), including on or about 22 August 2014 at [the Churchable property].

- [81] In relation to this ground it is submitted by the applicant that there is no case to answer as the particulars relied upon by the respondent do not support the ground and further that the particulars do not establish a breach of rule 86(aa).
- [82] The Particulars provided to Mr Ball in the show cause notice were: *In an interview with Racing Queensland in Deagon, Brisbane on 18 March 2015 [Mr Ball] made certain statements regarding [his] conduct and the conduct of others in respect of live baiting.*
- [83] The applicant submits that as the statements relied upon in the particulars are not clearly set out the particulars are deficient and the ground cannot be established.
- [84] The rule alleged to be breached in relation to ground 2 states: *A person (including an official) shall be guilty of an offence if the person tampers with any gear used on a greyhound, or uses any substance or item to affect the performance of a greyhound or greyhounds.*
- [85] Mr Ball further submits that there is no allegation of tampering with gear and the piglet could not logically be regarded as an item because if it were the boxes and the lure arm would also be items and it could not be intended that the use of those items would result in a breach of the rule.

⁸⁶ Exhibit 1 p.115 Submissions on behalf of the applicant in the Racing Disciplinary Board of Queensland.

- [86] Further, it is submitted that as there must be some reason for using the item, rule 86(af) is the more appropriate ground, so that including this ground is duplicitous.
- [87] In my view, the terms of the ground are clear. It is alleged that Mr Ball has used the live baiting of animals for the purpose of affecting the performance of a greyhound and the particulars merely refer to statements made by Mr Ball at the stewards inquiry about whether he engaged in live baiting at the Churchable property and the purpose of such practices. The particulars as they are worded when read with the terms of the ground sufficiently explain to Mr Ball the allegations against him. I do not consider that the wording of the particulars supports a finding that there is no case to answer.
- [88] Further, I consider that rule 86(aa) is focussed on capturing conduct aimed at affecting the performance of a greyhound whereas rule 86(af) is focussed on the welfare of animals. I do not regard the grounds as duplicitous.
- [89] Turning then to a consideration of the rule said to be breached. Leaving to one side for present purposes whether the live animal on the lure is a "substance or item" within the terms of rule 86(aa), I consider that the rule could be read either subjectively from the point of view of the person alleged to have breached the rule or objectively.
- [90] I do not have before me any objective evidence upon which I can be reasonably satisfied that live baiting affects the performance of a greyhound.
- [91] Presumably, those who engage in this practice consider it desirable for some reason. It might be assumed that those who engage in the practice believe it will improve the performance of greyhounds. Even if the terms of the rule should be read taking into account the subjective view of the person said to have breached the rule, I do not consider that I have sufficient evidence on which I can be reasonably satisfied that Mr Ball engaged in live baiting to affect the performance of his greyhounds. His evidence to the Inquiry in relation to whether live baiting improved the performance of a greyhound was as follows:⁸⁷

THE CHAIRMAN: In your words, with your experience, a dog that had been exposed to live baiting ---

MR BALL: Mmmm.

THE CHAIRMAN: Would they have an advantage over your dogs if you haven't participated in -----

MR BALL: Put it this way: it's the same as drugs. I put it to you this way: if you can run 100 metres in 12.4 and you had a sniff of coke, you might think you'd do it in 9.4 but your legs are not going to go any faster mate. It's the ability of the dog, not what you give them. It's the ability of the dog. Now I've

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Exhibit 1 pp.59-60: T24 lines 10 to 46 and T25 lines 1-33.

seen dogs that have got untold ability and they go along and then after 200 metres they'll just pull up and come back.

THE CHAIRMAN: So in regards to that, though, there is a reason why these trainers are doing it -----

MR BALL: Mmm.

THE CHAIRMAN: The live baiting. Is it to entice a dog or to encourage it to chase harder? Does it affect the behaviour?

MR BALL: Well, these dogs – greyhound dogs – are a very hypo dog.

THE CHAIRMAN: Yep.

MR BALL: Now, you can stand, with my experience, I've gone down my straight track, when I used to live at Ebenezer, and I'd drag a lure down, just an onion bag plaited – three onion bags plaited, right so it will come up straight and it won't go all over the place – an you can stand there and you can hear their heart thumping. And they are not getting live baited, it's just that when they get excited, the adrenaline comes into them and it's like you, if you got a fright or something or somebody had a go at you, you get double strength, and that's what adrenaline does to them. And that's why you have previewing at the racetrack, because it gets the dogs excited and he's on the toe, you know, and then that's it.

THE CHAIRMAN: In regards to your comments about prohibited substances, obviously we've got rules in place there to try and ensure a level playing field.

MR BALL: Yes.

THE CHAIRMAN: And I'm only assuming here, but if you were aware that a dog boxing beside you in a race was racing not on a level playing field whether that be a prohibit substance or had been exposed to live baiting, with your experience, and I think doing the professionalism up in the sport, you would be pretty upset by that?

MR BALL: Well – oh, Jesus, you know like. If I go and tell you different things here now, you'll think I'm giving myself a rap. But this is where, if you can get proper knowledge – and I did from Graham Bey, he, in my opinion, is the best vet that I've ever seen go over a dog and know the workings of a dog in Australia, and I've seen some very, very top men. Now, his idea to me was – he said to me 'you don't have to be jabbing needles in dogs, right'. He said "what you've got to do is learn how to condition the dog properly. That's where the problem lies." And if you don't condition it properly and you go and trial a dog and he's not fit to run, say, 400 and he's only fit to run 200, that's when all the shit hits the fan, they are jabbing this in, jabbing that in. But when you learn the dog to cope with your workload, you don't have a problem. I don't have a problem with conditioning my dogs.

THE CHAIRMAN: Getting it properly conditioned to race.

MR BALL: That's exactly right.

THE CHAIRMAN: And that's where you have an advantage over the other trainers?

MR BALL: Well, that's the idea of it. That's the idea of it.

[92] I do not consider that that evidence coupled with my findings in relation to Mr Ball engaging in live baiting in respect of ground 1, persuade me that Mr Ball engaged in live baiting *to affect the performance* of his greyhounds.

[93] I find that ground 2 is not established.

Ground 3: [Mr Ball] engaged in conduct which is detrimental or prejudicial to the interest, welfare, image, control or promotion of greyhound racing in breach of GAR, Rule 86(q), including on or about 22 August 2014 at [the Churchable property].

[94] The applicant submits that there is no case to answer in respect of this ground based on the particulars relied upon by the respondent. The particulars state: *In an interview with Racing Queensland in Deagon, Brisbane on 18 March 2015 [Mr Ball] made certain statements regarding [his] conduct and the conduct of others in respect of live baiting.*

[95] Again, it is submitted that the particulars do not identify the particular statements made by Mr Ball upon which the respondent relies. In my view, it is clear that Mr Ball's engagement in live baiting is relied upon by the respondent to support this ground and the particulars make that clear. Further, at the Inquiry, Mr Ball was asked about his knowledge of others being involved in the practice and what he thought of the practice. I do not consider that Mr Ball has been at any disadvantage in preparing his case by the wording of the particulars. The particulars served to inform him that what he said at the Inquiry was relied upon to support the ground. The submission that there is no case for Mr Ball to answer on ground 3 cannot succeed.

[96] The relevant rule states: *A person (including an official) shall be guilty of an offence if the person commits or omits to do any act or engages in any conduct which is in any way detrimental or prejudicial to the interest, welfare, image, control or promotion of greyhound racing.*

[97] In relation to ground 1, I have found that Mr Ball has engaged in live baiting. Such a practice involves harm to animals which, by community standards, is morally and socially unacceptable. That the harm to animals was perpetrated by a senior trainer in the greyhound racing industry reflects poorly on the greyhound racing industry as a whole. I find that Mr Ball's engagement in such conduct is detrimental and prejudicial to the welfare and image of greyhound racing.

[98] Mr Ball has committed an act or engaged in conduct which is prejudicial to the interest and image of greyhound racing.

[99] It is alleged that Mr Ball has breached rule 86(q) because he has failed to report live baiting to Racing Queensland. I do not consider that I have

sufficient evidence before me on which I can be reasonably satisfied that Mr Ball witnessed live baiting by others at the Churchable property. I do not consider that Mr Ball admitted to the stewards that he had witnessed live baiting by others. There is nothing in the footage that shows him viewing live baiting by others. He told the stewards that he would not criticise any person for their actions while accepting that what was shown on the Four Corners program was not 'complimentary vision'.⁸⁸ He said it was their business.⁸⁹

[100] I conclude that ground 3 is established, on the basis of Mr Ball's personal involvement in live baiting, although not with respect to a failure to report the involvement of others.

Ground 4: [Mr Ball] provided in an interview with Racing Queensland in Deagon on 18 March 2015, evidence that was false and misleading in breach of the GAR, Rule 86(d).

[101] Based on my findings in relation to ground 1, I must conclude that Mr Ball provided in an interview with Racing Queensland (the stewards' inquiry) on 18 March 2015 evidence that was false and misleading. He gave false evidence regarding his knowledge of and participation in, live baiting at the Churchable property. He denied engaging in live baiting himself at the Churchable property. Mr Ball has breached the GAR, rule 86(d).

What is the appropriate sanction?

[102] I have found that grounds 1, 3 and 4 are established. In determining the appropriate sanction, I am conscious that, as was stated by the High Court in *New South Wales Bar Association v Evatt*,⁹⁰ the power to do so is entirely protective and notwithstanding that it may involve a great deprivation to the person on whom the sanction is imposed there is no element of punishment involved.⁹¹ The task of imposing a penalty involves a balance between the severity of the offence, the need for deterrence and any mitigating factors.⁹²

[103] According to GAR rule 95, a person found guilty of an offence pursuant to a breach of the rules shall at the discretion of the decision maker be liable to any one, or combination, of a:

(a) fine not exceeding such amount as specified in the relevant Act or Rules for any one (1) offence;

(b) suspension;

⁸⁸ Exhibit 1: pp.55-56, Transcript of Inquiry T20, lines 1-47 and T21 lines 1-42, in particular, line 16.

⁸⁹ Exhibit 1: pp. 55-56 Transcript of inquiry T21, line 42.

⁹⁰ *New South Wales Bar Association v Evatt* (1968) 117 CLR 177.

⁹¹ *Ibid* at p. 183

⁹² As the Appeal Tribunal stated in *El-Issa v Racing Queensland Limited* [2011] QCATA 280 at [23].

- (c) disqualification;
- (d) cancellation of registration; or
- (e) warning off

[104] Any registration with the controlling body held by a person who is disqualified or warned off shall be automatically cancelled.⁹³ According to LR3A the control body has the power to warn off any or all racecourses within its control any person whose presence thereon is in the opinion of the Board or the control body not desirable.

[105] Neither party submitted that a sanction other than a period of warning off was appropriate in the event that I found the grounds established. The effect of disqualification, suspension or warning off is that during the period of the penalty the person cannot.⁹⁴

- (a) nominate a greyhound for any Event;
- (b) permit a greyhound of which that person is the owner or the trainer to compete in any Event;
- (c) act as an attendant at a meeting;
- (d) train a greyhound;
- (e) participate in a breeding program;
- (f) act as an official at a meeting;
- (g) be engaged as an employee or agent by any other person in the training of greyhounds; or
- (h) be a member of any committee of a club which is registered pursuant to the Rules of a Controlling Body.

[106] Further, unless the controlling body in special circumstances otherwise directs, a person who has been disqualified or warned off is not:⁹⁵

- (a) entitled to retain any registration certificates or greyhound identification cards held by the person and shall immediately deliver them to the controlling body;
- (b) permitted to transact any business affecting the registration of persons or greyhounds with the Controlling Body;
- (c) to enter any enclosure or other portion of a racecourse or any lands occupied or used in connection with a racecourse during and Event whether acting as agent or otherwise;

⁹³ GAR, rule 95(4).

⁹⁴ GAR, rule 99(2).

⁹⁵ GAR, rule 99(3).

(d) to enter the premises of a club on a day when a meeting, qualifying trial, satisfactory trial, other trial, Event or greyhound training of any type is occurring or would reasonably be expected to occur ...;

(e) to have any of the rights or privileges conferred by an registration pursuant to these Rules;

(f) eligible to otherwise participate in or associate with greyhound racing and any greyhound which has been nominated by the person or in the person's name, or of which the person is wholly or partly the owner or which is proved to the satisfaction of the Controlling Body to be pursuant to the person's care, custody or training is prohibited from competing in any Event; and

(g) to enter or go or remain on, at any time, any place where greyhounds are trained, kept or raced.

[107] The parties referred me to a number of cases in relation to the appropriate sanction. Some of those cases are decisions of this Tribunal but others have been made in other jurisdictions. It should be noted that this is the first decision of this Tribunal where a finding of live baiting has been made.

[108] In *Edmondson v Queensland All Codes Racing Industry Board*,⁹⁶ Ms Edmondson ultimately admitted witnessing live baiting but had not actively participated in live baiting. The QRDB had decided that a five year period of disqualification was appropriate. Ms Edmondson applied to the Tribunal for a review of that decision and this Tribunal (differently constituted) decided that the appropriate period was six years.⁹⁷ After setting out decisions of the Victorian Racing Appeals Disciplinary Board and other QRDB decisions, there being no decisions of this Tribunal in relation to live baiting, the Tribunal in *Edmondson* said:⁹⁸

Imposing a penalty involves a balance between the severity of the offence, the need for deterrence and any mitigating factors.⁹⁹

Live baiting is a blight on humanity. A warning off of eight to ten years reflects community repugnance of live baiting and reflects the need to deter this egregious practice. An extended period will help to restore public confidence in the industry.¹⁰⁰ However, like *Druery*, Ms Edmondson's penalty should be at the lower end to reflect her less active involvement, equating to eight years before applying any discount.

During the hearing, Ms Edmondson gave evidence that she has since been convicted in the Magistrates Courts of charges arising out of these circumstances. Ms Edmondson was unable to say whether the learned Magistrate recorded a conviction. Mr Horton of Queen's Counsel for the

⁹⁶ *Edmondson v Queensland All Codes Racing Industry Board* [2016] QCAT 70.

⁹⁷ *Edmondson v Queensland All codes Racing Industry Board* [2016] QCAT 70.

⁹⁸ *Edmondson v Queensland All Codes Racing Industry Board* [2016] QCAT 70 at [27] to [32].

⁹⁹ *Seymour v Racing Queensland Limited* [2012] QCAT 241 at [53].

¹⁰⁰ *Green v Racing Queensland* [2012] ACATA 269 at [17]; *Lawlor v Racing Queensland Limited* [2012] QCAT 255 at [28].

Board submitted that I may still consider the conviction to impose a higher penalty, even if no conviction was recorded.⁽³⁾ However, I am not prepared to do this in the absence of supporting evidence of any convictions, the sentence imposed and accompanying sentencing remarks.

Ms Edmondson is a 64 year old lady who has held a trainer licence in the industry for 46 years without incident, until the circumstances for these proceedings. Her only source of income is the pension. She is an acclaimed breeder who has suffered and will continue to suffer loss, to her health,⁽³¹⁾ reputation and financially as a result of her regretful conduct.

Ms Edmondson is understandably concerned about an extended penalty preventing her from returning to breeding dogs. During the hearing, Ms Edmondson testified that she has frozen breeding semen that is three years into a life expectancy of ten years. The purpose of disciplinary proceedings is protective rather than punitive¹⁰¹ A penalty in disciplinary proceedings should reflect this by allowing Ms Edmondson to continue that bloodline and return to her main source of income in the future, obviating any oppression to her.

After applying a discount for her – albeit belated – cooperation, otherwise unblemished record, and personal circumstances including her age, medical condition and impact on her earning capacity, I have formed the view that the appropriate penalty is a warning off for six years from 29 April 2015, the date when the original penalty was imposed (35) to allow for time already served.

[109] On 11 October 2016, the QRDB determined the matter of *Arnold*. In that case, Ms Arnold had admitted to live baiting on one occasion and to witnessing others engaging in the practice. She had initially been warned off for life. On appeal the QRDB reduced the period from life to eight years. In so doing, the QRDB said:

...In Queensland the appeals that have been before this Board have invariably resulted in a lowering of the lifetime ban to a period of ten years unless there be further actions undertaken on behalf of individual appellants that warranted a further reduction. It is not necessary to embark on a protracted discussion of the merits of those individual cases but suffice to say there were some meaningful attempts by those appellants to atone which this Board accepted as being an appropriate exercise of the discretion of this Board to reduce the penalty below ten years.

...Ms Arnold was the President of the United Queensland Greyhounds Association and had a high profile involvement in the greyhound racing industry. It is the opinion of the Board that she ought to be held accountable to a higher standard than the norm.

...

There is no doubt that Ms Arnold has suffered significantly in a loss of reputation in the industry and has also incurred significant financial losses as a result of her electing to leave the are because of *fearing for her life* as

¹⁰¹ *Medical Board of Australia v Martin* [2013] QCAT 376 at [91] to [93].

she put it. She has lost friends that were co-participants in the industry and will suffer greatly in the future. Her position seems to be that she was not one who wanted to inform on friends and co-associates but she was adamant that her participation in live baiting was a one-off and whilst she attended the racecourse in question, she did not utilise those services for her own animals.

This Board was of the view that she should be afforded a discount primarily for her initial cooperation and her early pleas and at least being willing to place herself in jeopardy by naming various people however any discount that is to be given would have to be tempered by the fact that she was present often on the course, lived close by and was a significant public figure of the leading Greyhound Association acting as its President. For that reason we are prepared to consider that a ten year warning off period will be appropriate but because of the assistance that she did offer, we have determined that reduction of two years be granted such that the penalty imposed is warning off for eight years.

[110] In *Druery*¹⁰² the QRDB found two breaches of the GAR in that Druery had failed to report his observations of live baiting to authorities and had provided false and misleading evidence in an interview with Racing Queensland. The QRDB allowed the appeal against penalty reducing the period of warning off from life to eight years. The QRDB expressed the following reasons:

Succinctly put the appellant's attitude can be best described by reference to Paragraphs (27) and (28) of the Board of Queensland All Codes Racing Industry:.... "Mr Druery's conduct is the type of behaviour that can put the entire regulation of the greyhound industry into disrepute and had an adverse and detrimental effect on the integrity and image of the greyhound racing industry in Queensland:..." .

It is incumbent on this Board to impose a sentence which will act as a general deterrent to all participants in the Industry and to reinforce the principle that any behaviour involving barbaric treatment of animals in any way that reflects negatively on the integrity of the industry will result in serious consequences to licensed perpetrators'.

In the Appeal of Julie Edmondson 22.9.2015 this Board stated ... "It is accepted that the practice of live baiting must be completely stamped out from the industry however the idea of someone being visited with a warning off for life for merely being an observer of the activity or of failing to give truthful evidence of what has previously been seen by her is not, in the opinion of this Board, an offence warranting a life penalty. This Board has consistently identified that a period of 10 years is tantamount to exactly that a life penalty because there will be a necessity for an application to be made to the relevant Authority at the expiration of the ten years and it will then be for that authority to identify whether the person is a fit and proper person".

In Edmondson's case although she was initially uncooperative with Racing Officials she ultimately co-operated with Queensland Police in relation to

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Druery v Queensland All Codes Racing Industry Board, QRDB 6 November 2015.

criminal proceedings of others involved in the 'live baiting' investigations. She was afforded leniency for the reasons outlined in the Decision.

On the other hand this Appellant has maintained an un-cooperative attitude of denial of responsibility and should be treated accordingly. An appropriate sentence in all of the circumstances is a period of eight years Disqualification.

[111] In *Chapman*,¹⁰³ the QRDB again reduced the penalty from a life ban to 10 years warning off. The QRDB said:

Queensland stewards provided detailed assessments of the impact that live baiting and the "bleeding" of greyhounds has on the public perception of the greyhound industry and have demanded that this Board act appropriately in ensuring that persons who wish to participate in actions such as these should not be countenanced as being desired persons in the future. It is the aim of Racing Queensland to ensure that such persons be banished forever and to that end, the penalty imposed on Mr Chapman is to effectively identify a significant deterrent to others who might think of acting in a likewise manner.

Throughout the course of the argument on appeal, evidence was submitted of previous penalties imposed throughout the various States of Australia. Interestingly, the most significant penalty imposed was that of 7 years in Victoria which was subsequently overturned on appeal for lack of evidence. Ordinarily, the penalty seemed to be somewhere between a period of 6 months to 3 ½ years disqualification.

...The previous penalties that had been imposed of up to 7 years were all some significant years ago and in this current climate where cruelty to animals is regarded as a significant crime against the public and against humanity, it is not for this Board to treat lightly in imposing what must be a significant penalty either by way of deterrent or otherwise. This Board accepts that a life penalty is something that is not appropriate in the circumstances as they exist here. There is no doubt that Mr Chapman will suffer significantly in respect of his association with his partner and his friends and more likely than not even after any penalty is served, it is doubtful that he will ever be afforded the luxury of a further licence. That of course is not a matter for this Board but for the official of the Racing Industry.

In all the circumstances, the Board believes that a penalty of 10 years warning off would be more than adequate in all of the circumstances to satisfy the perception of public indignation and public morality. To that end, the appeal is upheld and the penalty of 10 years warning off is substituted for that previously imposed by the stewards of Racing Queensland.

[112] The QRDB in determining Mr Ball's sanction had this to say:¹⁰⁴

The Appellant was one of a number of individuals who were found to be involved in illegal activities involving the 'live baiting' of greyhounds at the

¹⁰³ *Chapman and Racing Queensland*, decision of the QRDB 6 May 2015.

¹⁰⁴ Exhibit 1: Written Statement of the Reasons for the Decision of the Racing Disciplinary Board pp.309-314 at 313-314.

[Churchable property]. The majority of those individuals on appeal were sentenced to a varied term of 10 years disqualification from the original Life ban imposed.

The RDB has said when delivering a decision on relevant issues: “The integrity of the sport of greyhound racing is very much the subject of public scrutiny and it is essential that the practice of live baiting be stamped out and there must be a precedent set to act as a deterrent in that respect. The sport in question does not need to be associated with persons who engage in such practices” [RDB decision 11 June 2015 – Craig Wright]. The Board when making similar decisions has stressed the importance that illegal behaviour of the type witnessed at Churchable be eliminated because of the damage to the public’s perception of the Industry as a whole (including the welfare of animals) and the incalculable damage to the confidence of those wagering on greyhound racing.

The Appellant has been involved in the Greyhound Industry for a period of approximately 56 years and a number 1 trainer for the majority of them. He is an inductee of the Hall of Fame presumably awarded to him for his contribution to the Greyhound Industry. He is a professed advocate for professionalism in the Industry ... It is obvious that he has invested substantial time and resources into various aspects of Greyhound racing and that a loss of license will have a corresponding impact upon him. Unfortunately his professed commitment to professional standards did not include “public perception and animal welfare per se”.

There is a compelling case to increase what has become the standard penalty of 10 years disqualification imposed in these matters, to reflect what was a contradiction in stated principles by the Appellant when it came to the practice of training employed by him away from public scrutiny, contrasted against the respect and high profile he held within the Industry.

In the matter of Wright (supra) the Board said: “Of some assistance to this Board are the recent amendments to the ...GAR made on 20 April 2015. Those amendment make it mandatory for a period of disqualification of not less than 10 years to be imposed to any person who is involved in the practice of live baiting or is convicted in any Court of an offence in respect to the use of an animal, carcass or part of an animal with greyhound training. That of course is legislation that postdates the commission of this offence and does not take the matter very much further other than to identify that post the offence being committed the minimum penalty that shall be imposed by anybody shall be a minimum 10 years disqualification. In this particular instance, the Board of Racing Queensland has identified that a period of life should be the appropriate penalty imposed. In the opinion of this Disciplinary Board, such a period of life is not likely to have any more of an effect by way of a deterrent nature on a particular participant that would a period of 10 years as suggested in the relevant legislation. ...”

This Board varies to 10 years disqualification the decision of Racing Queensland to warn him off for life for the reasons outlined in the preceding paragraph.

[113] In *Connolly v Greyhound Racing Victoria Stewards (Review and Regulation)*¹⁰⁵ the applicant was charged with breaches of GAR 86(af) in relation to three sequential episodes of live baiting. However, the GAR breaches ultimately were struck out as the applicant plead guilty to breaches of a Local Rule stating that no person shall use or cause to be used any live animal as a lure for greyhounds or for exciting of greyhounds on any greyhound trial track or any other location. In terms of sanction, it was noted that the applicant was 23 years of age and was 21 years of age at the time of the incidents. It was accepted that his role had been lesser to others but it was stated by the stewards that “any involvement in such a barbaric and inhumane activity ... is abhorrent, vile and horrific.”¹⁰⁶

[114] It was found that the fact that no attempt was made by the applicant to expose the conduct and he did not make a comment to the Chief Steward when first approached weighed against a finding that he had expressed true remorse or contrition for his participation.¹⁰⁷ General deterrence was considered a weighty factor particularly as such conduct is difficult to detect¹⁰⁸. Counsel for the respondent sought a 20 year ban with 10 years suspended submitting that more weight should be given to deterrence than to the applicant’s youth and prospects of rehabilitation¹⁰⁹. The applicant stressed the relevance of his youth and the absence of any prior convictions and drew attention to the conduct of others that required in his submission greater denunciation.¹¹⁰ The applicant proposed a penalty of eight years disqualification with five of those eight years suspended.¹¹¹

[115] The following matters were weighed in determining that the applicant should be disqualified from being licenced as either an attendant or trainer for a period of 10 years, with half of that period suspended: the seriousness of the breach of the rules, the lesser degree of his involvement; his relative youth and employment relationship with others involved in the more serious conduct of placing the live animal on the lure contributing to his engagement in the practice and reluctance in reporting the conduct; and that, based on character witnesses, it was more probable than not that he would be able participate honourably within the industry in the future.¹¹²

The Appropriate Sanction in Mr Ball’s Case

[116] Racing Queensland submits that the 10 year period of warning off imposed by the QRDB is the appropriate sanction. The applicant submits that in the case of *Arnold* eight years was considered the appropriate sanction and Ms Arnold was aged in her 40’s. It is submitted by the applicant that, given Mr

¹⁰⁵ *Connolly v Greyhound Racing Victoria Stewards (Review and Regulation)* [2016] VCAT 1180.

¹⁰⁶ *Ibid* at [40].

¹⁰⁷ *Ibid* at [42].

¹⁰⁸ *Ibid* at [44].

¹⁰⁹ *Ibid* at [49].

¹¹⁰ *Ibid* at [50].

¹¹¹ *Ibid* at [50].

¹¹² *Ibid* at [51] and [54] and [55].

Ball's age a term of 10 years is effectively a life ban. Mr Ball's representative submitted that at his age even a two year period was a lengthy period and any period of disqualification should contemplate the applicant's return to the industry in some viable way.

[117] The offending conduct of Mr Ball is serious. It involves harm to animals. The safeguarding of animals involved in racing is a main purpose of the legislation. That harm is done, as part of the industry, to an animal that does not race as such does not in, in my view, diminish the seriousness of the conduct. I accept that any penalty should have both a general and personal deterrent effect and should reflect that the conduct engaged in by Mr Ball falls well short of the standard of behaviour expected of a licensed trainer as well as general community expectations of the industry. It follows that his conduct undermines public confidence in the greyhound racing industry. I consider in accordance with LR3A that Mr Ball is a person whose presence on racecourses is not desirable.

[118] Mr Ball has been a greyhound trainer for 56 years. He is referred to as a Hall of Famer. I have taken into account that until this matter he had an unblemished record in the industry. I accept that as a result of his professionally high standing in the industry this decision will have a significant effect on his reputation. I do not have any evidence in relation to the level of income he derives from training greyhounds. However, I accept that any disqualification from holding a licence will negatively impact his income.

[119] Unlike the cases of *Druery* and *Edmondson*, Mr Ball has personally engaged in live baiting. Unlike *Arnold* and *Edmondson*, and perhaps *Chapman*, Mr Ball has not made any admissions to Racing Queensland nor has he provided information to Racing Queensland to assist its investigation of live baiting at the Churchable property or generally in the industry. He has at all times denied that he has engaged in live baiting, and I have found that he has given false and misleading evidence. His denials and defence of this matter has meant that he has not expressed remorse for his conduct.

[120] The relevance of remorse in consideration of sanction has been considered in cases before this Tribunal and the Appeal Tribunal in disciplinary matters. I consider that the principles identified in those cases are apposite here. In *McKenzie v Acting Assistant Commissioner Tony Wright* it was observed:¹¹³

“In disciplinary proceedings the main relevance of an early indication of acceptance of the charge is that it indicates honesty and remorse, and a willingness to face up to obligations...the main relevance of such conduct in this disciplinary jurisdiction is its indication of remorse and responsibility. It is worth mentioning that these can be very significant and influential factors.”

¹¹³ *McKenzie v Acting Assistant Commissioner Tony Wright* [2011] QCATA 309 at [24].

[121] In *Kennedy v Deputy Commissioner Ian Stewart*¹¹⁴ the Tribunal cited that passage from *McKenzie* with approval¹¹⁵ and went on:

The conduct of the case by and on behalf of the relevant person may also provide some indication in this area. For example a defence maybe conducted in a responsible manner even if it is ultimately rejected; but it may also be conducted in an obstructionist manner and involve pursuit of opportunistic and unmeritorious points which unduly complicate the exercise. A preparedness to do this could be a clear indicator of absence of remorse and responsibility.¹¹⁶

[122] In this case, I have found Mr Ball to have given untruthful information to Racing Queensland but that is of itself a ground giving rise to sanction as a breach of the GAR. Mr Ball has been legally represented throughout the original decision making process and throughout the review process both before the QRDB and this Tribunal. I do not consider that it is open for me to find that he conducted any of the processes in an obstructionist manner or raised unmeritorious points. I have therefore not regarded his defence of this matter as evidence of a lack of remorse in determining sanction. However, I have taken into account that the established grounds include not only live baiting but also giving false and misleading evidence to Racing Queensland.

[123] I accept the submission of the respondent that the regulatory role of Racing Queensland relies upon the understanding of industry participants that they are obliged to engage and cooperate fully with their regulatory body and that that regulatory role is diminished and undermined if participants provide false or misleading information.¹¹⁷ I consider that comparative decisions involving the giving of false and/or misleading information to Racing Queensland in respect of other codes of racing are apposite.

[124] In *Thomas v Racing Queensland Limited*¹¹⁸ this Tribunal said in respect of Harness Racing Rule 187:

...The Stewards, and the industry, rely on the integrity, honesty and forthrightness of licensees to assist them to properly administer their obligations under the Racing Act 2002 so that the industry does not fall into disrepute.¹¹⁹

[125] The grounds found to be established are serious and as such impact the greyhound racing industry as a whole. The sanction imposed on Mr Ball must reflect the seriousness of the grounds and the negative impact on the industry. It must serve as a deterrent to others who might consider engaging in such a practice.

¹¹⁴ *Kennedy v Deputy Commissioner Ian Stewart* [2012] QCAT 66.

¹¹⁵ *Ibid* at [38].

¹¹⁶ *Ibid* at [39].

¹¹⁷ Exhibit 1: "Respondent's appeal submissions" p.152 at [77].

¹¹⁸ *Thomas v Racing Queensland Limited* [2012] QCAT 436.

¹¹⁹ *Ibid* at [20].

[126] I accept that at 74 years of age, the length of Mr Ball's remaining career in the industry after serving a period of disqualification is less than what could be the case for Ms Arnold in her 40s. Having said that Mr Ball was training greyhounds until Racing Queensland's decision. His age does not appear to be an impediment to his ability to train and it is not submitted that he was intending to retire at any particular age. He has also had the benefit of a long and successful career in the industry.

[127] The decisions of the QRDB have effectively equated a life ban with a ban of 10 years on the basis that it is seen as having effectively the same deterrent effect as a life ban. The decisions of the QRDB and this Tribunal whilst noting the age of the applicant do not appear to have placed significant weight on age as a factor for reducing the period of the penalty from 10 years. Ms Edmondson was 64 years of age and had not engaged in live baiting. The sanction imposed in her case by this Tribunal was six years. Mr Chapman's age did not feature in the QRDB's decision to reduce his life ban to a warning off for 10 years. This is not a case like *Connolly* where relative youth was taken into account in connection with the person's lesser involvement in the offending behaviour.

[128] Taking into account the circumstances of the case that I have outlined as well as the public interest and deterrence considerations and having considered the cases outlined in these reasons, I conclude that the appropriate sanction is a disqualification or warning off for a period of 10 years from the date of the original decision, 26 May 2015,¹²⁰ to take account of the period of warning off Mr Ball has already completed. In doing so, I note that Racing Queensland did not seek a longer period of warning off. I am satisfied that a warning off for 10 years is consistent with comparative decisions available. In reaching this conclusion, I am conscious that I determined that ground 2 was not established. I do not consider that my decision in relation to ground 2, when weighed against the seriousness of the other established grounds and the other relevant circumstances of this case, warrants any reduction in the period of warning off.

[129] As my decision is different from that of the QRDB in relation to the grounds established and I have set a date of effect for the sanction imposed, I consider it appropriate to set aside the reviewable decision and substitute my own decision that:

- a) Grounds 1, 3 and 4 are established in that Mr Ball has breached GAR 86(af), 86(q) and 86(d) as worded at the date of the conduct;
- b) Ground 2, the alleged breach of GAR 86(aa) is not established.
- c) For the breaches of the GAR, Mr Ball is warned off for 10 years from the date of the original decision, 26 May 2015.

¹²⁰

Date of Racing Queensland's decision to warn off Mr Ball for life.