

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Paull v Queensland Racing Integrity Commission* [2018]  
QCAT 214

PARTIES: **GREGORY BRIAN PAULL**  
(applicant)  
v  
**QUEENSLAND RACING INTEGRITY  
COMMISSION**  
(respondent)

APPLICATION NO/S: OCR155-15

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 10 July 2018

HEARING DATE: 19 February 2018

HEARD AT: Brisbane

DECISION OF: Member Ann Fitzpatrick

ORDERS: **The Tribunal directs:**

- 1. The Decision of the Queensland Racing Disciplinary Board of 24 June, 2015 affirming the original decision of the Board of Queensland All Codes Racing Industry Board is set aside;**
- 2. The Decision of the Queensland Racing Disciplinary Board of 24 June, 2015 in respect of conviction and penalty are set aside;**
- 3. A new decision is substituted that an alleged breach of GAR, Rule 86(af); GAR, Rule 86(aa) and GAR, Rule 86(q) is not established.**

CATCHWORDS: PROFESSIONS AND TRADES – LICENSING OR REGULATION OF OTHER PROFESSIONS, TRADES OR CALLINGS – OTHER PROFESSIONS, TRADES AND CALLINGS – Greyhound Trainer – where greyhound trainer sought review of decision to warn him off for ten years – where reviewable decision found greyhound trainer engaged in live baiting – breach of Greyhound Australasia Rules

EVIDENCE – PROOF – STANDARD OF PROOF – STANDARD OF SATISFACTION – SUFFICIENCY – GENERALLY – video footage – where quality of footage imperfect – no authentication of video footage

*Animal Care and Protection Act 2001 (Qld)*, s 30, s 31,  
s 32, s 33  
*Queensland Civil and Administrative Tribunal Act 2009*  
(Qld), s 19, s 20, s 24, s 33  
*Racing Act 2002 (Qld)*, s 152A

**APPEARANCES &  
REPRESENTATION:**

Applicant: Self-represented  
Respondent: J Ford, instructed by Clayton Utz Solicitors

**REASONS FOR DECISION**

**The Application to review**

- [1] This is an application to review a decision made on 24 June 2015 by the Queensland Racing Disciplinary Board. The Queensland Racing Disciplinary Board heard an appeal from a decision of the Board of Queensland All Codes Racing Industry Board trading as Racing Queensland. Racing Queensland considered 4 allegations against Mr Paull. It found him guilty of each charge and imposed a penalty that Mr Paull be warned off from the greyhound industry for life.
- [2] The decision of the Queensland Racing Disciplinary Board, the subject of this review is:
- ...that Mr Paull was present at the time live baiting was being conducted on the premises in question and as a result thereof he is guilty of the charges and this Board so finds the appeal in respect to conviction is dismissed.
- It is the decision of this Board that a period of 10 years is an adequate deterrent in all of the circumstances and that penalty is substituted for the life ban imposed by Racing Queensland.
- [3] This application to review is made under section 152A of the *Racing Act 2002 (Qld)* and section 33 of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)* ('QCAT Act').
- [4] By section 19 of the QCAT Act, this Tribunal has all the functions of the Queensland Racing Disciplinary Board. By section 20 of the QCAT Act:
- (a) the purpose of the review is to arrive at the correct and preferable decision; and
- (b) the Tribunal must hear and decide the review by a fresh hearing on the merits.
- [5] By section 24 of the QCAT Act, this Tribunal may:
- (a) confirm or amend the decision; or
- (b) set it aside and substitute its own decision; or
- (c) set aside the decision and return the matter for reconsideration to the Queensland Racing Disciplinary Board, with any appropriate directions.

- [6] Mr Paull seeks to have the findings of the Queensland Racing Disciplinary Board overturned and the attendant penalty removed.

### **Evidence**

- [7] Mr Paull relied upon all the material filed by him in the Tribunal, which was tendered as Exhibits in the hearing.

- [8] Mr Paull gave evidence and was cross-examined.

- [9] Mr Paull did not call any witnesses, although the material before the Tribunal refers to the opinion of other persons, including in relation to:

- (a) the ability to manipulate and alter DVD video footage;<sup>1</sup> and
- (b) how it may be possible to determine if an animal is dead.<sup>2</sup>

- [10] Because the witnesses were not called to give evidence, it is not possible to attribute any weight to their statements. However, insofar as the evidence states matters of common knowledge, I accept that:

- (a) it is possible to alter DVD video footage; and
- (b) it is very difficult without a physical examination to determine if an animal is dead.

- [11] I do not rely on that evidence to find that the DVD evidence has been altered or that there is evidence the animal in question is dead.

- [12] The respondent tendered into evidence the following:

- (a) DVD noted as: 'long shot 9.52 - 10.21' ('Exhibit 8'); and
- (b) DVD noted as: 'Button 9.48 - 10.01' ('Exhibit 9').

- [13] I accepted these DVDs as Exhibits with respect only to those parts which were put to Mr Paull in cross-examination. At the request of the Respondent, those parts of the DVDs which were played during the hearing and put to Mr Paull, were played without audio.

- [14] I was urged to accept into evidence the whole of the 2 DVDs and to give consideration to the whole of their contents. Mr Paull objected to that course and I indicated that I would rule on the matter in my decision. I will deal with this point later in the decision.

- [15] The Respondents also tendered the following:

- (a) Queensland All Codes Racing Industry Board Paper ('Exhibit 10');
- (b) Racing Queensland Statement of Reasons ('Exhibit 11');

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<sup>1</sup> Exhibit 5 – Attachment 2.

<sup>2</sup> Exhibit 1 – Attachments 4 and 5.

- (c) Racing Disciplinary Board Transcript of Proceedings, dated 24 June 2015 ('Exhibit 12');
- (d) Racing Disciplinary Board Appeal Decision, dated 24 June 2015 ('Exhibit 13');
- (e) Transcript of Steward's Inquiry dated 19 March 2015 ('Exhibit 14');
- (f) Show Cause Notice, dated 15 April 2015 ('Exhibit 15'); and
- (g) Show Cause Response, dated 22 April 2015 ('Exhibit 16').

### **Status of DVD Evidence**

- [16] The Respondent filed 11 DVDs as Attachments to an Affidavit of Jaime Lee Knight, Thoroughbred Integrity Officer, affirmed 18 September 2015.
- [17] Mr Paull earlier brought an Application to have those DVDs excluded from evidence in these proceedings. On 12 May 2016, his Application was dismissed. That decision was appealed. On 9 August 2017, Justice Carmody, sitting as the QCAT Appeal Tribunal, decided that the DVDs were admissible in evidence, with the exception of audio at 9:56:24am to 9:58:28am.<sup>3</sup>
- [18] In the course of his decision, Justice Carmody said:

The Regulator claims, in effect, that the tapes are virtual "eyewitnesses" to the Mr Paull's disciplinary breaches. In evidentiary language, they are copy documents capable of proving any stated fact under the common law rules of evidence if the author or witness with direct knowledge personally identifies and vouches for them or the affected party voluntarily (that is, willingly and not inadvertently or forcibly) admits or adopts them as true.

Otherwise, they are inadmissible for the purposes of proving what it records unless exempted by Part 6 of the *Evidence Act 1977* (Qld) from the absolute ban on second-hand documentary hearsay.<sup>4</sup>

...

Video tapes may, of course, also be proved simply by production in Tribunal proceedings, but it would seldom be fair or just to allow and act on anonymous hearsay in disciplinary proceedings where, as here, a Regulator has the onus of proving contested liability facts to the standard of reasonable satisfaction.<sup>5</sup>

...

There is no reason to question the reliability of the audio-visual material. The Applicant can expect to be given the opportunity to explain, refute, criticise, contradict or discredit the material. As long as the Tribunal is reasonably satisfied as to the authenticity of the video tapes (which it should be circumspect about) unavailability of any verifying witness to cross-examine is a matter going more to the weight than admissibility.<sup>6</sup>

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<sup>3</sup> *Paull v Queensland All Codes Racing Industry Board* [2017] QCATA 92.

<sup>4</sup> *Ibid* [116]-[117].

<sup>5</sup> *Ibid* [122].

<sup>6</sup> *Ibid* [150].

- [19] In the end, the Respondent did not seek to tender any of the DVDs other than Exhibits 8 and 9, as a consequence of putting parts of the DVDs to Mr Paull.
- [20] As the remaining nine DVDs were not tendered as evidence, I have had no regard to them.
- [21] In relation to footage outside that put to Mr Paull, it was submitted that, pursuant to s 28 of the QCAT Act, this Tribunal may inform itself in any way it considers appropriate and must ensure, so far as practicable, that all relevant material is disclosed to the tribunal to enable it to decide the proceeding with all the relevant facts.
- [22] Despite the power to do so, I do not consider it is fair to admit into evidence those parts of Exhibit 8 and 9 which were not put to Mr Paull in cross examination for the following reasons:
- (a) Mr Paull maintained an objection to the DVDs being tendered;
  - (b) no submissions were made as to the content of the remaining parts of the DVDs and its relevance;
  - (c) no author of the DVDs or other relevant person was called to verify the authenticity of the DVDs;
  - (d) no submissions were made to me in relation to any exceptions to the hearsay rule; and
  - (e) the matters referred to by His Honour Justice Carmody, set out earlier in this decision.
- [23] I reject the submission of the Respondent that, because the DVD evidence was admitted and considered by Racing Queensland and the Racing Disciplinary Board, it would be incongruous if the evidentiary threshold were different and higher in this Tribunal. The hearing before me is a fresh hearing on the merits. I am bound by s 28 of the QCAT Act to act fairly and to observe the rules of natural justice.
- [24] I do not accept those parts of Exhibits 8 and 9 not put to Mr Paull in cross examination as part of the evidence in this hearing.
- [25] In response to a question from me to Mr Paull during the course of his final submissions, after the evidence had closed, Mr Paull stated how the possum was attached to the lure and commented to the effect that the DVDs reveal a number of other dogs had trialled on that lure, before he arrived at the track with his dogs. Counsel for the Respondent asked me to take note of that answer as part of the evidence.
- [26] I decline to do so on the basis that at this stage the evidence had closed and the DVDs were not played or put to Mr Paull. There is no certainty as to which part of the DVD is being referred to, whether Mr Paull made an accurate statement or indeed its relevance to the issues before me.

## Issues

- [27] The decision of Racing Queensland, which was appealed to the Racing Disciplinary Board, followed upon a Notice to Mr Paull to show cause why it should not:
- (a) warn Mr Paull off all racecourses within its control pursuant to Local Rules of Racing (Greyhound Racing), Rule 3A; and
  - (b) prohibit all greyhounds owned by Mr Paull (whether whole or in part) from competing in any Event pursuant to Greyhound Australasia Rules ('GAR') Rule 14(1)(c).

- [28] The allegations set out in the Show Cause Notice dated 15 April 2015 were:

### Allegation One

You 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 20 August 2014 at 9 Wotan Road, Churchable.

### Allegation Two

You 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 20 August 2014 at 9 Wotan Road, Churchable.

### Allegation Three

You refused to give evidence at an Inquiry in breach of GAR, Rule 86(e) on 19 March 2015 at Racecourse Road, Deagon.

### Allegation Four

You engaged in conduct which is detrimental or prejudicial to the interests, welfare, image, control or promotion of greyhound racing in breach of GAR, Rule 86(q), including on or about 20 August 2014 at 9 Wotan Road, Churchable and/or on 19 March 2015 at Racing Queensland in Deagon, Brisbane.

- [29] At the hearing of this matter, Counsel for the Respondent advised that the Respondent no longer relied upon an allegation that Mr Paull refused to give evidence at an Inquiry, as set out in Allegation 3 in the Show Cause Notice, and did not rely on Allegation 4 insofar as it set out a particular that Mr Paull, in an interview with Racing Queensland, refused to give evidence when requested by the Stewards.
- [30] At the hearing, Counsel for the Respondent submitted that this hearing was concerned with two narrow issues:
- (a) was the possum used as bait on the lure at the trials conducted at 9 Wotan Road, Churchable, on 20 August 2014, alive?
  - (b) was Mr Paull aware that the possum was alive?
- [31] I agree that those are matters of fact which must be determined by me in deciding what is the correct and preferable decision within the context of GAR, Rules 86(af), 86(aa) and 86(q).

[32] GAR, Rule 86(af) states:

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

...

- (af) uses an animal for any purpose connected with greyhound racing or training in a manner which amounts to maltreatment of an animal or is improper or illegal;

[33] Section 32 of the *Animal Care and Protection Act 2001* (Qld) makes it an offence to keep or use an animal as a kill or lure:

- (a) to give a dog a taste or sight of the animal's blood; or
- (b) to race or train a coursing dog.<sup>7</sup>

[34] Counsel for the Respondent submitted that, to be satisfied that Mr Paull was in breach of GAR, Rule 86(af), I must be satisfied:

- (a) Mr Paull was present at the premises on or about 20 August 2014;
- (b) Mr Paull's greyhounds, or at least one of them, trained with a live animal on a lure arm; and
- (c) Mr Paull knew that there was a live animal on the lure when his greyhounds trained.

[35] GAR, Rule 86(aa) states:

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

...

- (aa) tampers with any gear used on a greyhound or uses any substance or item to affect the performance of a greyhound or greyhounds;

[36] Counsel for the Respondent submitted that I must be satisfied that:

- (a) the use of a live animal while training a greyhound is the use of a substance or item to affect the performance of a greyhound; and
- (b) objectively, Mr Paull had the requisite intent to do so to improve the performance of the greyhound.

[37] GAR, Rule 86(q) states:

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

...

- (q) commits or omits to do any act or engages in conduct which is in any way detrimental or prejudicial to the interest, welfare, image, control or promotion of greyhound racing-

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<sup>7</sup> See also sections 30 and 31 of the *Animal Care and Protection Act 2001* (Qld).

[38] Counsel for the Respondent submitted that, if I am satisfied the allegations in Allegation 1 or Allegation 2 are proven, it can conclude, as did Racing Queensland and the Racing Disciplinary Board, that the conduct was detrimental or prejudicial to the interests, image and promotion of greyhound racing.

[39] I accept the Respondent's submissions as to the matters to be decided by me.

[40] Finally, the question of any penalty must be determined.

### **Evidence**

[41] Mr Paull gave vehement evidence that:

(a) he did not go to 9 Wotan Road on 20 August 2014 to participate in live baiting;

(b) he did not witness live baiting; and

(c) he did not see a live possum on the lure.

[42] Further, he gave evidence that, prior to trialling his dogs, he was standing at a point approximately 30 metres from the stationary lure. He saw two things, a lambswool skin and a head and tail. Thereupon, he asked an attendant at the track if the possum was dead. He said that he was told the possum was dead. Mr Paull said that the possum looked like a carcass.

[43] After that, Mr Paull went to get his dogs in order to commence trialling each of the three dogs.

[44] Mr Paull's evidence is that, during the course of trialling his dogs, he did not pay any attention to the lure as he was watching his dogs intently. Mr Paull said that at no time did he think or imagine that there was any life in the possum on the lure.

[45] Mr Paull's evidence, which was not challenged in cross-examination, is that at the relevant time it was not against the rules of racing to trial on a carcass.

[46] After trialling his dogs, Mr Paull said that he then left the track. His evidence is that he was not aware of what else may have happened at the track. Mr Paull said that he is now aware that live baiting occurred outside the time he was at the track and that people have been charged as a consequence.

[47] In cross-examination, Mr Paull was unshakeable that he had never been involved in live baiting and that he thought the possum on the lure was dead.

[48] In cross-examination, Mr Paull said that he had been to the Wotan Road track on other occasions and that there had always been on the lure a 'honky' bit of material and other things, including roadkill. He said that the majority of the time lambswool was used.

[49] Mr Paull confirmed that he was aware of the use of roadkill as a lure.

[50] When asked in cross-examination if he had any doubts that the animal on the lure was dead, Mr Paull replied that he did not. He said that he was not suspicious the animal was alive and that there was no reason why he should not ask the question as to whether the possum was dead.

- [51] When pressed on this point, Mr Paull gave an example by analogy. The example was to the effect that if someone had a reputation as a car thief, you would check before taking a car from him.
- [52] Mr Paull refused to say that he had doubts as to whether there was live bait being used as a consequence of the analogy he gave. He insisted that it was merely as a result of 'innuendo' and the fact that he did not trust anyone that he asked the question as to whether the possum was dead.
- [53] Mr Paull said that if he had been told that there was live bait being used, he would have immediately left the track.
- [54] Mr Paull insisted that he was just wanting to be sure and that at no time did he think the possum was alive.
- [55] It was put to Mr Paull that what really happened was that he was used to using roadkill and this time something sparked his interest and he asked the question as to whether the possum was alive. It was suggested that, for example, he saw the lure move.
- [56] Mr Paull responded, 'no'.
- [57] Mr Paull said that he probably did not have to ask the question as to whether the animal on the lure was dead, but that it was something he just did, because he is the type of person who checks everything a lot.
- [58] During cross-examination, Mr Paull was first shown parts of Exhibit 8, the long shot DVD.
- [59] When displayed, the video footage from the DVD reveals rolling numerals. There was no evidence that the numerals represent the time of day. However, they have been referred to in the evidence as timestamps. I have treated the numerals as a marker to points on the DVD.
- [60] The DVD was forwarded to marker 9.59. Mr Paull was shown on the video collecting a dog which had just been trialled. Mr Paull did not deny this was the case.
- [61] The video was then stopped at 10.00.46. Mr Paull did not deny that the video showed him returning a dog to the kennel block.
- [62] The video was stopped at 10.02.18. Mr Paull did not deny that he was shown retrieving a dog in the vicinity of the lure. His evidence was that he did not look at the lure.
- [63] The video was stopped at 10.06.01. Mr Paull did not deny that he was shown retrieving a dog from the vicinity of a lure. Mr Paull said that he was in that position for a few seconds.
- [64] The video was stopped at 10.10.21. Mr Paull did not deny that he was shown in the vicinity of the kennel block. Mr Paull said that at that point in time he was packing up to leave.
- [65] The longshot video does not reveal a close-up image of the possum on the lure.
- [66] Mr Paull was then shown parts of Exhibit 9, called 'Button DVD 9.48-10.01'.

- [67] No evidence was given to me as to the difference between the long shot and button DVDs. I have assumed that they contain video footage taken from different cameras.
- [68] Mr Paull said that from his earlier viewing of the DVDs, the long shot and button DVDs are not synchronised and do not reflect the same happenings by reference to the date and timestamp. He did not think that the date and timestamps are accurate. I have insufficient evidence to make a finding in that regard. I have simply considered each image as presented in evidence and taken into account Mr Paull's responses to the images.
- [69] Exhibit 9 was stopped at 9.49.51. The lure arm was shown on the video recording. Mr Paull said that the lure appeared to be the lure which he saw when he presented to trial his dogs. He said that he was not at the track at 9.49.51. However, he agreed it looked similar.
- [70] He said that he arrived immediately before he walked towards a fence which was seen on Exhibit 9 at 9.56.20. When the DVD was stopped at that point, Mr Paull did not deny that the person at the side of the track was him. He said that it 'appears to be'.
- [71] Mr Paull said that at the point shown on the DVD at 9.56/9.57, he was approximately 10 feet from the possum on the lure.
- [72] The DVD was stopped at 9.59.05. Mr Paull said that nothing was happening, and the DVD looked like a photo. I took this to be a reference to the possibility that the DVD had been manipulated in some way. I make no finding in that regard. I have insufficient evidence to draw any such conclusion.
- [73] Importantly, the DVD was stopped at 10.00.00. The video recording shows the lure. The quality of the video is not crystal-clear. However, it is possible to discern a possum tail, a piece of lamb's wool and a possum head and arms. No person is shown at or near the lure in the image.
- [74] The video recording appears to show two movements of the possum's right arm and possibly the lift of the possum's head. At the time of these movements, the lure is starting to move.
- [75] Mr Paull agreed that the possum appeared to be moving. He did not say that the possum was alive.
- [76] Mr Paull's evidence is that at this time he was below a fence putting his dog in a box. He said that he was concentrating on the dog and that he did not see the possum move.
- [77] The Respondent called no evidence.
- [78] The parties made submissions.

### **Mr Paull's Submissions**

- [79] Mr Paull submitted that there was no factual evidence of Allegation 1 or 2 and that then affected Allegation 4. He said there was an assumption that because he had been at 9 Wotan Road that he had engaged in live baiting. Mr Paull submitted that the standard of proof needs to be higher where there is an impact on his employment.

- [80] Mr Paull submitted that the DVDs in evidence could have been changed and manipulated. He said that from the time he got to the track at Wotan Road, to the time he left, the possum looked like a carcass, except at one point on the video and it is possible that the DVD has been manipulated.
- [81] Mr Paull said that the Respondent cannot authenticate the DVD.
- [82] Mr Paull made other submissions in relation to what was said to be errors in the previous proceedings which he had been involved in. I have not addressed those matters, as this is a hearing de novo.
- [83] Mr Paull said that he has been disqualified since 2015 for ‘doing nothing’. He has suffered stress, anxiety and depression as a result. Mr Paull asked that no penalty be imposed on him and relied on the decisions of *Mackie v Greyhound Racing Victoria (Review and Regulation)* [2017] VCAT 546 and *Anderton v Greyhound Racing Victoria Stewards (Review and Regulation)* [2017] VCAT 439.
- [84] He concluded that the evidence was unfounded, that Rule 3A was based only on opinion and that the penalty was unreasonable.

### **Respondent’s Submissions**

- [85] The Respondent relied upon its written submissions handed up on the morning of the hearing and also made oral submissions.
- [86] With respect to allegation 1, it was submitted that if a factual finding of live baiting is made, then the allegation is made out.
- [87] The Respondent referred me to:
- (a) admissions made by Mr Paull in the Disciplinary Racing Board hearing;
  - (b) Exhibits 8 and 9; and
  - (c) inconsistencies in Mr Paull’s testimony, relying upon transcript from the Racing Disciplinary Board hearing.
- [88] It was submitted that I can be comfortably satisfied:
- (a) having watched the video footage before the Tribunal that Mr Paull identified himself in the video and confirmed that he was present at the premises on 20 August 2014;
  - (b) that Mr Paull attended the premises for the purpose of trialling one or more greyhounds;
  - (c) that Mr Paull did trial his dogs at the premises; and
  - (d) that Mr Paull saw and was aware that there was a possum on the lure arm used while he trialled greyhounds at the premises.
- [89] It was submitted that the DVD evidence on Exhibit 9, in particular at 10.00.00, revealed that the possum was alive.

- [90] The Respondent said that Mr Paull observed the possum on the lure and admitted that it appeared to be similar to the possum used on the day on which he was at the premises. When shown the DVD, Mr Paull saw the possum struggling with its forearms and agreed that the possum was alive.
- [91] I note that Mr Paull did not agree the possum was alive but said words to the effect that the possum appeared to be alive.
- [92] It was also submitted that the footage around 10.00.00 showed that Mr Paull was in the vicinity of the lure moments before and, on his own evidence, was about 10 feet from the lure. After that, he was preparing his dogs to trial.
- [93] As to whether Mr Paull was aware that the possum was alive, the Respondent acknowledged that Mr Paull denies he was aware the possum was alive.
- [94] The Respondent submitted that I can make inferences with respect to that issue based on inconsistencies in the evidence. It was submitted that I can reasonably conclude, from known facts, to a civil standard, considering the *Briginshaw* standard of proof.
- [95] The inconsistencies I was directed to are said to be:
- (a) Mr Paull described his obsessive nature and how he was meticulous in his work;
  - (b) Mr Paull had been to Wotan Road before and trialled on dead lures; and
  - (c) Mr Paull was certain, based on his experience, that the lure was dead, however, that evidence is inconsistent with the contention that he needed to ask whether the possum was dead at all.
- [96] The Respondent asked, if Mr Paull was not suspicious, why he needed to ask the question.
- [97] The Respondent drew my attention to the analogy given by Mr Paull of a car thief and borrowing a car from that person. In those circumstances, Mr Paull suggested that one would ask if the car was stolen.
- [98] The Respondent said the obvious conclusion is that Mr Paull suspected the bait being used was alive and to assuage that suspicion, he asked the question as to whether the bait was alive.
- [99] Upon being given an answer, Mr Paull stopped his inquiry. The Respondent said that was inconsistent with his alleged meticulous nature.
- [100] The Respondent said that Mr Paull agreed he had been 'shamed' by his association with the suggestion of live baiting and agreed that the practice was publicly deplored.
- [101] The Respondent asked me to draw the inference that contrary to Mr Paull's testimony, he was aware the lure was alive and that was why he was trialling at that location.
- [102] The Respondent further said that Mr Paull never said that he saw the possum moving, however, Exhibit 9 tends to indicate that could not reasonably be the case.
- [103] It was said that if I was satisfied of the facts, a finding should be made that allegation one was made out.

- [104] In relation to allegation two that Mr Paull used live baiting of animals for the purpose of affecting the performance of a greyhound in breach of GAR, Rule 86(aa), including on 20 August 2014 at 9 Wotan Road, Churchable, it was submitted that it is necessary to find Mr Paull had the requisite intent.
- [105] The Respondent acknowledged that there was no evidence of Mr Paull's state of mind other than his answers that he did not know the possum was alive.
- [106] However, the Respondent submitted that the only reason to use live bait is to enhance performance. It was said that innocent explanations are not credible.
- [107] The Respondent asked me to take judicial notice of the assertion that the practice of live baiting enhances performance in greyhounds. There was no evidence submitted on that point.
- [108] The Respondent confirmed that allegation number three was not pressed.
- [109] In relation to allegation number four that Mr Paull's conduct was detrimental to greyhound racing, it was submitted that if allegation one or two is made out, then the Tribunal should be satisfied that Mr Paull 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). I was referred to the public outcry in relation to live baiting when this was aired in the media.
- [110] It was submitted that the Tribunal can be satisfied if live baiting is made out that it is detrimental to the image of greyhound racing.
- [111] In relation to penalty, the Respondent submitted that a penalty of 10 years where Mr Paull has taken part in live baiting is consistent.<sup>8</sup> The Respondent said that closely related matters of *Thompson, Campbell, Ball, Pollock* and *Chapman* each had a penalty of a 10 year warning off. It was noted that *Thompson, Campbell* and *Ball* are currently subject to Appeals to this Tribunal.
- [112] The Respondent referred me to recent decisions from the Victorian Racing Appeals and Disciplinary Board ('Victorian Board').<sup>9</sup> The Respondent referred to one relevant decision in Western Australia from Racing and Wagering Western Australia.<sup>10</sup> The Respondent emphasised the seriousness of Mr Paull's conduct and the cruel practice of using a live animal as bait in the training of greyhounds. I was referred to the main purpose of the *Racing Act*, being to maintain public confidence in the racing of animals in Queensland, to ensure integrity and to safeguard the welfare of all animals involved in racing. It was reiterated that the use of a live animal as bait is unlawful under sections 31-33 of the *Animal Care and Protection Act 2001* (Qld). It may also constitute serious animal cruelty under section 232 of the *Criminal Code*.

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<sup>8</sup> *Druerry Queensland Racing Disciplinary Board Appeal Decision*, dated 26 August 2016; *Edmondson v Queensland All Code Racing Industry Board* [2016] QCAT 70, [22].

<sup>9</sup> *Roberts, Connolly and Mills; Dean; King; Sykes, Reynolds, Smith and Hodges; Anderton; Mackie; Wheeler*.

<sup>10</sup> *Glenny*.

[113] In conclusion, it was said that although a decision to ‘warn off’ a person may be punitive, there is a protective element for the benefit of the industry and the community.<sup>11</sup>

### **Submissions in Reply**

[114] In reply, Mr Paull said with respect to the two points that need to be proved, namely:

- (a) was the possum alive and was he aware that it was alive? There is no proof he knew the possum was alive; and
- (b) Mr Paull submitted that when the possum allegedly moved at 10.00.00 on the DVD Exhibit 9, he was not near the lure.

[115] In relation to alleged inconsistencies, he reasserted that it was his nature to check things. He asked what was wrong with asking as to whether the possum was alive. He said that he felt satisfied that it was not alive. He said that he has never indicated that he thought the possum was alive.

[116] Mr Paull submitted that he said, when shown the DVD footage, that the possum looked like it could be alive, not that it might be. He submitted that there may be other reasons for movement by the possum. He said that either side of that point, the possum looked completely dead. He asserted there was no way he saw the movement because he was putting his dog in the box, he had his head down and would have had to see over a fence, uphill and through the lambswool attached to the lure.

[117] He submitted that allegation one cannot be proved. Mr Paull said that his whole business has gone. He has lost everything. In his view, he was in the wrong place at the wrong time and he will regret that for the rest of his life.

[118] Mr Paull said there is no way to prove to a reasonable standard that he engaged in live baiting or participated in it. In relation to allegation two, he said that there is no evidence that live baiting changes performance.

[119] Mr Paull took particular exception to the suggestion that if he had engaged in live baiting, he did not do it for performance enhancement, then it must have been for a perverse joy in cruelty. Mr Paull submitted that he loves animals.

[120] Mr Paull denied that the *Ball* case was relevant to him. He pointed out that others had received reduced penalties for helping police.

[121] Finally, he said that the correct decision was that the allegations against him should be dismissed. He made the point that he had served three years of the penalty imposed on him.

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<sup>11</sup> *Wright; Clements v Queensland Racing Limited* [2010] QCAT 637, [59]; *Edmondson v Queensland All Codes Racing Industry Board* [2016] QCAT 70, [11].

### Standard of proof

- [122] The allegations against Mr Paull are very serious. He was warned off greyhound tracks for life, later reduced to 10 years and prohibited from racing greyhounds for the same period. There has been a very significant impact on him and his way of life.
- [123] In these circumstances and having regard to the evidence I must be reasonably satisfied on the balance of probabilities that the facts asserted by the Respondent are established. The standard of proof is described in *Briginshaw v Briginshaw*.<sup>12</sup> Relevantly: “reasonable satisfaction” should not be produced by inexact proofs, indefinite testimony or indirect inferences.’

### Findings

- [124] In relation to allegation one, I find that Mr Paull was present at the premises on or about 20 August 2014. Mr Paull made that admission in evidence.
- [125] As to whether Mr Paull’s greyhounds, or at least one of them, trained with a live animal on a lure arm, I am unable to find that was the case.
- [126] Mr Paull has not changed his version of events at any time through the Stewards Inquiry, the Appeal Board hearing, nor before this Tribunal that he did not know the possum attached to the lure was alive and that he did not train with a live animal on the lure arm.
- [127] Although acknowledging that the possum ‘appeared’ to be alive at marker 10.00.00 on Exhibit 9, Mr Paull did not agree that was the case.
- [128] From my own observation, it is possible the possum was alive. I did observe a jerking movement of one arm and a movement which may have been the possum’s head being lifted. The movements were short and observed over a very short period of time, perhaps one second. Mr Paull submitted that there may be other explanations for the movement, including a natural movement in a dead animal. There was no evidence called by the Respondent to support the submission that the possum was alive at the time Mr Paull was trialling his dogs. In particular, there was no evidence from a veterinarian to indicate that the movements were consistent with life rather than, for example, the movement of the lure or a convulsion naturally occurring in dead animals. I did not observe the movements to be ‘vigorous’ as submitted by the Respondent.
- [129] In the end, I cannot find with the requisite degree of certainty that the possum was alive at the point in time marked at 10.00.00 on Exhibit 9.
- [130] It is fundamental to the Respondent’s allegations against Mr Paull that the possum is proved to be alive when Mr Paull was trialling his dogs. I do not think one second of apparent movement on a moving lure is sufficient proof that the animal was alive. An eyewitness or an expert witness may have been helpful on this issue, but the Respondent was not able to produce any such evidence.

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<sup>12</sup> (1938) 60 CLR 336, 362.

- [131] Even if I am wrong and the possum was, in fact, alive at the relevant time, I am unable to find that Mr Paull knew the possum was alive.
- [132] I accept the evidence of Mr Paull that at the time he was attending to a dog, with his head down and was behind a fence. There is no evidence to the contrary. Mr Paull was unshakable in cross-examination.
- [133] I am invited to draw an inference.
- [134] In essence, the Respondent submits that I should find Mr Paull had a real suspicion that the possum was alive, otherwise, he would not have asked the question as to whether it was alive. It was suggested that if Mr Paull is obsessive by nature as suggested by him, then he would have checked if the possum was alive. I do not agree that was a logical or necessary thing for Mr Paull to do, and that having failed to do so he should be fixed with knowledge that the possum was alive.
- [135] I accept that the analogy given by Mr Paull in evidence in relation to borrowing a car from a car thief did suggest that he may have held suspicions in relation to whether the possum on the lure was alive. That is a flimsy basis on which to draw an adverse inference. I am not prepared to do so.
- [136] Mr Paull gave evidence that he asked a question and was assured that the possum was dead. He was satisfied. He said his own observation was that the possum looked like a carcass.
- [137] I accept that evidence. I cannot draw an inference that Mr Paull knew the possum was alive, even in light of a slim possibility that Mr Paull had a suspicion that was the case.
- [138] It was also suggested that I should draw an inference that Mr Paull had observed the possum move, as shown at 10.00.00 on Exhibit 9. It was suggested I should make this finding, because at the time, Mr Paull was a mere 10 feet from the possum on the lure. The DVD does not show Mr Paull observing the possum on the lure at that time. In fact, he is absent from the frame.
- [139] I accept Mr Paull's evidence that he was attending to his dog at that time and did not see the possum move.
- [140] On the basis of these findings, I do not find that allegation one is made out.
- [141] As a result of that finding, it is not possible to find that allegation two is made out. Likewise, it is not possible to find that allegation four is made out.
- [142] As a result of these findings, it is not necessary to make any decision in relation penalty. However, if I were wrong in relation to all the matters set out in this Decision, it would be appropriate to affirm the decision in relation to penalty on the basis of the submissions made to me by the Respondent in that regard.

### **Correct and preferable decision**

- [143] The Tribunal makes the following decision:

- (a) The Decision of the Queensland Racing Disciplinary Board of 24 June 2015 affirming the original decision of the Board of Queensland All Codes Racing Industry Board is set aside;
- (b) The Decision of the Queensland Racing Disciplinary Board of 24 June 2015 in respect of conviction and penalty is set aside; and
- (c) A new Decision is substituted that an alleged breach of GAR, Rule 86(af); GAR, Rule 86(aa) and GAR, Rule 86(q) is not established.