

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

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| Matter for determination         | Decision dated 3 September 2021 of Commission Stewards Wade Birch and Geoff Page under section 59 of the <i>Greyhound Racing Act 2017</i> to disqualify Mr Glen McKinley for varying periods ranging from two months to 4 months and three weeks, effective immediately. |
| Internal review decision date    | 30 September 2021  |
| Internal review decision by      | Mr Alan Brown<br><b>Chief Commissioner</b><br><br>Mr Peter Collins<br><b>Commissioner</b>  |
| Internal review decision summary | Vary the decision of 3 September 2021 and instead suspend Mr McKinley for a period of 3 months, effective immediately.   |

**REASONS FOR DECISION**

1. These are the reasons for decision following an application by Mr Glen McKinley (“**Mr McKinley**”) for internal review under the *Greyhound Racing Act 2017* (“**Act**”) of a decision of Greyhound Welfare & Integrity Commission (“**Commission**” or “**GWIC**”) Stewards. That decision was to disqualify Mr McKinley’s registrations for a total period of 4 months and three weeks, effective 3 September 2021.
2. This is a reviewable decision within the meaning of section 91(1) of the Act. As we were not substantially involved in making the reviewable decision, we have dealt with this application.
3. Under section 91(7) of the Act, an internal reviewer is empowered to:
  - Confirm the reviewable decision the subject of the application; or
  - Vary the reviewable decision; or
  - Revoke the reviewable decision.

**Background**

4. On 31 August 2021 Mr McKinley was issued with a Notice from Commission Stewards via email, charging Mr McKinley with 3 charges under the GWIC Greyhound Racing Rules (“**Rules**”). The relevant rules the charges were brought under were as follows:

Rule 86(q)

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-

Rule 86(p)

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

- (p) disobeys or fails to comply with the lawful order of a Steward or other person or body having official duties in relation to greyhound racing;

Rule 86(ag)

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

- (ag) fails to comply with a policy adopted by a Controlling Body;

5. The charges were particularised as follows:

Charge One: Rule 86(q)

That you engaged in conduct prejudicial to the control and promotion of greyhound racing by travelling to the Goulburn race meeting on 27 August 2021 when not the holder of a permit issued by Service NSW in contravention of the NSW State Government Health Orders.

Charge Two: Rule 86(p)

That you failed to comply with a lawful order of GWIC Inspector Ms Shaye Barrow to obtain a permit issued by Service NSW prior to travelling to the Goulburn race meeting on Friday 27 August 2021.

Charge Three: Rule 86(ag)

That when you attended the Goulburn race meeting on Friday 27 August 2021, you failed to comply with the policy of GRNSW and GWIC that requires persons to obtain a permit issued by Service NSW if they are travelling 50 kilometres or more from Greater Sydney for the purpose of attending a greyhound race meeting.

6. The Notice issued by Commission Stewards on 31 August 2021 directed Mr McKinley to attend a hearing held via videoconference on 3 September 2021, with two Commission Stewards as decision makers. On 2 September 2021, prior to the hearing, Mr McKinley entered a written plea of guilty to the three charges.
7. Mr McKinley declined to participate in the hearing on 3 September 2021 and the Commission Stewards heard the matter in his absence. Mr McKinley's written plea of guilty was read into the record and the Director of Race Day Operations (Chief Steward) noted that he had contacted Mr McKinley to seek his submissions in relation to any proposed penalty. A number of submissions were provided by Mr McKinley, being emails sent from himself to the Director of Race Day Operations (Chief Steward).
8. On the evidence, Commission Stewards found that on 25 August 2021, being two days before Mr McKinley attended the Goulburn race meeting, he was contacted by Commission Inspectors in relation to adhering to the Public Health Orders and COVID-19 protocols.

9. On 27 August 2021 Mr McKinley attended the Goulburn race meeting. When requested by Stewards, he was unable to provide evidence that he had complied with the New South Wales (“**NSW**”) Public Health Orders. As a consequence, the greyhounds that Mr McKinley had brought to the race meeting were withdrawn and Mr McKinley was unable to race any other greyhounds from 27 August 2021, pending the outcome of the 3 September 2021 hearing.
10. Upon review of all the evidence and submissions, Commission Stewards, in imposing the penalty that they did, took into account the following factors:
- Mr McKinley’s good record in the industry over a long period of time;
  - Mr McKinley’s plea of guilty on all three charges;
  - The contrition shown by Mr McKinley;
  - The objective seriousness of Mr McKinley’s conduct – being a serious failure to adhere to protocols that have been implemented to protect the greyhound racing industry in NSW and ensure its ongoing operation, restrictions which other greyhound racing participants have worked hard to comply with.
11. Having considered all the evidence and submissions, Commission Stewards found the three charges proven and imposed the following penalties:
- Charge One: 6-month disqualification, reduced to 4-month & 3-week disqualification for guilty plea;
- Charge Two: 3-month disqualification, reduced to 2-month disqualification for guilty plea;
- Charge Three: 6-month disqualification, reduced to 4-month & 3-week disqualification for guilty plea;
- with the penalties to be served concurrently.

### **This internal review application**

12. To the above decision, Mr McKinley initially lodged an application for appeal, as well as an application for a Stay of the decision, to the Racing Appeals Tribunal (“**Tribunal**”) on 6 September 2021.
13. The Tribunal heard the stay hearing on 9 September 2021. The stay was upheld, with the penalty effectively varied to a suspension until the substantive matter was determined by the Tribunal.
14. On the evening of 8 September 2021, Mr McKinley lodged an internal review application with the Commission. After the Commission advised that it was required to deal with the internal review before any determination by the Tribunal, Mr McKinley determined to proceed with the application for an internal review and to defer his appeal with the Tribunal following the determination of the internal review.

15. Mr McKinley's primary submissions on the internal review application is that, in Mr McKinley's view, the penalties imposed by the Commission Stewards that were manifestly unreasonable and excessive given the following circumstances:
- a. Mr McKinley's sole source of income is as a participant in the greyhound racing industry;
  - b. the charges relate to restrictions that were recently introduced by the NSW Government, and there was no guidance or precedent as to the appropriateness of the penalties; and
  - c. the disqualification imposed by Commission Stewards is otherwise unreasonable and disproportionate to the charges.
16. This is therefore a review of the severity of penalty imposed.

## Decision

17. Mr McKinley was provided with an opportunity to provide any further evidence and/or submissions to the internal reviewers for their consideration before making a final determination on the matter. Mr McKinley did not provide any further evidence and/or submissions to support his internal review.
18. As the internal reviewers, we have had regard to all the material provided as part of the Commission's Steward's Inquiry, together with the documentation provided to the Racing Appeals Tribunal. Relevantly, Mr McKinley provided to the Tribunal a statement of 9 September 2021 which provides the following extract:
- 7 *"Background:*
    - (a) *I live in the area designated in Covid-talk as "Greater Sydney" but*
    - (b) *I do NOT live in any of the "LGA's of Concern"; and*
    - (c) *I undertook and received a negative Covid test before I travelled; and*
    - (d) *I made serious and repeat efforts to get a travel permit, and was not DENIED one, just couldn't get one issued because the system was broken.*
  - 8 *All of GWIC's charges relate to my single act of not procuring NSW Travel Permit on 27 August 2021.*
  - 9 *Prior to GWIC making its decision, I supplied to GWIC the reasons that I could not procure a Travel Permit – that being, quite simply, that the system was not working each of the multiple times I tried it (this was widely reported in the press the first week of the permit system). It is not the fact that I was not eligible – because I was – but merely the fact that the system was not working. That is the same reason why the NSW Police publicly announced that they would not enforce the Travel Permit system until 28 August (being one week after it was introduced).*
  - 10 *The Travel Permit system does not assess risk posed by travel – it is a mere registration system and if you are eligible (which I was) and the system is functional, out pops a permit. It just records the fact of travel.*

- 11 *Prior to travelling I even called the RMS on its number, and they could not get the system to work. The RMS person who I was dealing with said to me that their interface was the same as the one the public uses.*
- 12 *Even when I arrived at the track I tried to get the permit, with witnesses, on the Club computer, and it was not operating.*
- 13 *I have screen shots of all of this, and I showed them to GWIC.”*

19. As internal reviewers, we have seen the screenshot images referred to in Mr McKinley’s statement above.
20. By his plea of guilty, Mr McKinley accepted the charges against him. Mr McKinley seeks that his penalty be reduced and states that he had taken steps to procure a travel permit. To this, Mr McKinley says that the travel permit wasn’t working, and he was therefore unable to obtain a travel permit after attempting to do so. Mr McKinley also says that NSW Police made a public announcement that the travel permit system would not be enforced until 28 August 2021. We as reviewers have not been provided with any evidence that would support this contention, but even if it were the case that such an announcement was made, this would not, in our view, exculpate Mr McKinley.
21. Further, the Commission notes that Mr McKinley was not the sole trainer contacted by Commission Inspectors on 25 August 2021 confirming the requirement of a travel permit in order to attend the Goulburn race meeting. These trainers attended the Goulburn meeting on 27 August 2021 and were able to provide evidence of their required travel permits. Mr McKinley’s submission that the travel permit system wasn’t working, and that NSW Police were not enforcing this part of the Health Orders and his failure to provide evidence to support these submissions, must be considered alongside evidence that other trainers had been able to obtain and provided the required permit to stewards.
22. There are not any comparable cases in other greyhound racing jurisdictions, but we as reviewers have regard to the penalties that have been imposed in the Thoroughbred Racing Code in NSW and the Australian Capital Territory (“**ACT**”).
23. Some guidance has been provided by the Racing Appeals Panel decision of John Sharah (“**Sharah**”).<sup>1</sup> In *Sharah*, a participant had displayed COVID-19-like symptoms and had attended trackwork despite developing a cough. In *Sharah*, the participant obtained a test but did not self-isolate whilst awaiting the result, and attended the racecourse for trackwork prior to obtaining the test result. A subsequent COVID-19 test result returned a positive result.
24. In *Sharah*, the Racing Appeals Panel found:

[13] *“The conduct involved here is objectively very serious offending under the Rules. It involves breaches of Racing NSW’s Covid protocols. These have been developed to protect not only the health of participants in the industry, but the ongoing operation*

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<sup>1</sup> NSW Racing Appeal Panel 2 September 2021 – John Sharah.

*of the industry itself. It involves a serious breach of NSW Health self-isolation rules designed also to protect the health of individuals, but also businesses, and the wider NSW economy...*

[15] *“No person was infected with Covid-19 as a result of the appellant’s conduct. With a highly transmissible virus like the one that causes Covid, that might simply be the result of very good fortune. The actual consequences of what occurred here were bad enough. The potential consequences were catastrophic. It is no exaggeration that racing in NSW remains in a precarious position for now as a result of the ongoing Pandemic. Racing’s management, administrators and Stewards have put in place measures such as the Covid Protocols referred to above to protect the industry and its participants as far as they can be. So far, those measures would seem to have been hugely successful in keeping the industry going. It is essential that participants comply with those protocols, and of course those of NSW Health. Conduct in breach of these measures is highly likely to result in penalties that range to long disqualifications.”*

25. We have also had regard to some recent Racing NSW decisions, being that of *Thompson* and *Carmody*.<sup>2</sup> In both of these matters, horse trainers were charged with attending a racecourse for trackwork between 2 August and 7 September 2021, but also attending a number of race meetings in breach of the Racing NSW policies and protocols, and the NSW Public Health Orders.
26. Both trainers pleaded guilty and were fined \$25,000, reduced to \$18,750 having regard to factors in mitigation, including their plea of guilt.
27. In *Thompson* and *Carmody*, Stewards were satisfied that the breaches were not intentional breaches or a wilful disregard to the policies but that the trainers had failed to act diligently by informing themselves of the policies of Racing NSW and the NSW Public Health Orders. Stewards also found that both trainers genuinely believed they were complying with the relevant policies and Public Health Orders, as they were undertaking regular COVID-19 tests and obtaining government travel permits.
28. In another matter dealt with by Racing NSW stewards, five participants pleaded guilty to a charge of conduct prejudicial to the interests of racing in that they attended a private gathering in the ACT contrary to ACT Government COVID-19 restrictions. In this decision, the stewards found:

*“In assessing penalty Stewards took submissions from each of the licensed persons. They also gave consideration to the need for the penalty to reflect an individual and general deterrence and the seriousness of the conduct in that the conduct had*

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<sup>2</sup> Racing NSW decision of *Thompson* – 14 September 2021; Racing NSW decision of *Carmody* – 14 September 2021.

*increased the risk of endangering the health and safety of racing participants and has compromised the continuance of Thoroughbred racing in the ACT and NSW.”<sup>3</sup>*

29. Each of the five participants involved in this matter received a 3-month suspension.
30. The protocols for the greyhound racing industry in NSW, to which Mr McKinley was required to adhere to, provided the following:

**“GREATER SYDNEY**

*Participants residing in Greater Sydney must always adhere to the abovementioned Racing Protocols. Additionally, should participants travel outside the Greater Sydney area, they must act in accordance with the NSW Health Orders and apply for a travel permit if they are attending a track that is 50km or more outside the Greater Sydney Area.”*

31. New South Wales is suffering the effects of the COVID-19 pandemic, arguably to a more significant degree to that of other jurisdictions, and as such the Regulator has put in place protective measures to ensure the ongoing viability of the greyhound racing industry. It requires adherence by all participants so that racing may continue safely. It is for this reason that we find that non-adherence to the protocols or the NSW Public Health Orders must be treated seriously, and the penalties should reflect this seriousness.
32. We also have regard to the factors in mitigation that were raised by Mr McKinley. They include:
- a. His plea of guilty;
  - b. The financial hardship that he would suffer whilst disqualified;
  - c. Submissions as to his personal circumstances, which will not be repeated here in a published decision but were taken into account by the reviewers.
33. Like the matters referenced above, an appropriate penalty is that of a suspension.
34. We take into account that Mr McKinley pleaded guilty at a very early stage and that he should have this reflected in a reduction of the penalty to that which was imposed by the Commission Stewards. Whilst this was reflected in the discount, we are of the view that the starting point of the penalty was excessive in the circumstances.
35. A consistent and strong message is still required by racing regulators whilst society grapples with the ongoing effects of the COVID-19 pandemic.

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<sup>3</sup> Canberra Racing Matter of jockey Billy Owen, apprentice jockey Miss Teaghan Martin and stablehands Mr Talan Hill, Miss Vicky Scott, Miss Meg Maguire and Miss Skye Stollery – 3 September 2021

36. We find that the outlined conduct occurred, in breach of the Rules.
37. We find that the original penalties were not appropriate. In all the circumstances, we are of the view that a period of disqualification is too high, having regard to the factors in mitigation as submitted by Mr McKinley.
38. In accordance with section 91(7)(a) of the Act, we vary the original decision and impose the following penalties:

That Mr McKinley's registrations to be suspended for the following periods of time:

Charge 1 (Rule 86(q)) – 3-month suspension to be served. In addition, a \$1500 fine wholly suspended on the condition that Mr McKinley does not breach the COVID-19 protocols or Public Health Orders within the next 12 months;

Charge 2 (Rule 86(p)) – 6-week suspension; and

Charge 3 (Rule 86(ag)) – 3-month suspension,

with the suspensions to be served concurrently.

The net effect of the suspensions varied on review takes into account also the time Mr McKinley has served under penalty already, being a period from 27 August 2021. Mr McKinley will be able to resume training from midnight 26 November 2021.

**Chief Commissioner Alan Brown**

**Commissioner Peter Collins**

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