

IN THE RACING APPEALS TRIBUNAL

CHLOE BILAL

Appellant

v

GREYHOUND WELFARE AND INTEGRITY COMMISSION

Respondent

REASONS FOR DETERMINATION

Date of hearing	22 August 2025
Further submissions	5 September 2025; 9 September 2025; 16 September 2025
Date of determination:	13 October 2025
Appearances:	Mr P Morris – Appellant
	Mr O Jones SC – Respondent

ORDERS

- 1. The order made by the Tribunal pursuant to cl 20 of the *Racing Appeals Tribunal Regulation 2024* on 5 May 2025 is vacated.**
- 2. The appeal against the finding of guilt is dismissed.**
- 3. The appeal against penalty is upheld.**
- 4. The decision made pursuant to an internal review conducted by the Respondent on 16 April 2025, insofar as that decision extended to the charge against the Appellant under r 156(b) of the *Greyhound Racing Rules*, is quashed.**
- 5. In lieu thereof, the Appellant is disqualified for a period of 3 months and 16 days.**
- 6. The disqualification in order [5] will expire at midnight on 13 October 2025.**
- 7. The appeal deposit is to be refunded.**

INTRODUCTION

1. On 24 October 2024, the Greyhound Welfare and Integrity Commission (the Respondent) found Chloe Bilal (the Appellant) guilty of two offences against the *Greyhound Racing Rules* (the Rules). Only one of those offences, namely that contrary to r 156(b) of the Rules, is relevant for present purposes. The Appellant had pleaded not guilty.
2. On 10 March 2025, the Respondent imposed a disqualification of 13 months, which was backdated. On 16 April 2025 following an internal review, that penalty was reduced to a disqualification of 6 months.
3. By a Notice dated 23 April 2025,¹ the Appellant appealed against the determinations of the Respondent as to both guilt and penalty. On 5 May 2025, I made an order pursuant to cl 20 of the *Racing Appeals Tribunal Regulation 2024* that the operation of the penalty imposed by the Respondent be suspended pending the determination of the present appeal.
4. The hearing of the appeal took place before me on 22 August 2025, following which I received further written submissions from both parties. There was no oral evidence given by any person at the hearing. The matter proceeded on the basis of documentary evidence contained in a joint Tribunal Book (TB) prepared by the parties. The Appellant maintained her plea of not guilty and, in the event of being found guilty, made further submissions as to penalty.

THE RELEVANT PROVISION OF THE RULES

5. Rule 156(b) is in the following terms:

An offence is committed if a person (including an official):

...

(b) *fails to comply with any conditions:*

¹ TB 1 and following.

- a. of the person's registration or licence as an owner, trainer, attendant or any other category of registration of licence;
- b. to which the registration of any greyhound owned by the person or under the person's care and custody is subject.

6. In the present case, the allegation against the Appellant was one pursuant to sub-paragraph (a).

7. There is a significant issue between the parties as to the nature of the offence created by r 156(b) which is addressed in detail below.

THE FACTS

8. I find the facts to be as follows.

The Appellant's registration as an industry participant

9. The Appellant is a greyhound racing industry participant who has been registered with the Respondent as an Owner/Trainer since June 2021.²

The imposition of a condition on the Appellant's registration

10. On 4 November 2021, the Respondent wrote to the Appellant's (then) solicitor in (inter alia) the following terms:³

*It is agreed that [the Appellant] installs CCTV at a suitable and agreed upon location that provides appropriate vision of [the Appellant's] greyhound kennels and associated training areas, **and that this footage will be provided to [the Respondent] on request** (my emphasis).*

11. The terms of the bolded portion (to which I will refer as "the condition" for the purposes of these reasons) is the focus of the present appeal.

² TB 48.

³ TB 63.

12. It is apparent that the imposition of that condition came about as a consequence of the Respondent's concerns that persons who were disqualified industry participants may have been present on the Appellant's property.. In other words, the imposition of the condition arose from integrity-related concerns on the part of the Respondent.⁴

13. The Appellant's (then) Solicitor responded by letter of 9 November 2025⁵ indicating that the Appellant consented to the imposition of the condition, and providing photographs of three locations on the Appellant's property at which the CCTV cameras were proposed to be installed. There is no dispute that such installation was subsequently effected.⁶ There is also no dispute that when the Appellant moved premises, the CCTV equipment was also moved and reinstalled.⁷

14. In her statement (which she was not cross-examined)⁸ the Appellant said the following about the operation of the CCTV equipment which had been installed:⁹

[24] *GWIC never elaborated or advised me as to the times or duration of the footage they required so I advised [the installer] to do a 7 day loop.*

[25] *The equipment would record and store the footage of the last 7 days (24 hours in each day) then it would automatically tape over itself. I thought a week would suffice and GWIC would let me know if they wanted the last 7 days.*

[26] *I thought that was a reasonable period of time if they wanted to check anything.*

[27] *In all of the time that the equipment was operating, I cannot recall and single enquiry or direction by GWIC as to:*
(a) the duration of the footage (days and hours taped);
(b) the actual times they wanted captured and stored;

⁴ See for example the final paragraph of the correspondence at TB 65.

⁵ TB 65 – 66.

⁶ Appellant's statement, TB 53 at [18].

⁷ Appellant's statement, TB 53 at [22].

⁸ Counsel for the Respondent made it clear in the hearing (T 6.34 – 7.1) that there were no issues arising from any of the evidence contained in the Tribunal Book, including the statement of the Appellant. It was made clear that the Respondent was not asserting that the Appellant had been untruthful in saying that the hard drive had developed a fault, and that the Appellant's honesty was not being challenged.

⁹ TB 53 – 54 at [24] – [35].

- (c) *any precise start or finishing date*
- (d) *any matters such as quality or format and so forth.*

- [28] *When GWIC came to inspect the cameras after I had them installed they were basically interested in the direction of the cameras and the perspective issues. They were modified at one point to meet GWIC's request.*
- [29] *I worked with GWIC on those matters to their satisfaction.*
- [30] *Prior to their attendance at my property on 14 May 2025, GWIC had never previously asked me to produce any footage for them since the condition was imposed.*
- [31] *Over the time that the camera and computer equipment was installed, to be best of my knowledge and belief, it was recording, it was operational and that [sic] any footage captured would be stored and to [sic] be available to be provided to GWIC on request.*
- [32] *Those matters in the immediate [sic] paragraph were apparent to me as whenever I looked at the camera, a red light was flashing and when I came across the monitor in the house, the vision was always there as well as a "record" symbol.*
- [33] *The monitor and computer are at the front of my house. So I usually see it every day as I walk in and move through the house.*
- [34] *So in my mind it was like a piece of furniture in the same place, with the vision apparent. If it wasn't working, or looked different, I think I would have noticed it but [sic] never looked different. Like a television that is always on.*
- [35] *I can't recall any event occurring that caused me to go back and look at past days. I never disarmed or interfered with it, it was a "set and forget" arrangement.*

The presence of disqualified persons at the Appellant's property

15. On 6 May 2024, Ms Teece, the Respondent's Inspector, sent a message to the Appellant in the following terms:¹⁰

Hi Chloe Kris Teece from GWIC can you please call me back I need to talk to you about some information.

¹⁰ TB 71.

16. It is apparent that the “information” referred to by Ms Teece concerned the presence of disqualified persons at the Appellant’s property.¹¹ When interviewed later that day, the Appellant was asked:¹²

Inspector: Okay. So, if we did need to come out and have a look at the cameras, for that day, can you make sure that that's not deleted or anything?

Respondent: Yep.

17. Despite her answer to that question, the Respondent did not take any action to ensure that the equipment was working or, more specifically, to ensure that footage taken on the day in question was preserved.

The events of 14 May 2024

18. On 14 May 2024, the Appellant travelled to Canberra for a medical appointment.¹³ In her absence, the Respondent’s inspectors attended her property. The Appellant’s statement sets out what occurred:¹⁴

[39] I had my phone on silent, but when I was there I noticed that I'd had a missed call from Kris Teece the inspector and Wade Birch. I noted a text message in the brief.

[40] It was from Kris Teece at GWIC letting me know she was at my place and needed to download data from my camera.

19. The message from Ms Teece was in the following terms:¹⁵

Hi Chloe it's Kris Teece from GWIC need to download data from your cameras. Call me ASAP we can come back today. It shouldn't take long.

20. The Appellant’s statement continued:

[41] I then rang Kris Teece and she [sic] words to the effect of:

¹¹ TB 68 at Q and A 7.

¹² TB 69 at Q and A 12.

¹³ TB 54 at [38].

¹⁴ TB 55 – 56 at [39] – [55].

¹⁵ TB 71.

Hi Chloe, we are at your place to access the cameras. Can we come in?

[42] *I wasn't expecting them at that time or on that date.*

[43] *My partner Aly (sic) was home and I spoke to him. He confirmed that they were there. So I told Aly (sic) to "let them in".*

[44] *I then rang Kris and said words to the effect of "No worries, come on in and do what you need to do"*

[45] *As I understand it now, Aly (sic) let them in.*

[46] *After a little while, Kris rang me and explained words to the effect of:*

Hi Chloe. We are at the machine, we can't seem to get into the footage to download it, what is the password?

I responded with words to the effect of:

I am not sure, but I will arrange to get it for you.

[47] *I didn't know what it was at the time and I wasn't at home, so I rang Aly (sic) and asked him to contact the tech guy to give the inspectors the passwords.*

[48] *I did this straight away.*

[49] *My understanding is that Aly (sic) did this and gave the inspectors the password, but unfortunately the inspectors could not get access to the footage.*

[50] *I now refer to the text messages that are in the brief (attached) and they illustrate my discussions with Kris. Kris left the USB there.*

[51] *I saw in the particulars that I was charged with not providing it to Kris on that day. But I was unable to and to the best of my knowledge she did not have any issue with this. Her language in the texts and speaking with her was friendly and encouraging.*

[52] *So I also rely upon my texts between Kris and I that I have attached.¹⁶*

[53] *When I got home after the trials, I went up to the machine to check it.*

[54] *I spoke to Aly (sic) and he explained to me that he had seen them "pressing keys" and told me that they had "locked themselves out of it."*

[55] *I rang the tech guy and explained to him what had happened and asked him to come out and fix it.*

¹⁶ To the extent that they are relevant, these are discussed below.

21. The “tech guy” to whom the Appellant referred was Mohammad Arnaout who had installed the equipment.¹⁷ I have addressed his evidence in more detail below.

22. Later on 14 May 2024, Ms Teece sent the Appellant a further message in the following terms:¹⁸

Hey Chloe I’ve left a super powerful USB drive so you can figure it out and take it to the stewards at the next race meeting after you get it down. We tried so don’t stress we will need to sort it out but have time. Have a chat to the installer and put it on him that’s what you’ve paid for.

23. In an addendum to that message Ms Teece sent another message stating:¹⁹

Last ten days from 4th May.

24. The Appellant replied:²⁰

Key kris, will do I’ll get on to it!

The Respondent’s demand of 16 May 2025

25. On 16 May 2024, the Respondent wrote to the Appellant.²¹ Having reminded her of the condition, the Respondent’s letter stated the following:

I note that on 14 May 2024 Commission inspectors attended your kennel premises [address redacted]. During that attendance Inspectors attempted to access and review the footage captured by the CCTV installed at the property but were unable to do so.

You are formally directed to provide all footage captured by the CCTV between 4 May 2024 and 14 May 2024 to the Commission by 5.00 pm on 22 May 2024.

Failure to comply with the above direction may result in disciplinary action being taken against you under the Act and/or under the Greyhound Racing Rules.

¹⁷ Appellant’s statement, TB 53 at [19] – [20].

¹⁸ TB 72.

¹⁹ TB 72.

²⁰ TB 73.

²¹ TB 73.

26. The deadline for production of the footage was extended to 27 May 2024²² after the Appellant's solicitor had foreshadowed a potential delay in providing it.²³

The evidence of Mr Arnaout

27. As previously noted, the Appellant had originally engaged Mr Arnaout to install the system. He was also responsible for removing and reinstalling when the Appellant moved premises. Following the attendance of the Respondent's inspectors at the Appellant's premises, the Appellant contacted Mr Arnaout to (as she put it) "come out and fix it".²⁴ He attended the Appellant's property on 20 May 2025.

28. Mr Arnaout provided a statement²⁵ (on which he was not cross-examined). Annexed to that statement was an email he had sent to the Appellant on 27 April 2025 outlining his involvement in the matter.²⁶ It reads (in part) as follows:

Mrs Bilal contacted me on the 15th of May advising inspectors were at the property waiting to download footage.

Through a third party I gave them the default password I configure all CCTV system with. From my understanding they had entered it incorrectly 3 times and potentially locked out access to the CCTV system.

Mrs. Bilal then contacted me to come to the property to download the footage. I attended on the 20th of May to download as requested.

Upon inspection, I believed the CCTV system to have been affected by some sort of electrical spike. This could have been caused by the use of heavy machinery in close proximity or bad weather.

I advised Mrs. Bilal that she would need a new hard drive and she was happy to proceed after discussing costs.

I supplied and installed a brand new hard drive and configured the CCTV system as per requested. The CCTV system was confirmed to be operational and recording before my departure.

²² TB 74.

²³ See correspondence of 18 May 2025 at TB 74.

²⁴ Appellant's statement, TB 56 at [55].

²⁵ Commencing at TB 58.

²⁶ TB 60.

29. These matters were generally consistent with a Tax Invoice issued by Mr Arnaout to the Appellant on 20 May for the work he had carried out.²⁷

Additional factual findings

30. I am satisfied that the facts are as summarised in the evidence above.

31. In addition, I am satisfied that:

- (i) the Appellant took all steps which were reasonably open to her in an effort to provide the footage to the Respondent upon being requested to do so;
- (ii) the Appellant did not deliberately withhold the footage from the Respondent when it was requested;
- (iii) there was a malfunction in the system;
- (iv) although Mr Arnaout suggested at one point that the Respondent's inspectors may have been responsible for the malfunction, some outside intervention, over which the Appellant had no control, caused the "spike" referred to by Mr Arnaout;
- (v) as a consequence of that "spike", the equipment was unable to carry out any recording function for an undefined period;
- (vi) the malfunction in the system was a primary cause of the Appellant not being able to provide any footage to the Respondent;
- (vii) the Appellant did not carry out any detailed inspection of the equipment, at any stage after it was installed, for the purposes of ensuring that it was actually working (and specifically, recording) but assumed from external indicators (including an illuminated red light on the machine and a "record" signal) that it was functioning properly.

²⁷ TB 61.

The interim suspension imposed on the Appellant by the Respondent

32. By correspondence of 22 May 2024,²⁸ the Respondent advised that it had determined that an interim suspension should be imposed on the Appellant. The basis of that determination was not directly related to the Appellant's failure to provide CCTV footage. Rather, it stemmed from the attendance, at the Appellant's property, of an industry participant who had been the subject of disciplinary action which prevented him from (inter alia) entering any place where greyhounds were kept, trained or raced.

The Notice of charge and the penalty imposed

33. On 1 July 2024, the Respondent issued a Notice to the Appellant which particularised the charge under r 165(b) in the following terms:²⁹

1. *On 9 November 2021 you consented to a condition being imposed upon you pursuant to section 49(4) of the Greyhound Racing Act 2017 (NSW) as follows:*
 - a. *[You] install CCTV at a suitable and agreed upon location that provides appropriate vision of [your] greyhound kennels and associated training areas and that this footage be provided to the Commission upon request.*
2. *On 14 May 2024, GWIC inspectors attended your registered kennel premises [redacted] and requested you access to [sic] the CCTV footage in accordance with the above condition.*
3. *You were not able to provide any CCTV footage when requested to do so in person on 14 May 2024.*
4. *You were not able to provide any CCTV footage in line with the request made to you on 16 May 2024 in writing.*
5. *By failing to comply with the condition to provide access of [sic] CCTV footage when requested, you have committed an offence.*

34. The Notice invited the Respondent to attend a hearing on 15 July 2024. Other than the fact that the Appellant pleaded not guilty, I am not entirely sure what happened at that hearing but as the present appeal proceeds *de novo*, I need not take that matter any further.

²⁸ TB 79 – 81.

²⁹ TB 88 – 89.

35. On 24 October 2024, Stewards wrote to the Appellant’s Solicitor³⁰ apologising for the delay in finalising the matter which was said to have been due to a person being on “*unplanned leave*”. The Appellant’s Solicitor was advised on that occasion that the Appellant had been found guilty. Submissions on penalty were invited, and were made in writing.³¹

36. On 10 March 2025, almost 5 months later, the Respondent advised the Appellant³² that it had imposed a disqualification of 13 months, backdated to commence on 28 May 2024 (that being the date of the commencement of the interim suspension). A period in excess of 8 months had therefore elapsed between the date on which the Notice of charge was issued, and the date on which the penalty was imposed.

The internal review of the determination

37. On 17 March 2025, the Appellant lodged an application for an internal review of the determination, accompanied by an application for a stay.³³ The latter application was refused on 10 April 2025 by the decision maker.

38. On 18 April 2025, having found the offence proved, the decision maker reduced the Appellant’s disqualification to one of 6 months, commencing on 10 March 2025. That meant, taking into account a period of 87 days which had been served by the Appellant, the disqualification would expire on 15 June 2025.³⁴ On 5 May 2025 I granted a stay of that determination pending the outcome of this appeal.

THE ISSUES ON THE APPEAL

39. At the commencement of the hearing there were five issues identified, namely:

³⁰ TB 96.

³¹ Commencing at TB 98.

³² TB 102 – 104.

³³ TB 105 and following.

³⁴ TB 129 – 134.

1. On its proper construction, does r 156(b) of the Rules create an offence of absolute liability?
2. Did the condition remain in effect as at May 2024 when the Appellant was asked to provide the footage?
3. Did the Appellant breach the condition in the manner alleged?
4. Having regard to the determination of the issue in [1] above, is the offence made out?
5. If so, what is the appropriate penalty?

40. As to those issues, three matters should be noted.

41. First, Mr Morris, who appeared for the Appellant, indicated during the hearing that the second issue would not be pressed.³⁵

42. Secondly, there was, in various respects, a degree of displacement between the written submissions filed on behalf of the Appellant prior to the hearing³⁶ and the case which was ultimately put on the Appellant's behalf. I have determined the issues on the basis of the terms in which Mr Morris put the case at hearing, but have also had regard to the supplementary submissions which were filed on the Appellant's behalf.

43. Thirdly, an issue arose at the commencement of the hearing as to whether the Appellant had been taken by surprise as a consequence of the position taken by the Respondent concerning the proper construction of r 156(b). In short, it was put that the Respondent's written submissions which were filed prior to the hearing had not clearly articulated the position that it now put in respect of the first issue (namely, that the offence created by the rule was one of absolute liability) and that the Appellant was therefore prejudiced.³⁷ The Respondent did not accept that to be the position but in any event, it was agreed that the Appellant

³⁵ T 19.31.

³⁶ Commencing at TB 5.

³⁷ T 2.32 and following.

would have the opportunity to provide further submissions addressing the issue after the conclusion of the hearing.³⁸ Those submissions, along with a copy of the decision of Zammit J in *Greyhound Racing Victoria Stewards v Anderton*³⁹ were provided under cover of an email to the Appeals Secretary on 5 September 2025. To the extent that they engage with the issues, those submissions have been taken into account

THE CONSTRUCTION OF RULE 156(b)

Submissions of the Appellant

44. The Appellant's submissions in respect of this issue which were filed following the hearing had a tendency to conflate the issue of the proper construction of r 156(b) with the question of whether, as a matter of fact, the Appellant had complied with the condition. The submissions also made a somewhat obscure reference to the application of the parole evidence rule which in my view, has no relevance whatsoever to the determination of this appeal. Moreover, having enclosed a copy of the decision in *Anderton*, the submissions themselves made no substantive reference to it. What the Appellant sought to gain from that decision was not made clear.

45. Doing the best I can, I have construed the submissions of the Appellant as advancing the following propositions in respect of this first issue:

- (i) on its proper construction, r 156(b) does not create an offence of absolute *or* strict liability;
- (ii) proof of an offence contrary to r 156(b) requires proof of a mental element;
- (iii) in the alternative, r 156(b) creates an offence of strict, not absolute, liability;

³⁸ T 5.38 – 6.21.

³⁹ [2018] VSC 64.

- (iv) accepting that to be the case, a defence of honest and reasonable mistake of fact is open to the Appellant.

Submissions of the Respondent

46. Senior counsel for the Respondent submitted (inter alia) that:⁴⁰

- (i) r 156(b) was directed to the conditions of registration of industry participants;
- (ii) in the context of the present case, the terms of the rule centred upon whether the Appellant had complied with the condition;
- (iii) whilst a condition imposed on a participant's registration *could* incorporate a mental element, this was not the position in the present case;
- (iv) r 156(b) itself incorporated no such element.

47. In supplementary written submissions, the following further propositions were put:

- (i) the terms of r 156(b) do not incorporate any requirement to prove that the conduct in question (in this case, the Appellant's failure to provide the footage) was intentional, wilful or reckless;⁴¹
- (ii) there is no presumption that mens rea is an ingredient of the offence created by the rule;⁴²
- (iii) whether an offence is to be regarded as one of absolute or strict liability will depend upon whether a defence of honest and reasonable mistake of fact is available;⁴³
- (iv) a number of factors pointed to the conclusion that the offence created by r 156(b) was one of absolute liability, and those factors included:

⁴⁰ T 7.28 – 11.8.

⁴¹ At [5].

⁴² At [5].

⁴³ At [6] citing *Day v Sanders* (2015) 90 NSWLR 764; [2015] NSWCA 324 (Day).

- (a) the absence of anything in the text of the rule suggesting the availability of a defence of honest and reasonable mistake of fact; and
- (b) the nature and purposes of the licencing scheme implemented by the Respondent, which supported the proposition that the requirement to comply with the condition was absolute.⁴⁴

Consideration

48. The resolution of this first issue involves an issue of construction. In *Day v Harness Racing New South Wales*⁴⁵ it was pointed out that rules of the present kind are not a statute drafted by Parliamentary Counsel, and are therefore less scrutinised than a Bill is scrutinised as it passes through the Parliament. All of that said, principles of statutory construction remain, at the very least, a guidepost for the purposes of determining the meaning of a rule such as r 156(b). Of those principles, three are of particular importance.

49. The first, is that the primary objective of statutory construction is to construe the relevant provision so that it is consistent with the language and purpose of all of the provisions of the statute. The meaning of the provision must therefore be determined by reference to the language of the statute as a whole.⁴⁶

50. The second, is that the task of statutory construction begins and ends with a consideration of the text of the provision in question. That text must be considered in light of its context, its purpose, and any relevant history.⁴⁷

51. The third, is that a construction that promotes the purpose of the legislation is to be preferred over one which does not.⁴⁸

⁴⁴ At [7].

⁴⁵ (2014) 88 NSWLR 594; [2014] NSWCA 423 at [78] – [79] per Leeming JA.

⁴⁶ *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355; [1990] HCA 28 at [69] – [70] per McHugh, Gummow, Kirby and Hayne JJ.

⁴⁷ *Thiess v Collector of Customs* (2014) 250 CLR 664; [2014] HCA 12 at [22] – [23]; *SAS Trustee Corporation v Miles* (2018) 265 CLR 137; [2018] HCA 55 at [20]; [41]; [64].

⁴⁸ *Project Blue Sky* at [78].

52. With these principles in mind, and for the reasons that follow, I have come to the view that r 156(b) creates an offence of absolute liability.

53. I accept that in the case of a statute, there is a general rule that an honest and reasonable belief in a state of facts which, if they existed, would make a person's act innocent, will afford an excuse for doing what would otherwise be an offence. However in other instances, there is less ground for presuming an intention that this general rule should apply, and render an honest and reasonable mistake a ground of exoneration. In circumstances such as the present, such a presumption should be regarded as a weak one.⁴⁹

54. The presumption is rendered even weaker by the fact that there is nothing in the text of r 156(b) which would suggest that a defence of honest and reasonable mistake of fact is available. That is an objective circumstance which tends wholly against the proposition advanced by the Appellant that the rule creates an offence of strict, as opposed to absolute, liability.⁵⁰

55. Further, leaving aside the text of r 156(b), there is nothing in the terms of the condition itself which would suggest the existence of any mental element. Put simply, the condition required the Appellant to provide the footage when it was requested. The terms of the condition support a conclusion that an offence was committed when that was not done.

56. It is also noteworthy that there are other provisions of r 156(b) which arguably *do* incorporate a mental element. For example, rr 156(d) and (e) create offences based on accessorial conduct. Rule 156(f)(i) creates an offence where the conduct is corrupt, fraudulent or dishonest. Rule 156(g) creates an offence where conduct is carried out wilfully. None of these concepts are reflected in the text of r 156(b). This provides support for the conclusion that the distinctions which have

⁴⁹ *Proudman v Dayman* (1941) 67 CLR 536 at 541 – 542 per Dixon J.

⁵⁰ *Day* at [65].

been created were deliberate, that r 156(b) incorporates no mental element, and that the rule creates an absolute offence.

57. That conclusion is further supported by the objects of the *Greyhound Racing Act 2017* (NSW)⁵¹ (the Act). Those objects include:

- (i) to provide for the efficient and effective regulation of the greyhound racing industry;⁵²
- (ii) to protect the interests of the greyhound racing industry and its stakeholders;⁵³ and
- (iii) to ensure the integrity of greyhound racing and associated betting in the public interest.⁵⁴

58. The Respondent is given power under s 49 to register a person as a participant. Specifically, s 49(4) confers a power on the Respondent to impose conditions on such registration. Those powers must, of course, be exercised by reference to the objects of the Act in s 3A. That underscores the need for compliance with any conditions imposed on registration, and supports a conclusion that r 156(b) creates an absolute offence. That is because such a construction clearly promotes the objects of the Act.

59. For these reasons, I am of the view that r 156(b) creates an absolute offence.

DID THE APPELLANT BREACH THE CONDITION?

IS THE OFFENCE MADE OUT?

60. These two issues can be conveniently dealt with together. Given my conclusion as to the nature of the offence created by r 156(b), if I am satisfied that the Appellant breached the condition it will follow that the offence is made out.

⁵¹ Section 3A.

⁵² Section 3A(a).

⁵³ Section 3A(b).

⁵⁴ Section 3A(d).

Submissions of the Appellant

61. Mr Morris submitted that on the whole of the evidence, I could not be satisfied that the Appellant breached the condition. His point was a short one and can be reduced to a simple proposition, namely that by providing access to the hard drive, and by giving the password, to the Respondent's investigators on 14 May 2024, the Appellant complied with the condition on the basis that her conduct in those two respects amounted to the provision of the footage for the purposes of the condition.⁵⁵

Submissions of the Respondent

62. The Respondent submitted that the condition imposed an obligation on the Appellant to provide the footage, and that it was not provided. It followed, in the Respondent's submission, that an offence against r 156(b) had therefore been committed⁵⁶ because that the offence did not incorporate any element of intention.⁵⁷

63. The Respondent further submitted that on the Appellant's own case, she had not complied with the condition. It was pointed out that the evidence of Mr Arnaout was that the system had been (for want of a better term) corrupted, as a consequence of which there was no footage in existence which could be retrieved. It was submitted in these circumstances that even if it were concluded that the Appellant provided access to the hard drive, that could not constitute provision of the footage as no footage existed. In these circumstances it was submitted that the Appellant had failed to comply with the condition, and that the offence was made out.

Conclusion

64. Accepting the evidence of Mr Arnaout (as I have done), there was a malfunction in the system. That malfunction prevented any footage from being recorded. As

⁵⁵ Transcript 22.46 – 27.40.

⁵⁶ T 3.7 – 3.32.

⁵⁷ T 4.4 – 4.6; written submissions at [32] and [37].

there was no footage in existence, the Appellant could not retrieve it, and thus could not produce it. Bearing in mind the absolute nature of the offence, her failure to produce it breached the condition.

65. The matters relied upon by Mr Morris amount to the Appellant having provided information to the Respondent to enable Ms Teece to gain access to the system. As events transpired, Ms Teece was unable to do so but in any event, providing information to allow access to a system is a completely different thing to providing footage recorded by that system.

66. The Respondent's submissions on this issue must be accepted. The Appellant failed to provide the footage. As a consequence, she failed to comply with the condition, and committed the offence.

WHAT IS THE APPROPRIATE PENALTY?

Submissions of the Appellant

67. It was submitted on behalf of the Appellant⁵⁸ that she had:

- (i) assisted the Respondent in its investigation at all times;
- (ii) sought to comply with the requirement of the condition to the extent that she was able to do so;
- (iii) been frustrated by technical factors which were:
 - (a) outside of her control; and
 - (b) not readily apparent;
- (iv) acted quickly to engage Mr Arnaout once the request for footage was made, and to install a new hard drive once the malfunction was discovered.

68. Reliance was also placed on the Appellant's evidence that she held a belief, based upon external indications, that the system was working.

⁵⁸ Supplementary submissions at p. 11.

69. Whilst not specifically put, the gravamen of all of these submissions was that the penalty imposed on the Appellant should be reduced.

Submissions of the Respondent

70. During the hearing, senior counsel for the Respondent expressly accepted that:

- (i) the system had malfunctioned at some point;⁵⁹
- (ii) as a consequence of that malfunction, no footage could be captured, and thus recovered;⁶⁰
- (iii) the Appellant had been under the impression that the system was working, and this was a factor which reduced her level of culpability.⁶¹

71. Nevertheless, it was submitted that the penalty imposed should stand because the Appellant:

- (i) did not, at any time, actually do anything to confirm that footage was being recorded and stored by the system;⁶²
- (ii) had incorrectly assumed that only 7 days of footage would ever need to be provided;⁶³
- (iii) had, when interviewed on 6 May 2024:
 - (a) been made aware of the investigation into the presence of persons at her premises;
 - (b) effectively agreed to make sure that nothing had been deleted from the footage;
 - (c) in fact done nothing to address the matters in (b) above.⁶⁴

⁵⁹ Transcript 13.10.

⁶⁰ Transcript 13.13.

⁶¹ Transcript 14.10 – 14.20.

⁶² Transcript 13.18 – 14.

⁶³ Transcript 14.46 – 14.47.

⁶⁴ TB 69, Q and A 11 and 12.

72. All of these matters were reiterated in supplementary written submissions.⁶⁵

Particular emphasis was placed on the matter in (c), senior counsel for the Respondent describing it as “*a very serious failing and one that goes to the very heart of the thing that (the Respondent) wanted to look at.*”⁶⁶

73. It was also put on the Respondent’s behalf that the necessity to impose conditions on a person’s registration generally arises when there are concerns about that person’s fitness as an industry participant. It was pointed out that in the present case, the condition was imposed to allow the Respondent to monitor the Appellant’s premises for the presence of unregistered persons and that, by reason of the breach of the condition, the Respondent was not in a position to determine whether any integrity issue(s) arose.⁶⁷ In this regard, my attention was drawn to the decision of the NSW Racing Appeals Panel in the matter of *Troy See* in which the Panel said:

“Licenced persons who refuse to co-operate with proper instructions and requests by the Stewards, or who hinder their investigations, can expect that absent what would have to be quite unusual or exceptional circumstances, it is almost inevitable that they will be disqualified ... for a considerable period of time. Racing would be chaos if licenced persons refused to co-operate with proper requests and instructions of racing authorities”.

74. There are two obvious distinctions to be drawn between that case (which, as I understand it, involved the refusal on the part of a jockey to surrender a mobile telephone) and the present. The first, is that even on the Respondent’s case, the Appellant did not “*refuse*” – in the sense of demonstrating an unwillingness – to comply with the condition. The second, is that it is not suggested by the Respondent that the Appellant hindered its investigation. I would certainly not cavil with any of the general propositions advanced by the Panel in the case of *See*. However, the application of those propositions to the present case is of limited utility, given the clearly distinguishable circumstances.

⁶⁵ At [12] – [16].

⁶⁶ Transcript 16.29 – 16.31.

⁶⁷ At [20] – [21].

Conclusion

75. Maintaining the integrity of the greyhound racing industry is one of the fundamental objects of the Act and is of paramount importance to the maintenance of public confidence in the greyhound racing industry. In the present case, the condition was imposed because of an integrity issue, namely the concern that a person or persons disqualified from participating in the industry may be present on the Appellant's premises. All of these matters form part of the background against which the issue of penalty must be considered.

76. For the reasons previously outlined, I am satisfied that the operational failure of the system came about as a consequence of matters beyond the Appellant's control. Consistent with that, I am also satisfied that the Appellant's breach of the condition did not amount to a "*refusal*" (in the accepted sense referred to above) to co-operate with the Respondent. On the contrary, the evidence is generally consistent with the Appellant having co-operated with the Respondent's investigation, and having taken such steps as were available to her to produce the footage.

77. Whilst I accept that the fact that the system installed by the Appellant was only capable of recording only a 7 day "loop", I find it difficult to level any criticism at the Appellant for that circumstance coming about. Her unchallenged evidence⁶⁸ is that the Respondent did not, at any time, suggest what might be required in this respect. It would have been open to the Respondent to incorporate further requirements when imposing the condition. On the evidence, it did not do so. In fact, the Respondent did not engage in any correspondence with the Appellant about any such requirements when the condition was imposed. The fact that it did not do so is hardly the fault of the Appellant.

78. It also needs to be emphasised that it is not part of the Respondent's case that the Appellant engaged in any deliberate conduct with the intention of placing herself

⁶⁸ See [13] above.

in a position where the footage could not be provided. Whilst I accept that the Appellant did not act on the indication that she gave the investigators on 6 May 2024 that she would take steps to preserve footage, the fact is that no formal demand was made for the footage at that time. Viewed in that way, the Appellant's failure to act upon what she said she would do, whilst relevant, is tangential to the actual offending.

79. I accept that there was, on any view, a significant responsibility placed on the Appellant to ensure that she would be in a position to, and would, comply with the condition, and provide the footage when it was requested. She did not meet that responsibility and for that reason, the offending must be viewed as objectively serious, particularly bearing in mind the reason for the imposition of the condition in the first place.

80. Further, and for obvious reasons, if the equipment was not capable of recording (as I am satisfied was the case) no footage could be provided. Those circumstances rendered the condition largely futile, at least for some period of time. That highlighted the Appellant's obligation to ensure that the equipment was working at all times. I am satisfied that she took no steps to do so at any stage. I accept her evidence that she had no reason to think that the equipment was not working, and that outward indicators suggested the contrary. Nevertheless, her failure to ensure that it was working amounted to a breach of her obligations. Even though she is not specifically charged with that failure, it remains a factor relevant to penalty.

81. It is also relevant to note that:

- (i) the original Notice of Charge was issued on 22 May 2024;
- (ii) a disqualification of 13 months was imposed on 10 March 2025, almost 10 months later;
- (iii) that disqualification was reduced to one of 6 months (expiring on 15 June 2025) on 16 April 2025.

82. It follows that a lengthy period elapsed between the time that the matter was commenced, until the time it was determined by the Respondent. Whilst not as significant as other periods of delay which have recently been considered,⁶⁹ it is nevertheless a factor which the Appellant is entitled to have taken into account.

83. The material with which I have been provided does not appear to include the Appellant's disciplinary history. No reference was made to it by either party. I will therefore assume that it is not to be regarded an aggravating factor.

84. In all of the circumstances, the offending must meet with a period of disqualification. However, the various matters canvassed above⁷⁰ significantly reduce the Appellant's level of culpability. In calculating the appropriate period of disqualification, the following further matters are noted:

- (i) at the time of the internal review, the Appellant had been prohibited from participating in the industry (as the consequence of the interim suspension) for a period of 87 days up to 16 April 2025;⁷¹
- (ii) taking that into account, the balance of the 6 month disqualification imposed following the review would have expired at midnight on 15 June 2025;⁷²
- (iii) the Appellant was disqualified between 16 April 2025 (the date of the internal review determination) and 5 May 2025 at which time a stay was granted. That, on my calculation, was a period of 19 days.

85. It follows that the Appellant has, by a combination of the imposition of the interim suspension and the period of disqualification imposed following the internal review, already served a penalty of 106 days, or approximately 3½ months. That is a substantial period and is one which, in the circumstances of this case, is an appropriate penalty.

⁶⁹ See for example *Kwong v Greyhound Welfare and Integrity Commission*, 17 March 2025.

⁷⁰ At [76] and following.

⁷¹ TB 133 at [37].

⁷² TB 133 at [37].

86. As the Appellant has been partially successful on the appeal, the appeal deposit should be refunded.

ORDERS

87. I make the following orders:

1. The order made by the Tribunal pursuant to cl 20 of the *Racing Appeals Tribunal Regulation 2024* on 5 May 2025 is vacated.
2. The appeal against the finding of guilt is dismissed.
3. The appeal against penalty is upheld.
4. The decision made pursuant to an internal review conducted by the Respondent on 16 April 2025, insofar as that decision extended to the charge against the Appellant under r 156(b) of the *Greyhound Racing Rules*, is quashed.
5. In lieu thereof, the Appellant is disqualified for a period of 3 months and 16 days.
6. The disqualification in order [5] will expire at midnight on 13 October 2025.
7. The appeal deposit is to be refunded.

THE HONOURABLE G J BELLEW SC

13 October 2025