

**IN THE RACING APPEALS TRIBUNAL**

**WAYNE VANDERBURG**

**Appellant**

**v**

**GREYHOUND WELFARE AND INTEGRITY COMMISSION**

**Respondent**

**REASONS FOR DETERMINATION**

**Date of hearing**                      **21 October 2025**

**Date of determination**           **27 October 2025**

**APPEARANCES**

**Mr J Elks for the Appellant**

**Mr B Gillies for the Respondent**

**ORDERS**

- 1. The appeal is upheld.**
- 2. The determination of the Stewards imposing a disqualification of 27 months is set aside.**
- 3. In lieu thereof, the Appellant is disqualified for a period of 15 months.**
- 4. Taking into account the periods of interim suspension and disqualification served by the Appellant to date, the disqualification imposed by order [3] will expire at midnight on 27 May 2026.**
- 5. The appeal deposit is to be refunded.**

## **INTRODUCTION**

1. By a Notice of Appeal dated 1 July 2025,<sup>1</sup> Wayne Vanderburg (the Appellant) has appealed against a determination made by the Greyhound Welfare and Integrity Commission (the Respondent) to disqualify him for a period of 27 months following his plea of guilty to an offence contrary to r 164(b) of the Greyhound Racing Rules (*the Rules*). The appeal was heard on 21 October 2025, following which my decision was reserved.
2. The evidence relied upon by the parties is contained in a Tribunal Book (TB) and is entirely documentary. No oral evidence was given at the hearing.

## **THE RELEVANT PROVISION OF THE RULES**

3. To the extent relevant for present purposes, r 164(b) provides as follows:

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

...

(b)    *refuses ... or **fails to produce** a document or **other thing in relation to an investigation** ... pursuant to the Rules **when directed by** a Controlling Body, **the Stewards** or other authorised person (my emphasis in each case).*

4. Bearing in mind the bolded parts above, the case against the Appellant is that in the circumstances more fully discussed below, he refused to produce a thing, namely a pill container, when directed by a Steward to do so.

## **THE PROCEDURAL HISTORY**

5. The offence was committed on 21 February 2024, in the circumstances more fully set out below. On 23 February 2024, the Respondent wrote to the Appellant<sup>2</sup> advising that it was considering the imposition of an interim suspension, and allowing the Appellant an opportunity to respond. The Appellant did so by letter of 24 February 2024,<sup>3</sup> the contents of which are also set out below.

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<sup>1</sup> TB 3 – 6.

<sup>2</sup> TB 64 – 65.

<sup>3</sup> TB 67.

6. By letter of 27 February 2024<sup>4</sup> the Respondent advised the Appellant that an interim suspension had been imposed, to take effect on 27 February 2024.
7. On 2 May 2025, the Respondent wrote to the Appellant's Solicitor<sup>5</sup> advising that a charge had been brought pursuant to r 164(b), the particulars of which were as follows:
1. *At all relevant times [the Appellant] was registered with [the Respondent] as an Attendant.*
  2. *On 21 February 2024, [the Appellant] was directed by Steward Van Gestel to produce a pill container that he had in his pocket.*
  3. *[The Appellant] refused to comply with the direction and consumed an item contained within the pill container.*
8. There was an obvious delay between February 2024 (when the interim suspension was imposed) and May 2025 (when the charge was laid). It would appear that such delay was attributable to proceedings taken against the Appellant's partner, Sarah Fellowes. Neither party has suggested that such delay is relevant to my assessment of penalty in this case.
9. The Appellant pleaded guilty to the charge and submissions were made on his behalf in relation to penalty.<sup>6</sup> In a decision dated 30 June 2025,<sup>7</sup> the Respondent imposed a disqualification of 27 months. That penalty took into account the period of the interim suspension and was expressed to expire at midnight on 26 May 2027.
10. It is the agreed position of the parties that, as at the date of the hearing of the appeal, and taking into account the period of interim suspension, the Appellant

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<sup>4</sup> TB 68 – 69.

<sup>5</sup> TB 71 – 72.

<sup>6</sup> TB 73 – 76.

<sup>7</sup> TB 77 – 78.

had been prohibited from participating in the greyhound racing industry for a total of 240 days (i.e. 8 months).<sup>8</sup>

### **THE CIRCUMSTANCES OF THE OFFENDING**

11. By reference to the material contained in the Tribunal Book, the circumstances of the offending were as follows.

12. At the relevant time, the Appellant was registered with the Respondent as an Attendant.<sup>9</sup> In that capacity he attended the Wentworth Park racetrack on 21 February 2025 as the handler of *Wild Octane* which was trained by Ms Fellowes.<sup>10</sup> *Wild Octane* competed in, and won, Race 2 on that day. A urine sample was taken from the greyhound to test for the presence of prohibited substances. The sample returned a negative result.

13. In his statement of 11 August 2025, the Appellant said that a friend of 30 years, to whom I will refer as “AB”, had been in the practice of providing him (i.e. the Appellant) with *Viagra* tablets from time to time, and had done so about a week prior to 21 February.<sup>11</sup> That this occurred is generally corroborated by a statement from AB.<sup>12</sup> It is noted that neither the Appellant nor AB were cross-examined on their statements at the hearing. Whether any of this conduct constitutes an offence is not something I have to determine.

14. According to the Appellant, when he received the tablet from AB he put it in his pocket, before placing it in an empty pill container he had found in his car. He then left the container, with the tablet still in it, in the car in a cupholder.<sup>13</sup>

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<sup>8</sup> Transcript 3.13

<sup>9</sup> TB 79.

<sup>10</sup> TB 40.

<sup>11</sup> TB 24 at [4] – [6].

<sup>12</sup> TB 38.

<sup>13</sup> TB 24 at [6].

15. The Appellant said<sup>14</sup> that on the day of the race, he had had a number of conversations with Stephen Wilde, the owner of *Wild Octane*, about placing bets on the greyhound, during which Mr Wilde became agitated. That is generally corroborated by a statement from Mr Wilde<sup>15</sup> who was similarly not cross-examined. These conversations, the Appellant said, made him agitated as well, such that on arrival at the track he just “*grabbed [his] keys and whatever was in the cupholder, including the container, and put it in [his] pocket*”.<sup>16</sup> He said that he later remembered thinking to himself that he should put the tablet back in the car and had intended to do so after he had dinner. He said that after dinner he became “*distracted*”, and “*forgot to take the pill container back to the car*”.<sup>17</sup>

16. The Senior Steward on duty that day was Paul Van Gestel, whose undated statement forms part of the evidence. Mr Van Gestel, who was also not cross-examined, said<sup>18</sup> that shortly prior to the race, he observed the Appellant reach into his right hand pocket before pulling his hand out. Mr Van Gestel described the Appellant’s hand as being “*slightly cupped*”. He said that he then saw the Appellant kneel down next to *Wild Octane* and place his cupped right hand over the muzzle area of the greyhound.<sup>19</sup> The Appellant accepts that he may have placed his hand in his pocket, but denies doing removing anything from the container to give to the greyhound.<sup>20</sup> In that regard, I would simply emphasise that a urine sample taken from the greyhound returned a negative result. That is an objective fact which provides some support for the Appellant’s account, as does the fact that the Appellant has not been charged with administering a prohibited substance to the greyhound.

17. Following the race Mr Van Gestel approached the Appellant and told him that he intended to search his pockets. The Appellant responded by removing the pill

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<sup>14</sup> TB 25 at [9] – [11].

<sup>15</sup> TB 35.

<sup>16</sup> TB 25 at [9] – [10].

<sup>17</sup> TB [24] at [11] – [13]

<sup>18</sup> TB 47 at [5].

<sup>19</sup> TB 45 at [6].

<sup>20</sup> TB 26 at [14].

container. Mr Van Gestel went to take it from him and the Appellant pulled away. He then directed the Appellant, on multiple occasions, to surrender the container. The Appellant repeatedly refused to do so.<sup>21</sup> When asked by Mr Van Gestel why he would not hand it over, the Appellant said:<sup>22</sup>

*It's personal.*

18. The Appellant was then taken to the Stewards' room where he was again directed to empty his pockets. He did so, and produced the pill container which bore the words "*For animal use only*" and "*Singleton Veterinary Clinic*".<sup>23</sup> The container, which was empty, was seized by Mr Van Gestel.<sup>24</sup>

19. At that point, the Appellant was interviewed. He told Stewards that the container was for the purpose of storing tablets which are administered to greyhounds to ensure that bitches are kept off-season.<sup>25</sup> Given the case that the Appellant now advances, that explanation was, at best, entirely misleading. It was also entirely inconsistent with what he had told Stewards a short time earlier. When reminded of that inconsistency, and specifically of the fact that he had previously told the Stewards that the contents of the container were "*personal*", the Appellant said:<sup>26</sup>

*I should have just told you the truth to start with. Right. .... Cause all I've now is make – make me look like I've done something wrong --- and it's to be honest with you it's fucken stupid.*

20. The Appellant then apologised for the manner in which he had dealt with the matter and the interview concluded. It should be noted that in light of the events that followed, the Appellant's approach to that entire interview was, to say the least, misleading.

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<sup>21</sup> TB 46 at [8].

<sup>22</sup> TB 46 at [8].

<sup>23</sup> TB 48 at [9].

<sup>24</sup> TB 62.

<sup>25</sup> TB 54 at Q and A 11.

<sup>26</sup> TB 55 at Q and A 16; 19; 20.

21. Mr Van Gestel was then informed for the first time that the Appellant had been seen by another Steward, Stephen McMahon,<sup>27</sup> to remove something from the pill container and ingest it whilst walking to the Stewards' room (i.e., prior to being interviewed). A second interview of the Appellant was then conducted, at which Mr McMahon was also present. When Mr McMahon's observations were put to the Appellant, he said:<sup>28</sup>

*.... **If that's what happened** – if that's what you've seen Steve, I wouldn't – I'm not saying that didn't happen. That I put me hand – put me hand in my pocket and put me hand in my mouth. **But I vigorously deny swallowing anything. It was – I furiously deny putting – taking any pills whatsoever** (my emphasis)*

22. The Appellant then offered to provide a urine sample, asserting in effect, that it would return a negative result because the “*so called substance .... doesn't exist*”.<sup>29</sup> His offer was declined. Obviously, it is a fundamental aspect of the Appellant's case before me that he **did** swallow the tablet, and that it was Viagra. It must follow that the statements he made in the second interview set out in [21] above were false to his knowledge.

23. On 23 February 2024, the Respondent wrote to the Appellant advising of a proposal to impose an interim suspension, and giving the Appellant the opportunity to respond.<sup>30</sup> It is appropriate to set out the Appellant's response in full:

*Thank you for letting me reply to this matter.*

*On Wednesday evening, when asked by the Steward to show him what was in my pocket, I advised him that there was a personal item in there that I did not want to disclose. The item was a Viagra tablet which I planned to use later that night.*

*The reason I did not want this disclosed was that if this was put in the steward's report and made public, this would put extreme pressure on my relationship with Sarah. In hindsight, I should have just disclosed what it was and I wouldn't be in the situation I am now.*

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<sup>27</sup> TB 52 at [5]; TB 58 at Q 6.

<sup>28</sup> TB 58 at A 6.

<sup>29</sup> TB 58 at A 7.

<sup>30</sup> TB 64 – 65.

*I have discussed this with Sarah and our relationship is currently under extreme pressure.*

*I don't believe this has led to any negative reputation for the greyhound racing industry as this was a personal matter and was not a matter of me giving the dog an illegal substance that night which I am positive the swabs will show.*

*Since obtaining my attendant's licence I have always cooperated with all GWC staff, all track staff and GWIC inspectors. For these reasons, I feel a suspension would be a harsh penalty for what I have done.*

24. On 27 February 2024, the Respondent imposed an interim suspension on the Appellant.<sup>31</sup> He was later charged with the present offence and pleaded guilty. On 30 June 2025, the Respondent imposed a disqualification of 27 months.

### **EVIDENCE IN THE APPELLANT'S SUBJECTIVE CASE**

25. Annexed to the Appellant's statement are copies of articles appearing in a number of different publications, giving accounts of the Appellant's offending by reference to my earlier reasons for refusing a stay.<sup>32</sup> These articles are relied on by the Appellant as evidence of extra-curial punishment.<sup>33</sup>

26. The Appellant's statement also cites a number of other consequences of the offending, including:

- (i) the distress he felt by virtue of the fact that his partner, Ms Fellowes, became unwittingly involved;<sup>34</sup>
- (ii) the consequent financial strain;<sup>35</sup>
- (iii) the fact that, as a disqualified participant, he is unable to live with Ms Fellowes at their home and has been forced to "couch surf" for a long period of time;<sup>36</sup>

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<sup>31</sup> TB 68 – 69.

<sup>32</sup> TB 29 – 36.

<sup>33</sup> TB 27 at [22].

<sup>34</sup> TB 27 at [21].

<sup>35</sup> TB 27 at [23].

<sup>36</sup> TB 27 at [24].



- (iv) the fact that he is unable to assist Ms Fellowes in her work as a trainer.<sup>37</sup>

27. The Appellant has described his conduct as “*incredibly stupid*”.<sup>38</sup> He has expressed his remorse and specifically acknowledged the fact that compliance with directions of Stewards was fundamental to the proper regulation of the greyhound racing industry.<sup>39</sup>

28. The Appellant also relied upon a series of testimonials which variously referred to him as a person of “*integrity*”,<sup>40</sup> someone who has “*a deep respect for the rules*”,<sup>41</sup> and a person of “*absolute honesty*”.<sup>42</sup> Contrary to the approach which is generally taken to evidence of that kind, none of the testimonials contained any acknowledgement on the part of those providing them that they knew the purpose for which they were going to be used, nor did they contain an acknowledgement of an awareness of the nature and circumstances of the Appellant’s offending. Counsel informed me at the conclusion of the hearing<sup>43</sup> that his instructions were that those who had provided testimonials knew of these matters. I accept that to be the case.

29. Finally, the Appellant tendered a report of Joel Wolfgram, Psychologist, dated 21 October 2025. The Appellant has attended three psychology sessions with Mr Wolfgram since 18 August this year. I do not propose to set out the contents of Mr Wolfgram’s report in detail. It is sufficient to note that he has diagnosed the Appellant as suffering from recognised mental health issues which fall within the extremely severe range, and which he (Mr Wolfgram) considers are a consequence of the offending. In that regard Mr Wolfgram placed particular emphasis on the articles referred to in [25] above. Mr Wolfgram’s report was silent as to whether or

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<sup>37</sup> TB 27 at [25].

<sup>38</sup> TB 26 at [17]; TB 27 at [26].

<sup>39</sup> TB 28 at [28].

<sup>40</sup> Ryan Tredaway at TB 43; Phillip Carrell at TB 44; Meredith Verhagen at TB 45.

<sup>41</sup> Phillip Carrel at TB 44.

<sup>42</sup> William Moncrieff at TB 46.

<sup>43</sup> Transcript 20.35.

not the Appellant proposes to continue treatment, and it did not proffer a definitive prognosis.

## **SUBMISSIONS OF THE PARTIES**

### **Submissions of the Appellant**

30. During the hearing, counsel for the Appellant made the following important concessions:

- (i) the offending was objectively serious;<sup>44</sup>
- (ii) the offending involved the Appellant being untruthful to Stewards;<sup>45</sup>
- (iii) the serious nature of the Appellant's conduct demanded the imposition of a not insignificant period of disqualification;<sup>46</sup>
- (iv) general deterrence was a relevant factor on penalty;<sup>47</sup>
- (v) it was critical that other participants in the industry understood that this type of conduct would not be tolerated.<sup>48</sup>

31. However, it was submitted that even when all of these factors were taken into account, the penalty which was imposed was manifestly excessive, particularly when regard was had to the starting point of 36 months. It was submitted that in all of the circumstances, and taking into account the Appellant's subjective case as well as the previous decisions of this Tribunal (differently constituted) in matters of *Boyd* and *Robinson*, the 8 month period of effective disqualification which had been served by the Appellant to date was an appropriate penalty.<sup>49</sup> It was submitted, in particular, that I should view the Appellant's conduct as having been driven primarily by embarrassment, rather than by a desire to hide nefarious conduct which would threaten the integrity of the sport.<sup>50</sup>

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<sup>44</sup> Transcript 8.8.

<sup>45</sup> Transcript 8.9

<sup>46</sup> Transcript 8.17

<sup>47</sup> Transcript 11.3.

<sup>48</sup> Transcript 11.5.

<sup>49</sup> Transcript 11.10 – 11.26; TB 13 at [23].

<sup>50</sup> TB 12 at [21].

32. In written submissions,<sup>51</sup> counsel argued that the penalty already served by the Appellant was appropriate because, apart from reflecting the objective seriousness of the offending, it also took into account:

- (i) the plea of guilty;
- (ii) the fact that the Appellant did not act as he did to avoid detection in respect of any integrity-related issue;
- (iii) the fact that the consequences of the offending constituted a strong personal deterrent;
- (iv) the Appellant's expressed remorse;
- (v) the extra-curial punishment suffered by the Appellant as a consequence of the publication of the articles referred to above;
- (vi) the fact that the Appellant had shouldered the guilt of the impact of his offending upon his partner Mr Fellowes;
- (vii) the fact that the Appellant had been unable to live with Ms Fellowes for a significant period of time as a consequence of his offending;
- (viii) the favourable opinions of the Appellant's character expressed by a number of persons.

33. All of these matters were emphasised during the course of the hearing, along with the Appellant's medical history.<sup>52</sup>

34. Finally, in terms of the Appellant's disciplinary history, counsel pointed out<sup>53</sup> that apart from a disqualification for a presentation offence some time ago, the majority of the balance of entries in that history recorded fines for relatively minor offending.<sup>54</sup> He emphasised that there was no history of matters of this kind.

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<sup>51</sup> TB 14 at [27].

<sup>52</sup> Transcript 14.25.

<sup>53</sup> TB 15 at [28].

<sup>54</sup> See the history at TB 81.

## Submissions of the Respondent

35. The unequivocal position of the Respondent was that the penalty imposed by the Stewards was appropriate, and that the appeal should be dismissed. That position revolved principally around the proposition that any offending which threatened the integrity of, and public confidence in, the greyhound racing industry was, by definition, a matter of considerable seriousness, and thus deserving of a substantial period of disqualification. In seeking to make good that position, particular reliance was placed (by reference to observations of this Tribunal (differently constituted) in the matters of *Boyd* and *Mabbott*(<sup>55</sup>) upon the fact that:

- (i) a licence to participate in the industry should be seen as a privilege;
- (ii) that privilege carries with it an obligation to be honest and forthright, not merely in dealings with Stewards but generally; and
- (iii) a failure to so act necessarily leads to the undermining of public trust and public confidence in the greyhound racing industry, and has the capacity to lead to its breakdown.

36. By reference to these factors, it was submitted on behalf of the Respondent that:<sup>56</sup>

- (i) there is a positive obligation on all industry participants to act honestly when engaging with the Respondent;
- (ii) the Appellant had failed to meet that obligation;
- (iii) a substantial penalty must follow; and
- (iv) the penalty imposed was appropriate.

37. It was submitted that the objective seriousness of the offending was reflected, in particular, by the fact that it had effectively denied Stewards the opportunity conduct a proper investigation.<sup>57</sup> It was further submitted that in any

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<sup>55</sup> TB 17 at [7].

<sup>56</sup> TB 18 at [17].

<sup>57</sup> TB 17 at [9] – [11].

circumstances, there was a (not unreasonable) expectation that registered participants will comply with directions given to them.<sup>58</sup> It was also pointed out that the case now advanced by the Appellant was disclosed only after the Respondent had indicated an intention to institute disciplinary action.<sup>59</sup>

38. To the extent that the Appellant relied upon the personal consequences of his offending (such as financial loss), the Respondent submitted that consequences of that kind were deserving of limited weight for the simple reason that they were obvious, and invariably form a part of any subjective case.<sup>60</sup> Specifically, in terms of the Appellant's inability to live with Ms Fellowes, it was pointed out (without in any way foreshadowing the outcome) that it would be open to the Appellant to make an application for an exemption pursuant to r 178(3) of the Rules to allow him to live with Ms Fellowes, but that he had not done so.

39. Finally, emphasis was placed on the need for any penalty to reflect considerations of general deterrence.<sup>61</sup>

## **CONSIDERATION**

40. It is appropriate to commence with some general observations.

41. The first, is that I have considered the decisions in *Boyd v Greyhound Welfare and Integrity Commission*<sup>62</sup> and *Robinson v Greyhound Welfare and Integrity Commission*<sup>63</sup> to which I was referred for what were said to be comparative purposes. I did not find either particularly helpful. Without engaging in an exhaustive analysis of them, there are (as is invariably the case) factors which distinguish those cases from each other, and from the present case. As has been stated on many occasions, what is sought to be achieved in determining penalty

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<sup>58</sup> TB 18 at [14].

<sup>59</sup> TB 18 and [16].

<sup>60</sup> TB 19 at [21].

<sup>61</sup> TB 20 at [28].

<sup>62</sup> 8 October 2021.

<sup>63</sup> 20 November 2023.

is consistency in the application of principle, not numerical equivalence in the penalties themselves.

42. The second, is that both parties made reference to a “starting point” when determining penalty. In *Wade v Harness Racing New South Wales*<sup>64</sup> I made the following observations:

*It was effectively submitted on behalf of the Appellant that there is a requirement for this Tribunal, when assessing penalty in a matter of this kind, to adopt a starting point. It appeared to be suggested, in particular, that such a requirement arose, at least in part, from the Respondent’s penalty guidelines. It has been said on many occasions that the guidelines are just that – a guide. Whilst those guidelines may well be adopted by Stewards, I am not bound by them. An assessment of penalty which is made by this Tribunal is not a process which is akin to a mathematical calculation. On the contrary, an assessment of penalty by this Tribunal is a discretionary decision which is made in light of firstly, the circumstances of the individual case, and secondly, the purposes which are intended to be served by such a penalty as set out in Pattinson. To the extent that Mr Morris sought to argue that the adoption of a starting point was a necessary (or perhaps even mandatory) step in that process, I am unable to agree. Such an approach has the clear tendency to advocate the undertaking of an almost purely mathematical exercise in which there are increments to, or decrements from, a predetermined starting point or range. It has been observed that such an approach is apt to give rise to error, is and is one which departs from principle.<sup>65</sup> Whilst those observations were made in the context of criminal proceedings, it seems to me that they necessarily have some role to play in the approach which is to be taken when this Tribunal is assessing penalties. Such approach must be one of instinctive synthesis in which all relevant matters are taken into account, the appropriate degree of weight is ascribed to each of them, and a determination is then reached. Some general support for that approach, and for the proposition that I am not bound by any guidelines, is to be found in the decision of Walton J in *McCarthy v Harness Racing New South Wales*.<sup>66</sup>*

43. I have approached my determination in this matter in accordance with those observations.

44. The third, is that on a proper analysis, there is a degree of common ground between the parties. In particular, there is no issue that:

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<sup>64</sup> 4 March 2025.

<sup>65</sup> *Wong v The Queen* [2001] HCA 64 at [74]; *Markarian v The Queen* [2005] HCA 25 at [30] – [34].

<sup>66</sup> [2024] NSWSC 865 at [216]

- (i) the offending was objectively serious;
- (ii) general deterrence is a paramount consideration;
- (iii) the Appellant is entitled to have his plea of guilty taken into account in the accepted way (i.e., by the application of a discount of 25%);  
and
- (iv) there must be a “*significant*” period of disqualification imposed.

45. Unsurprisingly, what might constitute “*significant*” in that sense is a principal issue between the parties. The Respondent submits that the period of disqualification imposed by the Stewards is appropriate. The Appellant submits that having regard to all relevant factors, any period of disqualification should be substantially less than that.

46. Those competing positions perhaps reflect the obvious, namely, that there is no single correct penalty.<sup>67</sup> Determination of an appropriate penalty in any case involves a discretionary exercise in which all relevant factors are taken into account. Although the Appellant has submitted that the penalty imposed is manifestly excessive, in the sense of being unreasonable or plainly unjust, he does not have to establish that this is the case in order to succeed. As this appeal proceeds *de novo*, I must look at the matter afresh and impose the penalty that I consider appropriate in all of the circumstances.

47. With all of those matters in mind, I turn firstly to an assessment of the objective seriousness of the offending. There are a number of factors relevant to that assessment.

48. I am prepared to accept that what the Appellant ingested was a *Viagra* tablet. The simple fact is that the Appellant’s evidence in this regard is unchallenged, and is generally corroborated by the evidence of AB which is similarly unchallenged. There is no reason to reject it, particularly in circumstances where the Appellant

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<sup>67</sup> See *Pearce v The Queen* (1998) 194 CLR 610 at 624.

offered to provide his own urine sample for testing, an offer which was not accepted. Accepting all of that to be the case, I accept the submission that the Appellant's conduct was not motivated by a desire to obfuscate nefarious conduct which threatened the integrity of the sport.

49. However, the Appellant cannot escape the fact that, irrespective of what might have motivated it, his conduct necessarily gave rise to an integrity-related issue, and that the seriousness of his failures to produce the container were compounded by his overall conduct which, as I have noted, contained material untruths.

50. In these circumstances, although the Appellant has been charged with, and has pleaded guilty to, an offence of refusing to produce something the pill container when directed to do so by Mr Van Gestel, to view the case solely through that factual prism would be to oversimplify it. There are a number of other matters within what might be described as the factual matrix surrounding the offending which in my view relevantly bear upon the assessment of its objective seriousness and, as a consequence, upon the assessment of penalty. As to those matters I make the following observations.

51. First, the Appellant's refusal(s) to comply with the direction given to him by Mr Van Gestel essentially commenced by him pulling away from Mr Van Gestel, actively preventing him from physically seizing the pill container.<sup>68</sup> That demonstrates a generally non-co-operative attitude on the part of the Appellant in his dealings with Mr Van Gestel from the outset.

52. Secondly, the unchallenged evidence of Mr Van Gestel is that he directed the Appellant "*multiple times*" to give him the container, and that the Appellant failed

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<sup>68</sup> TB 48 at [8].



to comply with each one of those directions.<sup>69</sup> It follows that this is not a case in which the Appellant's lack of co-operation was isolated.

53. Thirdly, when the pill container was ultimately seized at the first interview it was empty. The statements made by the Appellant to Stewards at that time carried with them the unequivocal suggestion that this had always been the case. That was, at best, misleading.

54. Fourthly, when it was put to the Appellant, with the benefit of the observations of Mr McMahon, that he had ingested something taken from the container on the way to the Stewards' room, the Appellant "*vigorously*" and "*furiously*" denied having "*taken any pills whatsoever*".<sup>70</sup> Given the case that he now advances, the only available conclusion is that those statements were plainly and deliberately false, to the Appellant's knowledge.

55. Fifthly, the fundamental ramification of the Appellant's conduct in failing to produce the pill container when directed to do so was that any investigation into the matter was, in effect, thwarted.

56. It follows that this is not simply a case in which the circumstances surrounding the offending are constituted by an single refusal on the part of the Appellant to produce the pill container when directed to do so. The gravamen of the offending encompasses the entirety of the circumstances I have outlined above. When viewed as a whole, the Appellant's conduct reflects repeated failures to comply with what was a simple request, accompanied by statements, some of which were misleading, and others of which were false. That conduct was demonstrative of a generally non-co-operative, and on one view, combative, attitude on the part of the Appellant, which is inconsistent with what is expected of industry participants. It is on these bases that the seriousness of the offending,

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<sup>69</sup> TB 48 at [8].

<sup>70</sup> TB 59 at A 6.

and the Appellant's culpability, are to be assessed. Even the briefest reflection on these factors leads inevitably to the conclusion that the offending was of a high degree of seriousness.

57. It would not be appropriate to speculate on what any investigation might have revealed had it been carried out, and I have not done so. I also reject the reference in the Respondent's submissions to the actions of the Appellant amounting to the destruction of evidence.<sup>71</sup> That is not an offence with which the Appellant has been charged. However, the entirety of the Appellant's conduct strikes at the heart of the need to maintain the integrity of the greyhound racing industry. Stewards play an integral role in maintaining that integrity. The power to give directions is conferred on them for good reason. When such directions are not complied with, the integrity of, and public confidence in, the industry is placed in immediate jeopardy. It is no answer for the Appellant to seek to diminish the seriousness of what he did by categorising it as something that was personal, or worse still, as something that "*has not led to any negative reputation for the greyhound racing industry*".<sup>72</sup> **Any** matter of this kind will reflect negatively, to some degree, on the industry as a whole.

58. It cannot be sufficiently emphasised that holding a licence as an Industry participant is a privilege and not a right. That privilege comes with a number of obligations. Complying with directions given by Stewards is but one of them. The gravity of a refusal to do so, particularly when that refusal is repeated, and is accompanied by misleading and untruthful statements, will be self-evident. All of these considerations were reflected in observations made by the NSW Racing Appeals Panel in a matter of *Troy See* in the following terms:

*Licensed 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*

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<sup>71</sup> TB 22 at [28].

<sup>72</sup> TB 65.

*would be chaos if licenced persons refused to co-operate with proper requests and instructions of racing authorities.*

59. These observations support the conclusion that the present offending is of a high degree of seriousness. They also support the conclusion that any penalty must reflect the need for general deterrence. A clear message must be sent to all industry participants that offending of the present kind will, almost inevitably, meet with the imposition of a substantial period of disqualification.

60. What is “*substantial*” will obviously depend, at least in part, on the circumstances of the individual case. In the course of oral submissions,<sup>73</sup> counsel for the Appellant referred me to the decision of Basten JA in *Director-General, Department of Ageing, Disability and Home Care v Lambert*<sup>74</sup>, where his Honour made reference to instances in which offending of this kind has made the person in question realise the seriousness of their conduct, to the point where the likelihood of a repetition of the offending has significantly diminished. I accept that, in some respects, the present case reflects such a situation. The Appellant has expressed his remorse for what occurred, and has made statements which tend to reflect some insight. I am satisfied that, as a consequence, personal deterrence has little or no role to play in determining penalty. I am fortified in that view by the absence of any previous similar offending. I have also taken into account his plea of guilty in the usual way, i.e. by the application of a discount of 25%. That said, none of those matters derogate from the Appellant’s express acceptance of the fact that the offending must result in the imposition of a significant period of disqualification.

61. I also accept, based on the report of Mr Wolfgram, that the Appellant has suffered some adverse psychological effects by the coverage of this matter in the media. In *Wanstall v R*<sup>75</sup> it was observed that differing views had been expressed about

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<sup>73</sup> Transcript 8.30.

<sup>74</sup> (2009) 74 NSWLR 523 at [83].

<sup>75</sup> [2024] NSWCCA 167 at [38] per Sweeney J; Cavanagh J and Stern JA agreeing.

the mitigating effect of adverse publicity and associated public humiliation being felt by an offender. In reaching the conclusion that the media reporting in that case did not amount to extra-curial punishment, it was noted<sup>76</sup> that such reporting was not inaccurate or sensational, and that there was no evidence of any psychological effect on the offender.

62. In the present case, perhaps with the exception of one headline, the articles could not, in my view, be fairly categorised as sensational in the sense of being shocking or exaggerated for the purposes of attracting attention. The articles themselves are generally factually correct. However, I accept the evidence of Mr Wolfgram that he has treated the Appellant for psychological symptoms which, in his view, have been exacerbated by articles in question. Thus, there *is* evidence (unlike the position in Wanstall) of an adverse psychological effect on the offender. In those circumstances there is evidence of extra curial punishment which should be taken into account.

63. Finally, I am compelled to observe that some of the views expressed in the testimonials<sup>77</sup> do not sit entirely comfortably with aspects of the Appellant's offending. However, to the extent that they establish that the Appellant enjoys a generally good reputation, I have taken them into account.

## **CONCLUSION**

64. Although it might reflect something of a truism, I accept the Appellant's submission<sup>78</sup> that any penalty must not result in consequences which are more serious than what are reasonably necessary for the relevant protective purpose(s).<sup>79</sup> I have come to the view that a disqualification of 27 months does give rise to such consequences. Such a penalty, in my view, reflects limited regard

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<sup>76</sup> At [39].

<sup>77</sup> See [28] above.

<sup>78</sup> Transcript 11.24 – 11.26.

<sup>79</sup> See *NSW Bar Association v Meakes* [2006] NSWCA 340.

having been paid to any aspect of the Appellant's subjective case, other than his plea of guilty.

65. At the same time, the primary purpose of a civil penalty such as this is the promotion of the public interest in compliance with the provisions of the Rules, and the *Greyhound Racing Act 2017* generally, by the deterrence of further contraventions.<sup>80</sup> In the circumstances of this case, that purpose is not met by a disqualification of 8 months, even giving full weight to the Appellant's subjective circumstances.

## **CONCLUSION**

66. Taking all factors into account, I have determined that that the appropriate penalty is a disqualification of 15 months. Noting that the Appellant has served a total of 8 months, the penalty will be backdated to reflect the balance of 7 months.

## **ORDERS**

67. I make the following orders:

1. The appeal is upheld.
2. The determination of the Stewards imposing a disqualification of 27 months is set aside.
3. In lieu thereof, the Appellant is disqualified for a period of 15 months.
4. Taking into account the periods of interim suspension and disqualification served by the Appellant to date, the disqualification imposed by order [3] will expire at midnight on 27 May 2026.
5. The appeal deposit is to be refunded.

**THE HONOURABLE G J BELLEW SC**

**27 October 2025**

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<sup>80</sup> See *Australian Building and Construction Commissioner v Pattinson* (2022) 274 CLR 450; [2022] HCA 13 at [9].

### **AMENDING NOTE**

Paragraph[38] of these reasons have been amended by deleting the reference to r 156(x) and inserting, in lieu thereof, r 178(3).