

**RACING APPEALS
TRIBUNAL
NEW SOUTH WALES**

TRIBUNAL MR D B ARMATI

EX TEMPORE DECISION

WEDNESDAY 5 APRIL 2023

APPELLANT JESSICA WINDIATE

RESPONDENT GWIC

**APPEAL AGAINST DECISION OF GWIC TO IMPOSE
A CONDITION UPON HER CERTIFICATES OF REGISTRATION**

GREYHOUND RACING ACT S49(4)

DECISION:

- 1. Appeal dismissed**
- 2. Condition amended and applied**
- 3. Liberty to apply on terms of condition**
- 4. Appeal deposit forfeited**

1. The appellant, licensed greyhound trainer and breeder Ms Jessica Windiate, appeals against a decision of the Greyhound Welfare and Integrity Commission (GWIC), the respondent, of 11 January 2023 to impose upon her certificates of registration the following condition:

“Installation of CCTV. You are required to install CCTV at the suitable and agreed upon location(s) that provides appropriate vision of your kennels and associated training areas and this footage is to be provided to the Commission upon request.”

2. That condition was imposed by the respondent exercising its powers under s 49(4) of the Greyhound Racing Act 2017, which provides as follows:

“(4) The Commission may, on the registration of a person as a greyhound racing industry participant or at any later time, impose conditions on the registration. Any such condition may be varied or revoked by the Commission.”

3. To give force to that provision, s 44(2) provides:

“(2) A registered greyhound racing industry participant must comply with any conditions to which the person’s registration is subject.”

4. The appellant, by the grounds of appeal, disputes the power of the Commission to impose the condition and, secondly, says that, in the event that power is found, it is not appropriate to impose that condition.

5. A third issue arose during the course of this hearing as to the fact that if the Tribunal finds power and determines a condition is appropriate, as to how it should be worded. The Tribunal indicated in the course of the hearing, firstly, that it had found the power and, secondly, that it should be exercised. The third limb remains outstanding at present.

6. The first issue, therefore, is the Tribunal’s reasons why the power was found.

7. The Tribunal has regard to s 11 of the Act, which is designed to give the respondent a broad range of powers in respect of the operation of the industry. Relevantly to this matter, its principal objectives are s 11(b) to safeguard the integrity of greyhound racing and betting, and (c) to maintain public confidence in the greyhound racing industry. It is given various functions. It is given a specific statutory power to impose a condition.

8. The Tribunal notes that the interpretation of s 49(4) requires a purposive interpretation. That purposive interpretation requires consideration of the words of the provision itself and the words of that provision as it is contained in the Greyhound Racing Act 2017 as a whole.

9. That purposive interpretation also requires consideration of the rules of greyhound racing, all of which are designed to provide integrity of racing and, importantly, welfare.

10. This case focuses upon integrity. No welfare issues have been identified.

11. The question is whether a condition relating to CCTV at the premises of a trainer and breeder is not limited by anything which is contained in s 49 generally. The scope and purpose of the Act is to ensure that those who are licensed and all those who participate in the industry do so to ensure its integrity.

12. The submissions for the appellant challenging jurisdiction essentially turn upon a more limited reading of the subsection than that which appears on its face to be available. That is said to arise by the consideration of the terms of s34 of the Interpretation Act and of the Minister's second reading speech in introducing the bill into Parliament in New South Wales.

13. Just dealing firstly with s 34, because it provides for the use of extrinsic materials. Section 34 as a whole is taken as read. But what it essentially does is to provide a mechanism for assisting in ascertaining the meaning of a provision. It is necessary to consider the confirming of that meaning and for that reason it is permissible to use extrinsic materials. And determining that meaning might arise because of ambiguity or obscurity or possible interpretations which are manifestly absurd or unreasonable. The use of extrinsic materials is merely an aid in interpretation.

14. At the outset, the Tribunal finds that there is nothing ambiguous, obscure, manifestly absurd or unreasonable about the terminology of the provision which would require a resource to an extraneous material. The Tribunal is satisfied that the clause, having a purposive meaning within the terms of the Act as a whole, is quite straightforward, simple and obvious. A condition can be imposed. But, of course, that condition must be one which falls within the powers and functions of the Commission, both within the provisions of the Greyhound Racing Act, but also within the rules to the extent that they are necessary to be considered.

15. The Tribunal is satisfied that the imposition of a condition of CCTV squarely falls within the ambit of a condition that can be imposed on registration within the meaning of that provision.

16. The second reason why the submissions for the appellant are not accepted is that the Tribunal does not find that a reading of the second reading speech, if it had been required to be considered, would take the Tribunal away from that conclusion.

17. The second reading speech is relevantly identified by the appellant, as to pages 5 and 6 of it, on the printout provided to the Tribunal. To be clear, it is a submission which embraces these terms:

“The commission will be able to impose conditions on any registration, including, for example, to require industry participants to comply with the code of practice for the welfare of greyhounds and to participate in education programs.”

It went on to say:

“Evidence provided to the commission of inquiry highlighted questionable practices.”

18. There are two things. Firstly, the second reading speech is very broad in its terms: “impose conditions on any registration”. It then chooses to adopt an example, and it is an example by way of inclusion and not sought to be exclusive. And that was merely one example which dealt with welfare and education programs.

19. The Tribunal is satisfied that the second reading speech should not be read in a way which would limit the ambit of the subject subsection to being limited to the welfare of greyhounds and education programs. Indeed, the further words to which the Tribunal has made reference indicate issues of integrity were squarely within the mind of the second reading speaker.

20. The Tribunal was then taken to the fact that on what is page 6 before it there is a power to appoint inspectors and to give them certain powers. The Tribunal sees nothing in the second reading speech which, allowing for the powers of inspectors, would cause a reading down of the clause to the extent that it could not extend to the imposition of a condition involving security cameras. The breadth of the inspectors’ powers are merely supplementary matters to which the second reading speech was providing examples of what an inspector might or might not do and give some meaning to the words in the bill for the benefit of those considering it.

21. Accordingly, the Tribunal finds that the Commission and the Tribunal each have the power under s 44(9) to impose a condition requiring the installation of CCTV.

22. The second issue is whether that power should be exercised.

23. The terminology of the subsection creates a discretion in the use of the word “may”. That discretion should only be exercised by provisions which have been identified, evidence which has been identified, as relevant to this

case. Some guidance can be obtained by what might be described as parity or precedent cases, and the Tribunal will deal with that.

24. Critically, consideration is given to *Chaker v GWIC, RATNSW*, 19 December 2022, a decision which involved the same considerations essentially as here, but not the issue of the power, but whether the discretion should be exercised on not greatly dissimilar facts.

25. In *Chaker*, the appellant was a trainer and breeder. There was a residence condition imposed upon a disqualified person and the Tribunal determined on the totality of the evidence there, particularly having regard to a nexus between the conduct in which Mr Jackson Chaker had engaged and the operation of the business of Ms Patricia Chaker, the appellant, provided a further reason why the discretion should be exercised. But it is, as said in *Chaker*, that the Tribunal must have regard to s 11 and the importance of it, that is, integrity.

26. The facts here are more limited than those which the respondent might have anticipated would be taken into consideration having regard to the breadth of the respondent's written submissions made prior to the hearing.

27. The evidence has comprised a limited field of material. It is the letter of the respondent of 15 December 2022 which invited submissions. That referred to charges brought against Mr Toby Weekes. It is to be noted that Mr Toby Weekes is a partner of the appellant and prior to his charging was residing at her premises and assisting her in the operation.

28. Mr Weekes has been charged and was bail refused and granted Supreme Court bail. The simple fact is that there is no evidence before the Tribunal of those charges. The appellant has given evidence, and she was not able to tell the Tribunal what those charges were. Suffice it to say that the Tribunal found that that evidence was somewhat remarkable. Simply put, it is hard to imagine that when a person's partner is charged with criminal offences and is bail refused and then to get bail has the partner, the appellant, agree to have that person reside at their premises, that that person, the appellant, would, in essence, have no idea of that with which he has been charged. Simply put, the Tribunal does not accept that evidence.

29. The next piece of evidence is that having been given bail, which was conditional, it was on the basis that he was to reside with the appellant. The appellant gave evidence to the Tribunal that she was at court and was aware of and agreed to that condition. Again, it is surprising that that course of conduct would arise from the appellant with no knowledge whatsoever of that with which he was charged.

30. The evidence is that the respondent subsequently granted Mr Weekes an exemption from a warning off that had been imposed upon him to allow

him to enter and reside at the residential premises on the property and to carry out maintenance and/or repair work, except where greyhounds are being kept. That exemption arose because the respondent had imposed an interim warning off on him on the basis of his criminal charges, whatever they are. It is to be implied that the imposition of a warning off on a person facing criminal charges carries with it an inescapable conclusion that there must be something serious about those charges. The Tribunal accepts the submission for the appellant that the sole fact that the Supreme Court granted him bail does not of itself mean that the charges were serious. Whilst the Bail Act requires some considerations before bail would be refused before a matter goes to the Local Court, there could be a number of reasons, other than the nature of the charges themselves, that caused the making of a release application in the Supreme Court. The facts remain neutral except for the fact, as described, that the interim warning off was based upon those charges and therefore the Tribunal concludes there is an element of seriousness to them.

31. The second part about an interim warning off is that it is a most serious outcome. It is protective, not punitive. It is imposed invariably on persons who are not licensed and the evidence appears to be that the appellant's partner, Mr Weekes, had previously been a disqualified person.

32. The exemption itself is a privilege that has been granted to Mr Weekes, but it is one which has been granted with the knowledge of the appellant. The appellant's licence is a privilege. In accepting that he would reside with her, it must have been obvious to the appellant that there was a necessity for some consideration of ongoing attention by the regulator upon her in respect of the compliance with the conditions of her registrations.

33. The evidence is that prior to the imposition of that exemption and his returning to the premises, the appellant had not been in any trouble whatsoever and there has been no issue of concern to the respondent since he commenced to reside there.

34. The appellant made submissions in answer to the 15 December 2022 letter and in that she points out that Mr Weekes himself has not misconducted himself in any way since the exemption was granted.

35. It is noted an issue was taken in respect of delay between the imposition of the warning off and the commencement on 15 December 2022 of these proceedings against the appellant.

36. The Tribunal finds that there is nothing untoward in any aspect of delay which in the exercise of a discretion would cause it not to exercise its discretion to impose the condition.

37. On other aspects of discretion, the appellant, in her submission in response, indicated that integrity was not required and, importantly, there would be breaches of privacy of her family, which include children, and in addition, to her extended family and friends who visit the property. That aspect is balanced by the appellant's evidence to the Tribunal today that those people assist about the kennels. If they were not about the kennels, then aspects of privacy would have greater import. However, by allowing them to be present at the premises, the appellant places them in the position where they essentially fall within the ambit of the supervision of the regulator. That is not to elevate their actions, which are limited, in some cases, with the children, to feeding puppies and playing with the puppies at the like, but nevertheless, it is done about the kennel area which is the subject of the exercise of the privilege of a licence, both as a trainer and a breeder.

38. There is a further challenge to the exercise of the discretion on the basis that it is said there is no nexus between the conduct of Mr Weekes and the greyhound industry. The evidence is silent on any such nexus and that is not a factor which arises for consideration in the discretion. The discretion focuses upon the fact that Mr Weekes, in accordance with his exemption, can be about the premises and that he is not to be in the area of the kennels themselves but about the premises generally.

39. It is, therefore, that there is a concern engendered in the mind of the Commission that it is possible Mr Weekes may do things that he should not. Particularly having regard to the serious nature of a warning off of a person facing criminal charges considered to be sufficiently serious to justify a warning off.

40. The Tribunal has been provided with five photographs of areas of the appellant's premises. The issue of whether CCTV is appropriate is, in the Tribunal's opinion, having viewed those photographs, elevated by the fact that it is possible for people to move about those premises, in and out of the kennels and the like, in circumstances where it is appropriate that there be supervision of those movements by way of CCTV.

41. As the Tribunal said in Chaker, and is invited to reconsider today, and about which the Tribunal, reinforced by its decision in Chaker but otherwise of a nature of judicial notice, or its equivalent, the resources of the Commission cannot be expected to be such that people in the position of the appellant can expect that there will be such frequency of visits by inspectors to her premises that that of itself would provide an answer to that which concerns the Commission. There is also the balancing fact that such continued visitation on the property would raise other concerns about attending in circumstances which were unfair to the appellant, and in that sense the Tribunal agrees with that submission on behalf of the respondent.

42. Those, then, are the principal considerations which the Tribunal addresses in respect of whether the discretion should be exercised. There is also this fact that this is a large premises, it is professionally run and, as such, is not, in the Tribunal's opinion, a minor hobby-type premises for which this condition would be overbearing. The size of it is such that the Tribunal is also satisfied that it should be the subject of necessary supervision.

43. The Tribunal, therefore, is satisfied that in the exercise of its discretion it is appropriate to order that the condition be imposed, and it does so.

44. The next aspect is whether or not the wording of that condition can be agreed upon, or whether there is a necessity for further submissions and/or evidence. Before the Tribunal indicates anything further, as it did earlier, in respect of the possible wording of a condition, it invites any further consideration. Whether it is available to be dealt with now or later today or otherwise is a matter for the parties.

SUBMISSIONS MADE IN RELATION TO TERMINOLOGY OF CONDITION

45. The Tribunal makes the following determination in respect of the terminology of the condition to be imposed:

Installation of CCTV. Ms Windiate is required to install CCTV within a time fixed by GWIC ("Commission") and which is capable of recording images on a system required by the Commission after consultation with Ms Windiate at suitable and agreed upon locations and provides appropriate vision of her kennels and associated training areas and this footage is to be provided to the Commission upon request.

46. The Tribunal notes that in making that order and a condition in those terms, that it has had regard to the photographs tendered to it depicting four known locations, and in respect of photograph 5, an area of the property which will be subject to coverage by placement of a camera at a suitably agreed location.

47. The Tribunal further orders that either party has liberty to apply to the Tribunal for variation of the terms of this condition.

APPEAL DEPOSIT

48. No application is made for a refund of the appeal deposit.

49. The Tribunal orders the appeal deposit forfeited.
