

**RACING APPEALS
TRIBUNAL
NEW SOUTH WALES**

TRIBUNAL MR D B ARMATI

EX TEMPORE DECISION

MONDAY 19 DECEMBER 2022

APPELLANT PATRICIA CHAKER

RESPONDENT GWIC

**APPEAL AGAINST DECISION OF GWIC TO IMPOSE
TWO CONDITIONS UPON HER CERTIFICATE OF
REGISTRATION**

GREYHOUND RACING ACT S49(4)

DECISION:

- 1. Appeal dismissed**
- 2. Conditions amended and applied**
- 3. Liberty to apply on wording of conditions**
- 4. Appeal deposit forfeited**

1. The appellant, licensed greyhound trainer and breeder Ms Patricia Chaker, appeals against a decision of the Greyhound Welfare and Integrity Commission (GWIC), the respondent, of 6 September 2022 to impose upon her certificate of registration two conditions.

2. Those conditions are as follows:

1. Installation of CCTV. Ms Chaker is required to install CCTV at a suitable and agreed upon location that provides appropriate vision of her kennels and associated training areas and this footage is to be provided to the Commission upon request.
2. Commission inspectors can attend Ms Chaker's property at a suitable time to assist with the location of the CCTV cameras.

3. That condition was imposed by the respondent exercising its powers under s 49(4) of the Greyhound Racing Act, 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.”

4. 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.”

5. The appellant does not dispute the powers of the respondent to exercise its functions under s 49(4) nor the impact of s 44 (2) as to compliance.

6. The issue is whether, for various reasons raised by the respondent, it is appropriate that the condition be imposed and for the appellant, on a number of reasons, why the condition should not be imposed. The decision to do so is discretionary by reason of the use of the word “may” in s 49(4). This case does not require a dissertation on how such a discretion is to be exercised.

7. The decision of the respondent was very much driven by the provisions of s 11 of the subject Act, which provides the Commission in the exercise of its powers to, relevant to this matter, safeguard the integrity of the industry and also maintain public confidence in the industry.

8. The appellant has been licensed for a considerable number of years and has not come under adverse notice. Participation of 32 years, not only in relation to the exercise of the functions of a licence, has also been associated with the industry generally and as an employee of the Richmond race club for some seven years.

9. The appellant has called in aid six referees. There is no challenge to the referees' evidence nor to the conclusions to be drawn from that evidence and from the appellant's evidence as to her good fame and character, no prior breaches of the rules, participation in the industry for a long time and very much a person who is a greyhound racing enthusiast.

10. A brief summary of the references of Wayne Billett, Jeff Collerson, Dennis Carl, Jeff Schrull, Mark Duclos and Noelene Holloway, in those circumstances, is only necessary. Each of their references is otherwise taken into account in their entirety and it would normally be the position of the Tribunal that it reads onto the record each of those matters.

11. However, as there is no contest that good character and capacity to comply with the rules on behalf of the appellant is not in issue, it is not necessary to do it in detail. The references relate, as the Tribunal has said, to her employment at the Richmond race club and her numerous voluntary supports to the industry with a person, as stated, of impeccable character and flawless integrity. She is supported by people associated with the industry, which of course is an important factor.

12. Some of the referees refer to the fact that this condition is very puzzling and should not be imposed. They are entitled to do so, but it is not their position in references to advise the Tribunal how it should or should not exercise such a function, but to put forward evidence in support of an appellant. They are not criticised for doing so, but those opinions are not regarded.

13. That is a very brief summary of the referees.

14. The suggestion of the imposition of the conditions arises in relation to two things.

15. Firstly, the appellant is a licensed person with the privilege of a licence and bound by the rules. Some of those restrictions can be quite burdensome, particularly in relation to a licensed person associating with a disqualified person, to choose but one branch of the rules.

16. Secondly in this case, the appellant is not only a licensed person but a mother. Her son has been charged with exceptionally serious criminal offences. As a result of those matters, the respondent has determined that as he is able to reside at the appellant's premises, the condition be imposed.

17. It is necessary, because of the allegations of delay and failure to act, to briefly summarise the chronology. It is this in summary terms. 19 February 2022, arrested and in custody on serious drug -related and driving-related

offences. 4 March 2022, bail. 31 May 2022, further charges and remanded in custody. Particularly serious charges, including participating in a criminal group and supply commercial quantities of prohibited drugs. On 2 June 2022, proposed disciplinary action was sent to the son, Mr Chaker, and on 14 June 2022 a disqualification was imposed upon him after due process. It was an interim disqualification. It nevertheless was a disqualification with all the import of restrictions on a person who was the subject of that disqualification and upon all other licensed persons came into operation. On 17 June 2022, he was granted bail. It is not in dispute that a condition of that bail was to reside at his mother's premises, the licensed kennel and breeding premises.

18. There is no evidence of the appellant's participation in those bail proceedings and consent or otherwise to the imposition of that bail condition. There is no evidence from the appellant as to her understanding that, because her son was a disqualified person, her agreement, if any, or her acceptance of that bail condition, as she has impliedly done so, carried with it the prospects of a restriction such as that which is proposed, namely, the imposition of a condition on her operation. The evidence is simply silent on that.

19. On 13 July, after submissions, an exemption was granted to Mr Jackson Chaker, the son, to reside and the prohibition imposed upon him is unsurprising, that it does not permit him to enter the kennel premises or any other place on the property where greyhounds are kept, trained or raced.

20. That could be seen to be the end of the necessity to consider the exercise of the discretion in relation to the possibility that the appellant might, in the conduct of her licensed business on the exercise of the privilege of a licence, need herself to be constrained. Her son has been constrained by the terms of the exemption.

21. Then, historically, it is that on 26 July 2022, the notice of proposed application of the conditions was sent to the appellant. There was correspondence in respect and submissions made. And a determination on 6 September 2022, as outlined earlier, of the imposition of the two conditions.

22. An appeal was lodged. A stay was granted on 19 September.

23. Some additional facts. The cost of the installation of CCTV and its operation and ongoing compliance is not known. It is quite obvious there will be some cost. The Tribunal accepts that. It is not in issue. The respondent in submissions says that it will be able to be effected inexpensively. The appellant, in the submissions to GWIC on the non-imposition, said it would be disproportionate as the appellant is a hobby trainer. And, in addition, in

submissions today, it is said to be – and it is accepted to be – an invasive requirement.

24. Brief submissions were made in relation to listening devices and perhaps the Surveillance Devices Act. Nothing much, with respect, is made of that. The Tribunal does not propose to examine that without more detailed factual and evidential submissions.

25. The gravamen, therefore, of the respondent's position is one of integrity. The respondent emphasises the very strong and serious limitations imposed by the imposition of disqualification upon Mr Jackson Chaker. The Tribunal accepts those matters. They are all well-established both by the respondent here and in the other codes and by the Tribunal on a regrettably entirely frequent basis. It is the most serious imposition of the loss of a privilege. But, of course, it is imposed on Mr Chaker, not the appellant.

26. The unchallenged submission of the respondent is that there is a nexus between the industry and Mr Jackson Chaker for not just the reason that he is a licensed person now subject to a disqualification but that in the conduct of his criminal activities he is said to have used his position with the greyhound industry during the Covid-19 lockdown to transport prohibited drugs in greyhound trailers. There is, therefore, a nexus between the conduct with which he has been charged, the basis for his disqualification and the limitations imposed on his conduct under the exemption granted to him with the industry with which this appellant is associated.

27. The Tribunal accepts that the appellant might be described as an innocent party, but that is balanced by the fact that she takes with the exercise of a licence the privilege of it and the known limitations which the Tribunal has described that fall upon a licensed person, vis-à-vis a disqualified person.

28. The appellant has no prior matters. She is highly spoken of. And the prospects, therefore, in this balancing exercise of her being involved in the permission of breaches by her son is a much reduced possibility. That is reinforced by the fact that the son Jackson Chaker has restrictions imposed upon him on his exemption.

29. The substantial ingredient is one of integrity – s 11, to which the Tribunal has made reference. That integrity here is driven by the very serious order imposed upon the son Mr Jackson Chaker of a disqualification. There is the added nexus to which reference has been made.

30. The Tribunal deals with the submission for the appellant that the respondent has delayed its approach to this matter to such an extent that it is inappropriate to now visit it or, as was intended, visit it on 6 September, upon the appellant.

31. The Tribunal does not find weight to be given to that submission on the factual chronology it summarised. In essence, once the serious charges were available, notice of proposed disciplinary action was taken within a couple of days. That action was taken to disqualify on 14 June when Mr Jackson Chaker was still in custody. He was not released on bail until 17 June. He made his exemption application and on 13 July a decision was made. The date of that application for exemption and reasons to support it are not before the Tribunal. In any event, the Tribunal is not persuaded by the appellant that the delay between his release on 17 June and the granting of the exemption on 13 July was such that it was open to the respondent to have instituted the action that it did on 26 July against the appellant earlier.

32. The Tribunal is not persuaded that on 19 February, when first charged, or on 4 March, when first released, on 31 May, when arrested and back into custody, that there was then an obligation upon the respondent to commence action against the appellant in the terms it has. It was not apparent to the appellant until the exemption was granted on 13 July that it was necessary to consider the imposition of a condition. In fact, it may have been thought about and pondered about, but it was not necessary to do so. He was not permitted to reside there by the order of disqualification of 14 June, and that itself was made, in the Tribunal's opinion, with allowance for procedural fairness, within a reasonable time.

33. Therefore, the Tribunal does not decline to exercise its discretion based upon that chronology and suggested delay and a need to have done it earlier.

34. The Tribunal accepts that in the appellant's history there have been no breaches of the rule which would provide reinforcement for the imposition of these conditions.

35. The Tribunal accepts that on periods of time that Mr Jackson Chaker has been entitled to reside at the property for various reasons that there is nothing about his conduct which has come under adverse notice.

36. The Tribunal accepts that since the exemption to reside was granted, nothing untoward has been identified so far as the Tribunal is concerned.

37. The further exercise in relation to the matter of discretion is a resourcing issue for the respondent.

38. In relation to that, the Tribunal accepts that as a matter of practical reality it is not open to the respondent to visit the premises of the appellant with a frequency which would be necessary to ensure compliance with the exemption that has been imposed upon Mr Jackson Chaker and, therefore,

required to be complied with by the appellant. Whilst there are no facts and circumstances to go with that, it is an obvious implication. This appellant is not the only licensed person with whom the respondent has to deal.

39. The other side of it – and it has not been the subject of submissions – is that there is a balance to the CCTV obligation by reason of the fact that it removes from the appellant the difficulties that could arise should unexpected steward or inspector-type visits be inflicted upon her. And, potentially, with some frequency. That is a balance that makes the conditions less onerous upon her exercise of a licence than would otherwise be the case.

40. In the end, the total balance falls back on s 11. It is reinforced by the resourcing issue and the gravity of the charges with which the son Jackson Chaker is subject. And, in addition, that slight nexus, to which reference has been made, of his conduct whilst a licensed person, balanced as it is by all of the other factors which have been assessed in favour of the appellant.

41. The Tribunal determines that the discretion should be exercised under s 49(4) for all of those reasons which have been identified in favour of the respondent and that those reasons outweigh the reasons advanced by the appellant in her favour.

42. That means that pursuant to s 49(4) of the Act, the Tribunal imposes the conditions on the registration which were outlined at the beginning of this decision. The only issue perhaps is, as the Tribunal has been asked to impose conditions, whether there is any submission in respect of the actual terminology of those conditions, not their import.

SUBMISSIONS MADE IN RELATION TO TERMINOLOGY OF CONDITIONS

43. The Tribunal imposes the following condition pursuant to s 49(4) of the Greyhound Racing Act:

1. Installation of CCTV. Ms Chaker 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 Chaker at a suitable and agreed upon location and provides appropriate vision of her kennels and associated training areas and this footage is to be provided to the Commission upon request.
2. Commission inspectors can attend Ms Chaker’s property at a suitable time to assist with the location of the CCTV cameras.

44. Either party has liberty to apply to the Tribunal for variation of the terms of those two conditions.

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

46. The Tribunal orders the appeal deposit forfeited forfeited.
