

# RACING APPEALS TRIBUNAL

**DANA LOUISE BURNS**

Appellant

**GREYHOUND WELFARE AND INTEGRITY COMMISSION**

Respondent

## DETERMINATION

**In the matter of a Stay Application by the Appellant  
6 June 2023**

### Introduction

1. The Appellant, Dana Louise Burns (**Ms Burns**) is a registered owner/trainer with the Respondent, Greyhound Welfare and Integrity Commission (**GWIC**).
2. Following an investigation, the GWIC determined that Ms Burns had on 22 November 2022 received transfers of greyhounds “Sketchy Comrade” and “Sketchy Deliver” into her custody whilst the original trainer, Mr Allan Ivers, was subject to disciplinary action and that by doing so Ms Burns breached the GWIC Transfer Policy (**Policy**). Mr Ivers is also Ms Burns’s husband.
3. On 28 April 2023, Ms Burns was issued with a notice of charge and proposed disciplinary action (**Notice**). Ms Burns was charged with an offence under Rule 156(w) of the NSW Greyhound Racing Rules (**Rules**) which requires a participant to comply with a policy or code of practice such as the GWIC Transfer Policy. The Notice proposed a penalty of a nine-month disqualification and invited Ms Burns to a hearing on 30 May 2023.
4. On 29 May 2023, Ms Burns’ legal representatives entered a plea of guilty on behalf of Ms Burns and provided written submissions as to penalty. Ms Burns relies on those submissions on this application also.
5. On 31 May 2023, the GWIC determined that, having regard to Ms Burns’ plea of guilty and the other matters referred to in its determination, Ms Burns was to be disqualified for 29 weeks commencing midnight Saturday, 3 June 2023 and expiring 12:01 AM on Saturday, 23 December 2023 (**Decision**).
6. By notice of appeal dated 1 June 2023, Ms Burns appeals the Decision. The appeal is only as to penalty.
7. Ms Burns has also made an urgent application for a stay which is opposed by the GWIC. The principal ground supporting the urgency of the application was a concern by Ms Burns

that the Decision would require her and her young family to vacate her home which is also the registered greyhound training facility. In these circumstances and, having regard to the fact that the Decision was to commence during a weekend, on 1 June 2023 the Tribunal ordered an interim stay up to and including the determination of the stay application.

8. The Tribunal notes that irrespective of the interim stay, the GWIC has indicated in an email to the Tribunal Secretary on 2 June 2023 that it would agree to an exemption allowing Ms Burns to remain at her residential address for the duration of any disqualification period, on the proviso that she does not enter any area in which greyhounds are kept or interact with them in any way.
9. Ms Burns presses her application for a stay notwithstanding the concession made by the GWIC.

### **Principles applicable to a stay**

10. Regulation 14 of the Racing Appeals Tribunal Regulation 2015 (NSW) (**Regulations**) provides, inter alia, that the Tribunal may, on written application by an appellant, order that the decision appealed against is not to be carried into effect, or is to be carried into effect only to the extent specified in the order pending the determination of the appeal. The Regulation is otherwise silent as to the test to be applied for the consideration of a stay application.
11. The manner in which the Tribunal should exercise its discretion to order a stay has been the subject of prior determinations by the Tribunal and is derived from well-established authorities. Those principles may be conveniently summarised as follows:
  - (a) it is not necessary to make out special or exceptional circumstances for a stay: *Alexander v Cambridge Credit Corp Ltd* (1985) 2 NSWLR 685 at 694-5;
  - (b) an applicant must show that the appeal raises serious issues for determination and that there is a real risk that they will suffer damage or prejudice if a stay is not granted and will not be redressed by a successful appeal: *Kalifair Pty Ltd v Digi-Tech (Australia) Ltd* (2002) 55 NSWLR 737 at [17]-[20];
  - (c) consideration should be given first, as to whether the appeal raises a serious question to be tried, in the sense of arguable grounds, and if so, where the balance of convenience lies: *Alexander v Cambridge Credit Corp Ltd* (1985) 2 NSWLR 685 at 694; *Kalifair Pty Ltd v Digi-Tech (Australia) Ltd* (2002) 55 NSWLR 737 at [18]; *Vaughan v Dawson* [2008] NSWCA 169 at [17]);
  - (d) the applicant must demonstrate a proper basis for a stay which will be fair as between the respective interests of the parties (*Alexander v Cambridge Credit Corp Ltd* (1985) 2 NSWLR 685 at 694; *Adeels Palace Pty Ltd v Moubarak* [2009] NSWCA 130 at [5]; *Bar Association of NSW v Stevens* [2003] NSWCA 95 at [83]);
  - (e) whether an appeal, if successful, will be rendered nugatory if a stay is not granted (*TCN Channel 9 Pty Ltd v Antoniadis [No. 2]* (1999) 48 NSWLR 381; *Newcrest Mining v Industrial Relations Commission* [2005] NSWCA 91); and
  - (f) the mere filing of an appeal does not demonstrate an appropriate case or discharge the onus.

### The submissions

12. In support of her application for a continuation of the stay, Ms Burns submitted, in summary, that:
- (a) the objective seriousness of the offending in this case is at the very lowest end of the scale for offending for breaches of Rule 156(w): when the greyhounds were transferred to Ms Burns on or about 22 November 2023 kennel notifications were lodged; accordingly, there was no attempt to hide the fact of the transfer from the GWIC; the greyhounds remained in the care of Ms Burns for a very short period of time, 14 days for Sketchy Deliver and less than three months in the case of Sketchy Comrade; Ms Burns was not aware that she may have breached the Policy until she was notified of the charge on 28 April 2023, several months after the greyhounds had already left her care;
  - (b) this is her first offence; she has otherwise had an unblemished disciplinary history and is a person of good character and repute;
  - (c) she has shown genuine remorse;
  - (d) she lives at the property where her dogs are kennelled with her two young daughters aged 3 and 6. Ms Burns earns a modest income of \$1,000 - \$1,500 per week (net);
  - (e) the offending was not deliberate; she has not acted deceitfully nor tried to hide her conduct at any time. It was a genuine oversight and Ms Burns has addressed that conduct so that it will not be repeated and she will take better care to read and understand the details of policies in the future;
  - (f) there is limited precedent available in respect of other persons who have been dealt with for a breach of the Policy, which is relatively new, having been in operation since April 2021. However, some guidance may be gleaned from breaches of other policies that have been dealt with as breaches of Rule 156(w) (or its predecessor Rule 86(ag)) such as the decisions of the GWIC in *Kraeft* (21.11.22), *Ballentine* (5.12.22), *Duclos* (27.6.22) and *Cassar* (11.6.21). Each of those cases involved facts that were more objectively serious than Ms Burns's offending and none of them involved a disqualification period being imposed. Largely, the penalty imposed in those cases was a fine or, for a repeat offender, such as in *Kraeft* and *Cassar*, a short period of suspension; and
  - (g) in all the circumstances, a reprimand or, alternatively, a fine would be an appropriate penalty.
13. In opposing the application for a continuation of the stay, the GWIC submitted, in summary, that:
- (a) the principal objectives of the GWIC include both to safeguard the integrity of greyhound racing and to maintain public confidence in the industry;
  - (b) the objective seriousness is at the higher end because Mr Ivers (Ms Burns's spouse) the participant from whom the greyhounds were received, was under investigation at the time for and ultimately found guilty of the offences of race fixing and placing bets on greyhound racing on behalf of a minor. There is therefore a need for specific deterrence, given the factual basis of this offending;

- (c) the Policy goes to the heart of regulating integrity within the greyhound racing industry. There is therefore a need for general deterrence to ensure the industry is aware of the importance that the GWIC places on ensuring that the Policy is complied with;
- (d) it would grant an exemption to permit Ms Burns to remain at the residential address for any period of disqualification imposed therefore removing any need for her to uproot her young family from their home; and
- (e) the penalty has not yet come into effect due to both a delayed commencement date and the interim stay issued by the Tribunal. A hearing of the substantive appeal could be conducted expeditiously on behalf of the GWIC and it could be heard prior to a time when Ms Burns would be prejudiced by any short delay.

14. In reply, Ms Burns submitted that:

- (a) neither the integrity of greyhound racing nor public confidence in the industry was affected by the offending in this case;
- (b) any punishment on the basis of the conduct of her husband would be wrong at law and, moreover, Mr Ivers was not found guilty of “race fixing” as alleged; he pleaded guilty to “offering” to accept money to scratch a greyhound. The charge was not that he in fact accepted money to do so and it therefore cannot be said that the integrity of the races in that matter were affected in anyway by his conduct. Ms Burns should not be punished for any conduct involving her spouse, nor can specific deterrence apply in respect of it;
- (c) the fact that the GWIC proposed an initial penalty of nine months disqualification does not make the proposal correct. Nor does it rise to the level of precedent or parity. The GWIC does not attempt to grapple at all with the precedents relied upon by Ms Burns to demonstrate that fines are routinely imposed for like conduct. Nor is it apparently able to point to a single precedent that would justify the imposition of such a harsh penalty in analogous circumstances. So long as the Tribunal is satisfied that it is at least arguable that a reprimand or fine may be imposed in this case, Ms Burns has satisfied the first limb of the test to be applied on the stay application;
- (d) an exemption to allow Ms Burns to reside at her property does not ameliorate all of the very onus consequences of Ms Burns being a disqualified person. She would lose greyhounds presently in her care, need to transfer the ownership of greyhounds that she owns and she could not attend races or have anything to do with the industry. Those are consequences that are not required in all the circumstances of this case and there is a real risk that she will suffer prejudice or damage, if the stay is not granted, which will not be redressed by a successful appeal;
- (e) the appeal could be conducted expeditiously (and indeed on the papers and on the evidence before the original decision-makers). That is a matter which favours Ms Burns and not the GWIC. Allowing a short period for the decision to be made, will not prejudice the GWIC.

## Consideration

15. In the consideration that follows, the Tribunal has had regard to all of the submissions made by the parties and summarised in the preceding paragraphs. However, the Tribunal proposes to only refer to such of those submissions which are necessary to explain its reasoning.
16. The application for a stay gives rise to two essential issues. First, whether the appeal raises a serious question to be tried, in the sense of arguable grounds, and secondly, where the balance of convenience lies.

### As to whether there is an arguable case

17. The GWIC Penalty Guidelines 2022 provide no direct guidance in relation to penalties that apply to a breach of the Policy by a participant beyond setting out a number of “important considerations” which the GWIC takes into account when imposing a penalty, including the need to:
  - ensure a level playing field for all participants and the betting public;
  - ensure that animal welfare is protected in the industry;
  - maintain community trust and public confidence in the integrity of greyhound racing;
  - deter the individual from committing similar offences;
  - deter others in the industry from committing similar offences;
  - demonstrate to the industry that the relevant conduct is not acceptable; and
  - ensure any punishment imposed is appropriate and proportionate, taking into account the specific circumstances of the individual and the offence committed.
18. Ms Burns submits that there is limited precedent available in respect of other persons who have been dealt with for a breach of the Policy, which is relatively new, having been in operation since April 2021. However, by reference to previous decisions of the GWIC referred to in paragraph 12(f) of these reasons, she contends that each of those cases involved facts that are more objectively serious than her offending and none involved a period of disqualification period being imposed. Largely, the penalty imposed in those cases was a fine or, for a repeat offender, such as in *Kraeft* and *Cassar*, a short period of suspension. In no circumstance, was a disqualification imposed.
19. Ms Burns also refers to a number of subjective circumstances which she contends mitigate the severity of any sanction.
20. The GWIC does not cavil with those submissions but contends that the particular facts of this case, especially the conduct of Ms Burns’s spouse, justifies the penalty imposed.
21. Ultimately, it will be for the Tribunal to determine that any penalty is appropriate and proportionate having regard to the objective and subjective circumstances of the offending and the parity principle.
22. The parties’ submissions provide articulate and cogent reasons in support of the competing contentions. They also make plain that there is a clearly arguable case as to the appropriate penalty.
22. The Tribunal is accordingly satisfied that the appeal raises a serious question to be tried.

As to the balance of convenience

23. The Tribunal is satisfied that the balance of convenience favours Ms Burns. The disqualification will likely impose a financial burden upon Ms Burns and will have other necessary consequences including the loss of the greyhounds presently in her care, the need to transfer the ownership of greyhounds that she owns and an inability to attend races or have anything to do with the industry. There is also a real risk that she will suffer prejudice or damage, if the stay is not extended, which will not be redressed by a successful appeal.
24. The GWIC does not identify any prejudice that it will suffer as a consequence of the continuation of the stay pending the hearing of the appeal assuming that it proceeds as expeditiously as practicable.

**Determination**

25. The application for an extension of the stay is granted.

**Orders**

26. Pursuant to Regulation 14, the Tribunal orders that the decision of the GWIC the subject of the appeal not be carried into effect pending the determination of the appeal or other order on condition that Mr Burns prosecutes the appeal with expedition.

A.P. Lo Surdo SC  
Acting Racing Appeals Tribunal