

**DECISION ON AN INTERNAL REVIEW APPLICATION UNDER
SECTION 91 OF THE *GREYHOUND RACING ACT 2017***

Matter for determination	Decision dated 9 April 2020 by Mr Matthew Tutt, Director Legal Services, under section 59 of the <i>Greyhound Racing Act 2017</i> to disqualify Mr Matthew Philip Martin as a greyhound racing industry participant for 15 months [with 3 weeks and 2 days suspended due to a period of interim suspension served], effective immediately
Internal review decision date	25 June 2020
Internal review decision by	Ms Judy Lind Chief Executive Officer
Internal review decision summary	Confirm the decision of 9 April 2020 by disqualifying Mr Martin for 15 months [with 3 weeks and 2 days suspended due to a period of interim suspension served].

REASONS FOR DECISION

1. These are the reasons following an application by Mr Matthew Philip Martin (“**Mr Martin**”) for internal review under the *Greyhound Racing Act 2017* (“**Act**”) of a decision of the Director Legal Services of the Greyhound Welfare & Integrity Commission (“**Commission**”) to disqualify Mr Martin for 15 months [with 3 weeks and 2 days suspended due to a period of interim suspension served], effective from the date of the decision which was 9 April 2020.
2. This is a reviewable decision within the meaning of section 91(1) of the Act. As a person who was not substantially involved in making the reviewable decision, I have been directed by the Commission to deal with this application.
3. Under section 91(7) of the Act, an internal reviewer is empowered to:
 - Confirm the reviewable decision the subject of the application; or
 - Vary the reviewable decision; or
 - Revoke the reviewable decision.

Background

4. On 14 December 2019 ‘Federal Wozza’, a greyhound trained by Mr Martin, competed in race 10 at The Gardens Greyhound and Sporting Complex in Newcastle. Federal Wozza placed first. In accordance with usual procedure for a race-winner, a urine sample was taken from the greyhound.
5. The sample was analysed by Racing Analytical Services Limited, an accredited laboratory contracted by the Commission. The analysis detected the presence of amphetamine, which under Rule 79A(2) of the Greyhound Racing Rules (“**Rules**”) is a permanently banned prohibited substance. This means that no amount of amphetamine should be present in a greyhound.

6. As is customary when a detection occurs, the sample was further analysed by an independent accredited laboratory, on this occasion the Australian Racing Forensic Laboratory. This analysis confirmed the presence of amphetamine.
7. On 28 February 2020, the Commission commenced disciplinary action against Mr Martin under section 58(1)(a) of the Act for a contravention of the Rules, specifically Rule 83(2)(a).
8. Section 58(1) of the Act provides:
 - (1) The Commission may take disciplinary action under this Division against or in respect of a relevant person if the Commission is of the opinion that the person—
 - (a) has contravened a provision of this Act, the regulations, the code of practice or the greyhound racing rules, or
 - (b) is not a fit and proper person to be registered (having regard in particular to the need to protect the public interest as it relates to the greyhound racing industry).
9. Rules 83 of the Rules are as follows:
 - (2) The owner, trainer or person in charge of a greyhound-
 - (a) nominated to compete in an Event;
 - (b) presented for a satisfactory, weight or whelping trial or such other trial as provided for pursuant to these Rules; or
 - (c) presented for any test or examination for the purpose of a period of incapacitation or prohibition being varied or revoked
 shall present the greyhound free of any prohibited substance.
 - (3) The owner, trainer or person in charge of a greyhound presented contrary to sub-rule (2) shall be guilty of an offence.
 - (4) A greyhound presented for an Event contrary to sub-rules (1) or (2) shall be disqualified from the Event or any benefit derived from a trial or test.
10. On 18 March 2020, the Commission imposed an interim suspension on Mr Martin under section 59(1)(d) of the Act.
11. Shortly afterwards, the Commission charged Mr Martin with a breach of Rule 83(2)(a).
12. Mr Martin admitted the charge. He elected to have the disciplinary proceedings conducted in writing.
13. To that end, Mr Martin provided written submissions. These were considered by Mr Matthew Tutt, the Commission's Director Legal Services ("**original decision-maker**").
14. The original decision-maker determined the disciplinary action on 9 April 2020. The written decision records that all evidence was considered, including:
 - Mr Martin had been a registered trainer for a short period of time, of approximately 19 months at the time of the offence;
 - Mr Martin had no history of any prohibited substance matters;
 - The detected prohibited substance was at a comparatively low level;
 - Mr Martin was serving an interim suspension for the offence being the period from 18 March 2020 to 9 April 2020;

- NSW greyhound racing penalty guidelines and precedents;
- Mr Martin's submissions in mitigation of any penalty, including in relation to his personal and financial circumstances, the review of his animal husbandry practices, and his remorse.

15. The original decision-maker found the charge proven and took the following disciplinary action against Mr Martin under section 59(1)(d) of the Act:

- Disqualifying Mr Martin for a period of 15 months, with:
 - Allowance for three weeks and two days being the period served under the interim suspension; and
 - The remaining period of disqualification to be served from 10 April 2020 to 16 June 2021 inclusive.

This internal review application

16. On 15 April 2020, Mr Martin lodged an application for internal review of the original decision-maker's decision.

17. In undertaking this review, I have:

- Considered the submissions put forward by Mr Martin's solicitor, including 4 references;
- Reviewed the body worn camera footage taken on the day, 22 January 2020, Mr Martin was served with the notice of finding of the prohibited substance;
- Reviewed the brief of evidence relied upon by the Commission in proving the charges;
- Reviewed the level of penalties imposed by the Commission, or the Commission's predecessor GRNSW, in similar matters;
- Reviewed relevant case law in similar matters in other jurisdictions and/or racing appellant bodies.

18. I restrict my consideration solely to the question of the appropriateness of the penalty imposed on Mr Martin.

Summary of facts

19. The post-race swab sample taken from 'Federal Wozza' on 14 December 2019 was analysed and confirmed as containing the presence of amphetamine. As a result, Mr Martin was charged with the following particulars:

R83(2)(a)

Mr Martin presented the greyhound 'Federal Wozza' for the purposes of competing in race 10 at the Gardens meeting on 14 December 2019 in circumstances where the Greyhound was not free of any prohibited substance.

20. The substance detected in the greyhound was amphetamine. Amphetamine is a permanently banned prohibited substance under the Rules. The Rules relevantly provide:

R79A (2) The following substances are deemed to be Permanently Banned Prohibited Substances and shall include a metabolite, isomer or artefact of any of the substances specified within.

(vi) Diacetylmorphine (heroin), benzoylmethylecgonine (cocaine), cannabinoids and lysergic acid diethylamide (LSD), gamma-hydroxybutyric acid (GHB) and its salts and amphetamines including **amphetamine**, methylamphetamine and methylenedioxy-methamphetamine (MDMA).

21. The reported level of amphetamine (whilst not relevant to the charge as the substance falls into the definition of permanently banned prohibited substances) was 3 ng/mL, a level regarded as low.

Consideration on whether the penalty imposed by the original decision is appropriate

22. In determining whether the penalty imposed by the original decision-maker is appropriate in the circumstances I have considered all relevant factors, including that:

- Mr Martin had been a registered trainer for a short period of time, of approximately 19 months at the time of the offence;
- Mr Martin's plea of guilty to the charge;
- Mr Martin had no history of any prohibited substance matters;
- The detected prohibited substance was at a comparatively low level;
- Mr Martin was serving an interim suspension for the offence, being the period from 18 March 2020 to 9 April 2020, while the disciplinary action was pending;
- There are NSW greyhound racing penalty guidelines and precedents;
- Mr Martin's submissions in mitigation of any penalty, including in relation to his personal and financial circumstances, the review of his animal husbandry practices and his remorse;
- The submissions provided by Mr Martin as part of the application for internal review;
- References provided in support of Mr Martin as part of the application for internal review.

Decision

23. I find that the original penalty is appropriate in the circumstances and consistent with like matters involving presentation charges relating to permanently banned prohibited substances.

24. In accordance with section 91(7)(a) of the Act, I confirm the original decision, namely:

That Mr Martin be disqualified for a period of 15 months [with a period of 3 weeks and 2 days suspended being the period served under interim suspension].

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