

**RACING APPEALS  
TRIBUNAL  
NEW SOUTH WALES**

**TRIBUNAL MR D B ARMATI**

**24 September 2021**

**IN THE MATTER OF A STAY APPLICATION  
BY JADE MURRAY**

**RESPONDENT GWIC**

**DECISION:**

- 1. Application granted**
- 2. The decision of GWIC of 2 August 2021 not be carried in to effect on condition.**

1. The matter before the Tribunal is an appeal by Mr Murray, who is the owner and trainer of the greyhound Rommel.

2. On 2 August 2021, GWIC, under the provisions of Rule 14(1)(c) of the Greyhound Racing Rules, prohibited the greyhound from competing in any event on the basis that it is necessary for the proper control and regulation of greyhound racing. A written decision was given. Notice of appeal was lodged on 9 August and with it a stay application. Hearing on the stay commenced on 12 August but was adjourned to enable the appellant to obtain legal advice. He is now represented.

3. The evidence has comprised the decision, the notice of appeal and the supporting documentation on the stay application lodged by the appellant and, in addition, the submissions by both parties.

4. The Tribunal starts by having regard to the Greyhound Racing Act 2017, which, as part of its introductory words, requires the Commission to act for the welfare of the greyhound.

5. Section 11 of that Act provides, in summary terms, three key provisions: (a) to protect the welfare of the greyhound; (b) to safeguard the integrity of the racing industry and (c) to maintain public confidence in the industry. And that is a paraphrase of the provisions.

6. The mischief here which is said to require the Commission to act in accordance with section 11 is that there is said to have been a breach of the Prevention of Cruelty to Animals Act 1979 and, in particular, section 21A of that Act. Section 21A is in terms that, under the heading "Firing prohibited":

"A person who applies a thermal stimulus (such as hot wires) to the leg of an animal with the intention of causing tissue damage and the development of scar tissue around tendons and ligaments of the leg is guilty of an offence."

7. The Tribunal notes that the offence provisions carry with them substantial penalties. It is a reflection of the gravity of that particular breach of that particular Act that is for consideration here so far as it relates back to welfare of the greyhound.

8. The fact is that the Greyhound Racing Rules themselves are silent in respect of this particular provision in section 21A. There is, therefore, no specific rule preventing such a treatment. The overall arch of the rules, however, is of course designed not only for integrity but also for welfare, and that relates back to section 11 of the Greyhound Racing Act. The mandate, therefore, of GWIC is to assess matters such as this, a burden which now falls on the Tribunal, and to determine whether those welfare issues are such that it is appropriate that the endorsement under 14(1)(c) be kept on foot.

9. The Tribunal has set out the required legal principles on numerous past occasions and no different approach is advanced by the parties.

10. The issue on an arguable case is the appellant's submission that s21A was not breached because pin firing did not take place. An extract of a paper yet to be published, and presumably not peer reviewed, by the treating vet was lodged on 16 September 2021. It is submitted by the appellant that a legal argument will then follow on the meaning of s21A and whether liability will attach for the procedure in fact provided. Further details and analysis is not required on a stay application. Submissions are made on the balance of convenience that there will be further delay, financial loss, there are no current health issues, it is not necessary to prevent the greyhound racing, the appeal may prove abortive.

11. The respondent faintly submits on the arguable case but does submit the balance of convenience has not been established. It is submitted that a criminal procedure may have been effected and this is important on welfare. It is submitted that a hearing can take place in the short term.

12. In the recent similar application by Yarnold the Tribunal closely canvassed welfare issues. They are adopted. Here the facts have moved on.

13. An arguable case is demonstrated on the basis there may have been no breach of s21A and therefore the welfare and integrity concerns will not arise.

14. On balance of convenience the Tribunal is satisfied that the case to be run in due course, the first group of which have arisen, enables a positive finding. It would be unfair that a penalty on the greyhound continue on this arguable case finding and such a determination outweighs the welfare and integrity concerns.

15. The Tribunal emphasises that this is not a final determination of the appeal; it is simply a determination on the evidence currently before it.

16. In those circumstances, the application for a stay of the decision is granted.

17. The Tribunal orders that the decision of GWIC of 2 August 2021 not be carried in to effect pending the determination of the appeal on condition that the appellant prosecutes the appeal expeditiously.

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**TRIBUNAL MR D B ARMATI**

**24 September 2021**

**IN THE MATTER OF A STAY APPLICATION BY  
BARNETT**

**RESPONDENT GWIC**

**DECISION:**

- 1. Application granted**
- 2. The decision of GWIC of 2 August 2021 not be carried in to effect on condition.**

1. The matter before the Tribunal is an appeal by Mr Barnett, who is the owner and trainer of a greyhound

2. On an unknown date GWIC, under the provisions of Rule 14(1)(c) of the Greyhound Racing Rules, prohibited the greyhound from competing in any event on the basis that it is necessary for the proper control and regulation of greyhound racing. A written decision was given. Notice of appeal was lodged and with it a stay application.

3. This appeal and application are travelling with Murray. The Tribunal has no separate papers or submissions on this appeal. Details of the appellant and the greyhound or relevant dates are unknown. This finding is based upon the submissions entitled in the names of Barnett and Murray by both parties, by consent.

4. The Tribunal starts by having regard to the Greyhound Racing Act 2017, which, as part of its introductory words, requires the Commission to act for the welfare of the greyhound.

5. Section 11 of that Act provides, in summary terms, three key provisions: (a) to protect the welfare of the greyhound; (b) to safeguard the integrity of the racing industry and (c) to maintain public confidence in the industry. And that is a paraphrase of the provisions.

6. The mischief here which is said to require the Commission to act in accordance with section 11 is that there is said to have been a breach of the Prevention of Cruelty to Animals Act 1979 and, in particular, section 21A of that Act. Section 21A is in terms that, under the heading "Firing prohibited":

"A person who applies a thermal stimulus (such as hot wires) to the leg of an animal with the intention of causing tissue damage and the development of scar tissue around tendons and ligaments of the leg is guilty of an offence."

7. The Tribunal notes that the offence provisions carry with them substantial penalties. It is a reflection of the gravity of that particular breach of that particular Act that is for consideration here so far as it relates back to welfare of the greyhound.

8. The fact is that the Greyhound Racing Rules themselves are silent in respect of this particular provision in section 21A. There is, therefore, no specific rule preventing such a treatment. The overall arch of the rules, however, is of course designed not only for integrity but also for welfare, and that relates back to section 11 of the Greyhound Racing Act. The mandate, therefore, of GWIC is to assess matters such as this, a burden which now falls on the Tribunal, and to determine whether those welfare issues are such that it is appropriate that the endorsement under 14(1)(c) be kept on foot.

9. The Tribunal has set out the required legal principles on numerous past occasions and no different approach is advanced by the parties.

10. The issue on an arguable case is the appellant's submission that s21A was not breached because pin firing did not take place. An extract of a paper yet to be published, and presumably not peer reviewed, by the treating vet was lodged on 16 September 2021. It is submitted by the appellant that a legal argument will then follow on the meaning of s21A and whether liability will attach for the procedure in fact provided. Further details and analysis is not required on a stay application. Submissions are made on the balance of convenience that there will be further delay, financial loss, there are no current health issues, it is not necessary to prevent the greyhound racing, the appeal may prove abortive.

11. The respondent faintly submits on the arguable case but does submit the balance of convenience has not been established. It is submitted that a criminal procedure may have been effected and this is important on welfare. It is submitted that a hearing can take place in the short term.

12. In the recent similar application by Yarnold the Tribunal closely canvassed welfare issues. They are adopted. Here the facts have moved on.

13. An arguable case is demonstrated on the basis there may have been no breach of s21A and therefore the welfare and integrity concerns will not arise.

14. On balance of convenience the Tribunal is satisfied that the case to be run in due course, the first group of which have arisen, enables a positive finding. It would be unfair that a penalty on the greyhound continue on this arguable case finding and such a determination outweighs the welfare and integrity concerns.

15. The Tribunal emphasises that this is not a final determination of the appeal; it is simply a determination on the evidence currently before it.

16. In those circumstances, the application for a stay of the decision is granted.

17. The Tribunal orders that the decision of GWIC not be carried in to effect pending the determination of the appeal on condition that the appellant prosecutes the appeal expeditiously.