Decision

INQUIRY NUMBER:	EXP 005, 006, 007, and 008, of 2018
PARTICIPANTS:	James Cortis, Bradley Eberand; Michael Eberand; Peter Lagogiane
PANEL MEMBER(S):	Mr Adrian Anderson (**Steward**)
DATE OF DECISION:	22 January 2019

Introduction

1. The participants to this Inquiry have each been charged in relation to their involvement in the export of a greyhound to Dubai without the requisite approval from Greyhounds Australasia ("**GA"**).

2. Mr Lagogiane (**Lagogiane**) has pleaded guilty to the charge against him. I will deal with his penalty in these reasons.

3. The remaining three have pleaded not guilty.

4. The greyhound in question, Wandering Mija (**WM**), was whelped on 14 August 2013, with Michael Eberand (**Eberand Snr**) the breeder and owner.

5. A transfer of ownership was registered on 18 March 2018 to a syndicate comprising Mr James Cortis (**Cortis**) and Mr Eberand Jnr (**Eberand Jnr**).[1]

6. Eberand Jnr was registered as lead owner of the syndicate and Eberand Snr remained the trainer.

7. Lagogiane, who was a greyhound trainer for the Crown Prince in Dubai from December 2014, made contact with Eberand Snr around June 2015 and enquired if WM was available for sale. Lagogiane said that if Eberand Snr was happy to sell WM, he should take it to Stephen Farrugia (**Farrugia**) at Glengarrie trial track and Farrugia would look after it.

8. On 6 July 2015, Eberand Snr delivered WM to Farrugia at the Glengarrie trial track together with signed transfer papers and was given $5,000 in cash on delivery.

9. Eberand Snr, Eberand Jnr and Cortis knew that Farrugia intended to export WM to Dubai.

10. The next day, a notice of transfer of ownership for WM was lodged with GRNSW notifying GRNSW that Farrugia had taken ownership of WM from Cortis and Eberand Jnr.

11. Farrugia took care of the quarantine requirements and exported WM from Australia to Dubai in or about August 2015.

12. Farrugia pleaded guilty on 30 March 2017 to a charge of exporting WM to another country without a valid passport and certified pedigree issued by GA in breach of Rule 124(1).[2]

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[1] Eberand Snr's statutory declaration dated 31 May 2018 at [5]; Eberand Jnr's statutory declaration dated 31 May 2018 at [2].

[2] See decision of 23 October 2017 for Inquiry numbers EXP186, 187 and 188 of 2016.

13. Although the charge did not specify to which country WM had been exported, Farrugia had indicated that WM was one of 98 greyhounds he had exported to Macau and the Inquiry was then under the impression that WM had been exported to Macau. It subsequently emerged that WM had in fact been exported by Farrugia to Dubai and not to Macau.

Summary of charges

14. Eberand Snr has been charged that:

    (a) in breach of rule 86(n), he knowingly aided, abetted, counselled or procured [Stephen Farrugia] to commit a breach of Rule 124(1) by the export of [WM] without a greyhound passport and certified pedigree issued by GA; and

    (b) in breach of rule 86(o), in facilitating the export of [WM] to Dubai without a valid passport and certified pedigree, he has done a thing that is negligent, improper, or constitutes misconduct.

15. Eberand Jnr has been charged that, in breach of rule 86(o), in facilitating the export of [WM] to Dubai without a valid passport and certified pedigree, he has done a thing that is negligent, improper, or constitutes misconduct.

16. Cortis has been charged that, in breach of rule 86(o), in facilitating the export of [WM] to Dubai without a valid passport and certified pedigree, he has done a thing that is negligent, improper, or constitutes misconduct.

17. Lagogiane has been charged that, in breach of rule 86(o), in facilitating the export of [WM] to Dubai without a valid passport and certified pedigree, he has done a thing that is negligent, improper, or constitutes misconduct.

Relevant provisions

18. Rule 86(n) provides:

> A person (including an official) shall be guilty of an offence if the person knowingly aids, abets, counsels or procures a person to commit a breach of these Rules.

19. Rule 86(o) provides:

> A person (including an official) shall be guilty of an offence if the person has, in relation to a greyhound or greyhound racing, done a thing, or omitted to do a thing, which, in the opinion of the Stewards or the Controlling Body, as the case may be, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct.

20. Rule 124(1) provides:

> Any person intending to export a greyhound, being the subject of these Rules or to those of a relevant Registration Controlling Body, from Australia or New Zealand to any other country (excluding Australia or New Zealand) must, prior to meeting the quarantine and inspection service requirements for the relevant country, obtain a greyhound passport and certified pedigree issued by Greyhounds Australasia.

21. Rule 92(1) provides:

> The Controlling Body or Stewards may regulate their own procedure and are not bound by formal Rules and practices as to evidence, but may inform themselves as to any matter in such manner as they think fit.

Summary of conclusions

22. In summary, I have concluded that:

    (a) Eberand Snr is guilty of both charges.

(b) Eberand Jnr is not guilty of the Rule 86(o) charge against him.

(c) Cortis is not guilty of the Rule 86(o) charge against him.

(d) Lagogiane is found guilty of the Rule 86(o) charge, given his plea, and fined.

Issues to be determined

23. The appropriate penalty for Lagogiane is to be determined in this decision. I deal with that issue, having regard to the facts that I have found as proven, after dealing with the other charges.

24. At the hearing on 31 May 2018, Mr F C Corsaro SC, appearing for Eberand Snr and Eberand Jnr, submitted that Rule 124 was ultra vires the rule-making power contained in the *Greyhound Racing Act 2009* (NSW). In his written submissions in reply of 19 July 2018, however, the argument was not pressed.

25. Mr Corsaro identified the following issues that need to be determined with respect to liability for his clients:

(a) whether there is a reasonable apprehension of bias in this Inquiry especially given the involvement in it of the General Counsel for GRNSW;

(b) the elements of the 86(o) charges;

(c) the elements of the 86(n) aid and abet charge (with respect to Eberand Snr only);

(d) whether I am satisfied of the guilt of his clients of the charges;

(e) whether the 86(o) charges are bad for duplicity.

26. The issues concerning the 86(o) charges against the Eberands similarly arise in the application of the Rules to the conduct of Cortis.

Bias

27. It is appropriate that I deal with the question of bias first.

28. At the hearing on 31 May 2018, Mr Corsaro objected to the presence of Ms Love, General Counsel for Greyhound Racing New South Wales, at the hearing on the basis that her presence intimidated his client. I ruled at the time that she should not be excluded saying:

> *I'm not satisfied on the basis of what I heard that there is sufficient grounds to exclude Ms Love from the hearing at this point in time. And that's my, [sic] and that she has a legitimate interest to be here as the General Counsel of Greyhound Racing New South Wales and that is in accordance with what has been past practice in many cases.*

29. No further point was made about the presence of Ms Love in the hearing on 31 May 2018 or at the resumption of the adjourned hearing on 8 June 2018. Mr Corsaro completed submissions on behalf of the Eberands at the conclusion of the hearing on 8 June 2018. Due to a shortage of time, Counsel Assisting was then asked to provide his submissions in writing and for Mr Corsaro to then provide any written submissions in reply. It was not until the written submissions in reply of 19 July 2018 that counsel for the Eberands raised the issue of bias and requested that I disqualify myself. The written submissions in reply alleged bias on the basis of the continued presence of Ms Love and on various other bases which had not been raised during the hearing. It was then submitted that Eberand Snr and Eberand Jnr reasonably apprehended that the Steward might not bring an impartial mind to the determination of the facts, law or charges against them. It was submitted that:

(a) Eberand Snr and Eberand Jnr are 'in conflict' with GRNSW because of a refusal by GRNSW to make a public statement correcting earlier statements that WM had been exported to Macau, when in fact WM had been exported to Dubai,

(b) my ruling with respect to the presence of GRNSW General Counsel Ms Love has infected the fairness of the process due to the prejudice and bias of Ms Love as an adversary toward the Eberands;

(c) it was apparent that Ms Love considered her role was to act as a prosecutor or instructor to Counsel Assisting;

(d) as a result, the Inquiry has become an adversarial process compromising the independence and neutrality of the Steward, who is not to be subject to the control or direction of GRNSW;

(e) by engaging Minter Ellison, and by participating in the preparation of the brief of evidence, GRNSW has influenced or appeared to influence my decision to lay the charges that I have; and

(f) the selection of material for the brief of evidence infected the neutrality of the Steward by omitting:

(i) the transfer form of the sale from the syndicate owners to Stephen Farrugia;

(ii) the transcripts of interview with Mark, Stephen and Donna Farrugia;

(iii) the Steward's determination of the charges against the Farrugias (subsequently provided); and

(iv) correspondence related to an email from Eberand Snr to the General Counsel for GRNSW of 1 and 2 March 2018 and subsequent correspondence between lawyers prior to 4 May 2018.

30. On these grounds, Mr Corsaro submitted that a fair-minded observer might reasonably apprehend that I might not bring an impartial mind to the determination of the charges against the Eberands in accordance with the test set out in *Stollery v Greyhound Racing Control Board* (1962) 128 CLR 509 and *Isbester v Knox City Council* (2015) 255 CLR 135. Mr Corsaro did not seek to rely upon my participation in other roles as a Steward in this Inquiry such as by conducting interviews and laying the charges as any ground in support of the claim of reasonable apprehension of bias. This was presumably in recognition of the long-standing acceptance of the role of stewards in investigating and adjudicating upon racing matters.[3]

31. In the circumstances, it was said that any finding of guilt by me of Eberand Snr or Eberand Jnr was liable to be invalidated. It was submitted that the only course open to me was to dismiss the charges forthwith, or to withdraw from the proceedings.

32. I do not accept the bias submission.

33. First, the full argument concerning an apprehension of bias on my part and an application for me to recuse myself was not raised at the commencement of the hearing, nor at the resumption of the hearing on 8 June 2018, and was only belatedly raised in written reply submissions. The Eberands were obliged to raise the claim of bias and the request that I disqualify myself at the commencement of the hearing or as soon thereafter as the relevant facts were known.[4] No objection was taken until written submissions in reply following the conclusion of the hearing in circumstances where the issue had not previously been raised. The facts upon which the objection was belatedly raised were known well before they were raised and the Eberands must be taken to have deliberately elected not to object.[5] The failure to object promptly amounted to waiver of the right to object. [6]

34. Secondly, the only issue which was previously raised in any form was the objection to the presence of Ms Love at the hearing on 31 May 2018. Even if that ground had properly been

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3 See, eg, *Harper v Racing Penalties Appeals Tribunal of Western Australia* [2001] WASCA 217 at [62]–[66]; *R v Brewer; Ex Parte Renzella* [1973] VR 375; *Hall v New South Wales Trotting Club Ltd* [1977] 1 NSWLR 323; *Hall v New South Wales Trotting Club Ltd* [1977] 1 NSWLR 378.

4 *Smits v Roach* (2006) 227 CLR 423 at 438 [41], 442 [49], and per Kirby J at 465–466. See also *Battenburg v Union Club* [2007] NSWSC 265.

5 *Maloney v New South Wales National Coursing Association Ltd* [1978] 1 NSWLR 161 at 172 per Glass JA.

6 *Smits v Roach* (2006) 227 CLR 423 at 466 [125] and *Battenburg* [2007] NSWSC 265 at [23].

raised as a claim of bias at that time, I do not accept that Ms Love's presence amounted to bias or apprehended bias by the decision-maker. The only matter put on 31 May 2018 was that Eberand Snr was intimidated by the presence of Ms Love. Ms Love was not present when deliberations were conducted, and the decisions set out in these reasons were not influenced by Ms Love. Even if this ground was adequately raised, I do not accept that it justifies a conclusion of apprehended bias.

35. Thirdly, even if the alleged grounds of bias had been properly raised, I do not consider that the grounds advanced by Mr Corsaro establish a reasonable apprehension of bias.

36. In *Isbester*, a majority of the High Court at [21] explained the required two-step test from *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337 in these terms:

> *The first requires the identification of what it is said might lead a decision-maker to decide a case other than on its legal and factual merits. Where it is said that a decision-maker has an "interest" in litigation, the nature of that interest must be spelled out. The second requires the articulation of the logical connection between that interest and the feared deviation from the course of deciding the case on its merits. As Hayne J observed in Jia Legeng, essentially the fear that is expressed in an assertion of apprehended bias, whatever its source, is of a deviation from the true course of decision-making.*

37. In both *Stollery* and *Isbester*, a person who might have been said to have some personal interest in the outcome of the case was present when deliberations of a board were conducted. As noted by J R S Forbes in *Justice in Tribunals,*[7] a biased advisor does not disqualify a tribunal[8] unless she or he accompanies the members during their deliberations,[9] or otherwise influences, or appears to influence their decision.[10] In this passage, Forbes goes on to note that bias in counsel assisting a tribunal is also immaterial provided he or she takes no part in the decision and provides a number of citations.[11]

38. As correctly observed in Mr Corsaro's submissions, I am appointed to independently conduct the Inquiry by pursuing investigations, laying charges as I see appropriate, conducting hearings, and determining the charges laid. I am of course appointed by GRNSW, and assisted from time to time by officers and employees of that organisation in accordance with the separate functions given to the Controlling Body and Stewards under the Rules, but, unlike the cases relied upon by Mr Corsaro, representatives of the Controlling Body are not present when my deliberations are conducted and do not participate in my deliberations.

39. With respect to the alleged dispute that has arisen between GRNSW and Eberand Snr and Eberand Jnr, it is relevant to observe that this Inquiry had been limited by its terms of reference to investigating the export of greyhounds to Macau and China, until it became clear that WM was in Dubai, not Macau or China. At that time, the terms of reference of this Inquiry were expanded by GRNSW to include exports of greyhounds to other countries as revealed by the Inquiry.

40. It is perhaps worth noting at this point that Rule 124 does not limit its operation to China and Macau, but is a wider prohibition on exporting greyhounds to countries (other than New Zealand) without a passport and certified pedigree issued by GA.

41. The fact that my terms of reference were expanded by GRNSW to enable the Inquiry to follow the leads that were uncovered as a result of the investigations does not mean that that there is a reasonable apprehension that I would be biased in my adjudication of the charges brought pursuant to the expanded terms of reference.

42. The omission of the four items outlined from the brief of evidence similarly does not found any reasonable apprehension of bias. One of them, my decision concerning the Farrugias, was publicly available and confirmation that it was relied upon was provided before the hearing on 29 May 2018. I am not sure of the relevance of the interviews of the Farrugias referred to in

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7 J R S Forbes, *Justice in Tribunals* (The Federation Press, 4th ed, 2014) 259–60.
8 *Preston v Carmody* (1993) 44 FCR 1.
9 *Carruthers v Connolly* [1998] 1 Qd R 339 at 390.
10 *Hot Holdings Pty Ltd v Creasey* (2002) 210 CLR 438.
11 Forbes, above n 7 at 260.

that decision and they were never requested. The transfer form was annexed to the statutory declaration of Michael Eberand and has been considered as part of my decision. The correspondence related to the emails from Eberand Snr to the General counsel for GRNSW of 1 and 2 March 2018 and subsequent correspondence between lawyers prior to 4 May 2018 was attached to the written submissions in reply on behalf of the Eberands and has also been considered.

43. In my view, Mr Corsaro has not established the first step in the test. The focus of the test is on the position of the decision-maker. The grounds advanced do not, in my view, establish any reasonable apprehension that I might decide this case other than on its legal or factual merits. If Ms Love had any responsibility to make a decision in this Inquiry, or influence over my decision, he may have established that matter. Further, having failed to establish that first matter, it is not surprising that the second step is not established: the submissions do not explain the logical connection between the grievance between Eberand Snr, Eberand Jnr and GRNSW and any perceived impairment of my ability to decide the case on its merits.

44. It is my independence inherent in this process, acknowledged by his submissions, that renders any *reasonable* appearance of bias unsustainable in the circumstances relied upon. It was my decision to lay the charges that have been laid. I was in control of the hearing, and I had responsibility to determine the facts and law in relation to the charges, assisted by submissions from Counsel Assisting and Mr Corsaro and Mr Cortis. In my opinion, the grounds advanced do not establish any reasonable apprehension of bias.

45. Finally, there is considerable doubt that this is a proceeding of a statutory tribunal. If it is not, the preponderance of authority is to the effect that actual, not apprehended, bias is required.

46. This is an inquiry conducted by a steward under the Rules. The Full Court of the Supreme Court of Western Australian in *Harper*[12] did not consider that the Rules of Trotting were part of the statute law of Western Australia despite the fact the *WA Trotting Association Act* 1946 (WA) applied and the Bylaws under that Act provided the committee with the power to make the Rules of Trotting.[13] The court considered that the Rules of Trotting had coercive effect consensually or contractually, not by legislative force.[14] In reaching this view, the Court put some weight on the fact that a reading of the Rules of Trotting indicated that they were intended to have coercive effect consensually or contractually and referred in this regard to rule 2 which stated "Any person, club or other body who takes part in any matter coming within these Rules … shall be deemed to have consented to be bound by them."

47. In *Zucal*,[15] the WA Supreme Court noted that the *Racing and Wagering Western Australia Act* 2003 (WA) *('RWWA Act')* had been introduced, and that the RWWA *Rules of Harness Racing* 1999 (WA) were delegated legislation that bind those to whom they are addressed by force of the *RWWA Act.* In the context of the *Racing and Betting Act* 1954-1972 (Qld), the Full Court of the Supreme Court of Queensland in *R v Wadley* considered that the Rules of Racing constituted a contract between the Queensland Turf Club and 'any person who takes part in any matter coming within these Rules", who "thereby agrees to be bound by them."[16] The Queensland Turf Club Committee was described as "a domestic tribunal … clothed by the legislature with the duty of disciplining persons subject to the rules of racing as defined by this… Act".[17] In the context of the *Racing and Betting Act* 1980 (Qld), the Queensland Court of Appeal in *Hogno*[18] referred to *R v Wadley* and stated "It may be the case that the Australian Rules are not subordinate legislation as the respondents contend."[19]

48. Rothman J specifically considered the nature of the disciplinary power exercised by GRNSW under the *Greyhound Racing Act 2009* (NSW) in *Absalom v Greyhound Racing New South Wales* [2018] NSWSC 207. The plaintiff in that case submitted that the Hydration Policy invoked in finding her guilty of a breach of Rule 86(ag) was *ultra vires* the statutory power reposed in GRNSW to make Rules. The plaintiff submitted that the Hydration Policy was legislative in nature or effect and relied upon authority to the effect that legislation may not be

12 *Harper v Racing Penalties Appeal Tribunal of Western Australia* (1995) 12 WAR 337.
13 Ibid at 344.
14 Ibid, see 342 and 346.
15 *Zucal, RWWA Chairman of Stewards and Others v Harper* (2005) 29 WAR 563.
16 *R v Wadley* [1976] Qd R 286.
17 Ibid at 291.
18 *Hogno v Racing Queensland Ltd* [2013] QCA 139.
19 Ibid at [31].

promulgated by a body other than the Parliament without the authority of the Parliament. Rothman J stated:

> *The difficulty with the submission based on the aforementioned principles is that the principle applies to legislation and delegated legislation; it does not apply to a private body. The first defendant is exercising a power consequential upon a person (in this case, the plaintiff) seeking to be licensed by them and/or seeking to have a greyhound under her or his control race in the meetings conducted by the first defendant.*
>
> *In other words, the first defendant is acting as a regulator of those persons who voluntarily submit themselves to the control of the first defendant in order to race greyhounds. The first defendant only regulates the conduct of persons who, for their own purposes, voluntarily submit to the control of the first defendant.*
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> *The power exercised by the first defendant is akin to the power exercised by an unincorporated association over persons who join voluntarily as the members thereof. Another example is a sporting body, exercising powers over those people who seek to participate in sporting activities.*[20]

49. Section 23 of the *Greyhound Racing Act 2009* (NSW) states that GRNSW may make rules with respect to the control and regulation of greyhound racing. It also contemplates that GRNSW may make rules for "the appointment of stewards by GRNSW and the functions of those stewards" and "conferring on stewards appointed by GRNSW the function of enforcing the rules." It does not however establish the stewards as a statutory tribunal in the manner for example that the *Racing Appeals Tribunal Act 1993* establishes the Racing Appeals Tribunal. Rule 3(2) is analogous to Rule 2 of the Rules of Trotting referred to in *Harper* and provides that:

> *A person or Club to whom these Rules apply, in the absence of any other provisions that serve to bind that person to these Rules in the manner indicated in this Rule, is deemed-*
>
> *(a) to have knowledge of and to consent to be bound thereby; and*
>
> *(b) to have agreed that these Rules shall be a defence to any alleged civil liability arising out of the operation of these Rules.*

Forbes[21] refers to entities that formerly exercised purely consensual jurisdiction and retain certain "domestic" features, but now have statutory support as "hybrid tribunals".

50. For present purposes, it is sufficient to note that there is significant doubt as to whether I am in effect a statutory tribunal such as to attract the operation of the principles of apprehended bias.

51. The weight of authority is to the effect that an apprehension of bias is insufficient for a decision-maker in private tribunal to recuse themselves, or to have their decision quashed. Rather, in such Tribunals, it seems actual bias is required.[22] Actual bias has not been alleged.

Undisputed and disputed facts

52. It is not in dispute that WM was exported to Dubai from Australia without a passport or a certified pedigree having been issued at a time when the Rules required the person exporting the greyhound to obtain a passport and certified pedigree.

53. It is not in dispute that WM had been owned by Eberand Snr, then by Eberand Jnr and Cortis, and finally by Stephen Farrugia until export.

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[20] Ibid at [53]–[55].

[21] Above n 7 at [2.17].

[22] See, eg, *Maloney v NSW National Coursing Association Ltd* [1978] 1 NSWLR 161; *Cains v Jenkins* (1979) 28 ALR 219; *Bornecrantz v Queensland Bridge Association Inc* [1999] QSC 58; *D'Souza v Royal Australian and New Zealand College of Psychiatrists* (2005) 12 VR 42 at 60 [120]–[124].

54. What is in dispute is the precise circumstances as to what occurred prior to the export, the role of each of the participants in preparing and/or planning the export of WM, and whether that conduct constitutes a breach of the Rules.

Summary of evidence

55. Counsel Assisting relied on the following material:

(a) documents contained in the Brief of Evidence;

(b) documents tendered at the hearing, comprising:

(i) *Time for the Government to Back a Winner,* Presentation dated 6 February;

(ii) *Submission to the Inquiry into Greyhound Racing in New South Wales*, 15 January 2014, written by Eberand Snr;

(iii) *Public Hearing Schedule – Inquiry into Greyhound Racing in New South Wales,* 6 February 2014, Select Committee on Greyhound Racing New South Wales;

(iv) *Second Report*, printed 16 October 2014, Greyhound Racing in New South Wales, Select Committee;

(v) Greyhound Knowledge Forum, *Welcome to the Greyhound Knowledge Forum*;

(vi) *New South Wales Greyhound Breeders, Owners and Trainers Association Ltd Members' Code of Conduct,* effective 18 April 2015;

(vii) Annual Report 2015, Greyhound Breeders, Owners and Trainers Association;

(viii) Email from Patrick George on 10 April 2018;

(ix) Letter from Kennedys, Patrick George to Mr Scott dated 10 April 2018; and

(x) Email from Mr Scott of 7 June 2018 to Kennedys.

(c) statutory declarations made by:

(i) Eberand Snr; and

(ii) Eberand Jnr;

(d) the transcripts of the hearings including the transcript of Lagogiane's plea on 31 May 2018; and

(e) my decision concerning the Farrugias of 23 October 2017.

56. Eberand Snr has provided a number of accounts of what happened with respect to WM.

57. At the time of the initial investigation into Eberand Snr's involvement in the sale or export of WM, Eberand Snr was a member of the Board of GRNSW, having been appointed during 2017. A news organisation asked GRNSW for comment on a story that it was intending to publish alleging that Eberand Snr had exported WM to Macau. Ms Love, General Counsel for GRNSW, relayed this enquiry to Eberand Snr. She asked Eberand Snr in an email on 28 February 2018 if he had given or sold WM to Farrugia. He replied on 1 March 2018 at 6.48am, 'I did not'. This email was copied to GRNSW Chairman Morris Iemma and GRNSW CEO Tony Mestrov.

58. Eberand Snr had in fact delivered WM to Stephen Farrugia on 6 July 2015 in return for a payment of $5,000 in cash. Although he was not the registered owner of WM at the time, he gave the dog to Stephen Farrugia and sold it on behalf of Eberand Jnr and Cortis. It was submitted by Cortis that it was strictly true that he did not 'sell or give' WM to Farrugia. I do not accept this submission. In circumstances where Eberand Snr:

(a) had owned WM for a substantial period of time, and later given his interest to his son;

(b) expected his son, the lead owner, "to do whatever I said to do" and that his son "was a young kid and pretty well doing whatever I told him to do";

(c) was entrusted by Cortis with control over whatever needed to be done in the best interests of the dog and Cortis usually took his advice on whether to sell or keep greyhounds;

(d) conducted the negotiations on behalf of others for the sale of WM;

(e) agreed to sell WM to Farrugia when he met with him at his trial track and then spoke separately to Cortis and Eberand Jnr to explain to them that Farrugia was buying WM;

(f) knew that WM was to be exported to Dubai;

(g) delivered WM to Farrugia; and

(h) accepted as payment $5,000 in cash;

his email of 1 March 2018 to the General Counsel, CEO, and Chairman of GRNSW denying that he had sold or given WM to Farrugia was misleading. In my opinion, it is indicative of a willingness to obscure the extent of his true involvement in and knowledge of the export of WM to Dubai by Farrugia.

59. Later on 1 March 2018, Eberand Snr informed Mr Mestrov that he had appointed Patrick George of Kennedys to advise him. He informed Ms Love that evening that he was prepared to participate in an independent investigation into the matter.

60. The following morning, on 2 March 2018, he sent a further email to Ms Love, Mr Iemma and Mr Mestrov indicating that he had obtained legal advice and making a statement to the best of his recollection and knowledge that:

(a) in 2015 Farrugia was interested in buying WM to send him to Dubai, to be owned there by the Crown Prince;

(b) neither he nor the owners of WM were regular sellers of greyhounds;

(c) Farrugia made an offer to buy WM which he thought was a good offer, and he wanted to reduce kennel numbers at the time of the sale;

(d) the lead owner James Cortis[23] was told of the offer and wanted to proceed in selling the greyhound;

(e) he advised Cortis he would ring GA (but may have called GRNSW first) to check it was possible in terms of the rules and to ask whether it was possible for a greyhound to be exported to Dubai. The application process seemed to be very complicated and lengthy, particularly for someone with no experience;

(f) he told Farrugia that the owners had no interest in being exporters, nor filling in application forms, and that the owners were not intending to proceed;

(g) a period of time passed, and Farrugia told him that "they" would still like to proceed, and that he (being Farrugia) had "the relevant licensing to export the greyhound";

(h) he accepted this statement in good faith, which was passed on to the lead owner (by whom he was erroneously referring to Cortis);

(i) the lead owner made the decision to proceed on the basis that WM would be sold and transferred to Farrugia and it was Farrugia's obligation to meet export requirements; and

[23] The registered lead owner was Eberand Jnr.

(j) there was not as well-known an understanding of passport requirements at the time of the transaction as there is now.[24]

61. Soon after the 2 March 2018 email was sent, in a recorded Interview on 2 March 2018 with the Steward, Eberand Snr said, in summary:

(a) his email of 2 March 2018 was true and correct;

(b) he had been owning and training greyhounds for about 25 years, mainly for himself;

(c) in fact, Lagogiane had made the first approach, sometime after WM commenced its racing career;

(d) Lagogiane had been working for a prince in Dubai;

(e) Lagogiane told him that Farrugia would be the person to buy and export the greyhound on behalf of the Prince;

(f) Lagogiane told him he would have to get in touch with Farrugia if he wanted to proceed;

(g) Eberand Snr told this to Eberand Jnr and Cortis and they wanted to sell;

(h) Eberand Snr told Eberand Jnr and Cortis, "I'll check out whether it's all above board, ridgy-didge…";

(i) he rang GA for this purpose and was frustrated "because they basically wouldn't give me an answer on whether it's possible or not…And I just said I just want an indication 'cause I wanted to know whether it would be worthwhile filling in the application which sounded like a very complicated process. But they couldn't give me any time whether it would be approved or not approved…";

(j) he relayed this to Cortis who "decided he didn't want to go ahead, he didn't want to be in export or have to apply for exporting";

(k) he recalled that "at that stage, I think I told Lagogiane or Farrugia, I'm not sure, that it wouldn't be going ahead";

(l) after "a significant period of time… maybe two months", Farrugia told him that "they" would like to proceed, but he reiterated that "the owners aren't interested in exporting the dog or having to apply 'cause it sounds like a hassle". Farrugia then said that they had "the licensing to do that". Eberand Snr said "well, that being the case, you buy the dog and then it's yours and your responsibility to get the exporting correct… it was a clear understanding that the dog would be sold to Steve and Steve would be responsible for any requirements around exporting which he'd indicated to us he's got the licensing for". Farrugia agreed to buy WM for $5,000;

(m) although he was told that Farrugia had the licensing and capability to export legally, Farrugia never said he had the ability to get passports — "they just thought they had the ability to export as far as I recall" and "they definitely didn't say they did know [about the requirement to get passports]…";

(n) there was never any doubt in his mind the dog was going to Dubai;

(o) a short time later, WM was delivered to Farrugia, the funds were received, and the transfer was signed and lodged;

(p) in reference to "the licensing" held by the Farrugias, he said "clearly he said to me that they had the licensing to do it, or the, I'm not sure … but the capability to do it legally."

(q) the Farrugias probably did not know that you needed to get a passport from GA to export a greyhound; and

[24] Ex B to Eberand Snr's statutory declaration dated 31 May 2018.

(r) he knew that Farrugia was a regular exporter of dogs, but did not really understand where they went or what happened to them.

62. By a statutory declaration dated 31 May 2018, Eberand Snr said, in summary:

(a) the initial discussion with Lagogiane was in around June 2015, who telephoned from Dubai;

(b) in that conversation, Lagogiane asked him whether another dog, Lord Golec was for sale. He said the dog was not, but WM might be good for long-distance races, like Lord Golec, but WM was too slow for Australia;

(c) he thought Lagogiane was interested, but he did not make an offer. Eberand Snr said the owners would probably want $5,000 or more";

(d) he told Cortis and Eberand Jnr of Lagogiane's interest. Cortis agreed that the $5,000 he had mentioned to Lagogiane was a fair price. Eberand Jnr was concerned about the welfare of WM being sent to Dubai;

(e) he decided that they needed to know more about exporting, so he called GRNSW who referred him to GA. He said: "I then rang Greyhounds Australasia to check whether it was possible to export to Dubai. I was told that there was a form to complete, and I asked that being the case, would it likely be approved. I asked whether greyhounds were currently being approved for export to Dubai. The person from Greyhounds Australasia would not answer that…She said an application needed to be completed, and that we would need a lot of detail, from memory, possibly including photos of where he was going. Even then she could not say whether it was possible or not";

(f) he was stressed and busy, particularly because of health concerns relating to his younger son recently being in hospital for a long period. He said he "didn't have the time to be in any lengthy application process and I told [Cortis and Eberand Jnr] I did not think it would go ahead. At that point I do not think there was further contact for some time. I think I may have said two months in the interview but I think it could have been much shorter than this";

(g) he believes he later had contact with Lagogiane, who told him that Farrugia would buy the dog and do the exporting and that Farrugia had all the licensing necessary;

(h) he saw Farrugia at the trial track at Glengarrie, who said he wanted to buy WM and "that he had all exporting approvals…". Farrugia "said to drop the dog off and the papers and he would buy the dog. I told him so as to be clear he would be responsible for the greyhound, and would need to register it in his name accordingly and be responsible with any requirement." He told Farrugia that WM should be registered in Farrugia's name;

(i) he agreed to sell WM to Farrugia when he met him at his trial track and then spoke separately to Cortis and Eberand Jnr to explain to them that Farrugia was buying WM and that Farrugia intended to export him to Dubai;

(j) he recalled an occasion of insisting that Eberand Jnr sign the transfer because they were both busy;

(k) on about 6 July 2015, he drove WM to Farrugia's trial track, with racing papers and transfer form, and received $5,000 in cash;

(l) he retained the cash. Instead of paying it to the owners, he believes he gave Cortis an interest in a new pup, Mija Sydney; and, he may have given some cash to Eberand Jnr, but he had also recently bought his son a car; and

(m) the cash would have been spent on trials, dog food, vitamins and fencing.

63. In an interview on 10 April 2018, Eberand Jnr said to a GRNSW investigator, in summary:

(a) Cortis was a family friend he had known his whole life;

(b) Cortis had picked WM to be part owned by Cortis;

(c) he had owned half of WM, having been given it by Eberand Snr after he turned 18 in January that year;

(d) Eberand Snr was initially contacted by the Farrugias;

(e) the Farrugias were going to send WM to Dubai for long distance racing, to be trained by Lagogiane;

(f) he had no reason to believe the dog was not going to Dubai;

(g) Eberand Snr was not sure about the rules around it and contacted GA on behalf of him and Cortis to find out about any rules or regulations around it;

(h) Eberand Snr told him they (GA) were not able to provide him with an answer;

(i) as an owner, he also researched the matter;

(j) at that point, because they were not sure and were not clear on it, they were not going to proceed with the sale;

(k) the Farrugias contacted Eberand Snr again telling him that they had "all the necessary, um. documents and everything that they needed to send the dog";

(l) Eberand Snr again on behalf of Eberand Jnr and Cortis told them that it was not clear and only agreed to the sale on the basis that it would be solely their responsibility to make sure they had all the necessary authorisation to do so;

(m) although he was listed in OzChase as the primary contact person and any official communications concerning WM would come to him, Cortis had a greater say in the decision-making process than he did because Cortis was more experienced in the ownership of greyhounds;

(n) the negotiations for the sale of WM would have been discussed between Cortis and Eberand Snr;

(o) the price he was paid for WM was not important to him because he was proud that his dog would be going to Dubai to be treated like royalty;

(p) he was distressed to hear that WM may have ended up in Macau because he knew conditions in Macau were substandard and he was passionate about animal welfare; and

(q) he did not know the Farrugias and had no direct dealings with them concerning the sale of WM.

64. In his interview on 11 April 2018, Lagogiane relevantly said, in summary:

(a) from December 2014, he worked for the Crown Prince as a trainer of greyhounds. The Crown Prince raced the greyhounds privately, as a matter of pride;

(b) part of his role was to seek dogs to purchase for Dubai;

(c) Stephen Farrugia was the "go to man" to send the dogs over from Australia and had sent three other greyhounds to the Crown Prince from Australia;

(d) the Crown Prince specifically identified WM as a dog amongst other dogs which he was interested in purchasing having watched replays of them race;[25]

[25] This is contrary to Eberand Snr's explanation that he offered the dog to Lagogiane after Lord Golec was not for sale.

(e) he called Eberand Snr, knowing that the Mija breed were bred by him, to enquire whether the greyhound was for sale, and thinking that Eberand Snr was the owner of WM;

(f) he asked Eberand Snr on behalf of the Prince if WM was for sale. Eberand Snr said yes. The price was not agreed at this time. He told Eberand Snr that Steve Farrugia from Glengarrie would be in contact to arrange the purchase… "If you're happy to sell it, just take it to Glengarrie's, Steve will look after it";

(g) that was the extent of Lagogiane's discussions with Eberand and the extent of his involvement in the transaction for the sale of WM;[26]

(h) he called Stephen Farrugia and told him WM might be purchased by the Prince;

(i) Farrugia then took over proceedings, made contact with the Prince's office and spoke to vet Dr Mohammed (the Prince's "go to man" in Dubai) to organise a price;

(j) the Crown Prince's office made a payment to Steve Farrugia for WM;

(k) Farrugia coordinated all the arrangements for the purchase and transport. Within a matter of 6 weeks, Eberand Snr had dropped WM off to Farrugia and the dog was sent to Dubai after the 21-day quarantine period;

(l) Lagogiane was not aware of any stalling of discussions or suggestion that the purchase might fall through;[27]

(m) he had numerous telephone calls with Steve Farrugia at Glengarrie, who 'had the licence' to export dogs;[28]

(n) Farrugia sent him the relevant paperwork from AQIS and took care of the veterinary side of things needed for the export;

(o) Farrugia never told him that he had a licence to export greyhounds but Lagogiane thought Farrugia had a licence from a government body to export dogs to China and overseas;[29]

(p) WM arrived in Dubai in around August 2015; and

(q) sometime after his return to Australia from Dubai in December 2016, he had spoken to Eberand Snr at a track, and said that WM was 'fine' in Dubai.

65. In an interview on 11 April 2018, Cortis said, in summary:

(a) he had known Eberand Snr for his whole adult life, being a relative of Eberand Snr's wife;

(b) he usually will take a half interest in one of the pups in each litter bred by Eberand Snr;

(c) in the case of WM, he understood that the other half interest was to be taken by Eberand Jnr, being payment for his help on the farm and this was the first dog where he was to be put down as the owner as he'd just turned 18;

(d) it was a scenario where Eberand Jnr would help out and Eberand Snr would give him some money and Eberand Jnr was technically and officially the owner;

(e) actual cash may not have changed hands for his interest in WM, because it was just a 'gentlemen's agreement' about how much is due back and forth between Eberand Snr and him in relation to the sale and purchase of other dogs, the proceeds of winnings, the costs of feeding and veterinary fees and the like, but these things are not set out in a spreadsheet;

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[26] Transcript of Interview of Lagogiane of 11 April 2018, pages 26 and 30.
[27] Ibid, page 10.
[28] Ibid, pages 4, 28–29.
[29] Ibid, pages 28, 29.

(f) he usually takes Eberand Snr's advice in relation to whether to sell or keep greyhounds, as Eberand Snr has the day to day experience of training the greyhound;

(g) Eberand Snr was the trainer and Cortis and Eberand Jnr gave him control over whatever needed to be done in the best interest of the dog. WM had a number of races in Australia before there was any discussion of selling WM;

(h) Eberand Snr had discussed with him the sale of WM. It was understood that in Dubai the dogs race 900m races, which was a distance that seemed more suitable to WM than WM was racing in Australia. Eberand Snr said to him that "I think the dog's limited. You two decide what youse want to do".

(i) he remembered that a "scenario come up in Dubai and I remember [Eberand Snr] inquired something to do with a licence and we put it in the too-hard basket. He said, 'Oh, look, I don't know what the licences or whatever that's required'. And I know that he was speaking to a gentleman from Glengarrie's, um, and basically it was a scenario where at the end of it a gentleman from Glengarrie's bought it and we were under the impression that he was going to Dubai – that dog was going to Dubai from there, and he had a licence to export the dog. And that's all we got told.'

(j) he did not have a clue about exporting the dog, and Eberand Snr made all the enquiries;[30]

(k) "we knew that there was paperwork that was involved. Whether or not it was a passport or not, but there was paperwork that would have to be involved... so Michael rang up Greyhound Racing Australasia, or whatever it was, to work out what it was";[31]

(l) Eberand Snr said to him, "Well, look, if they buy the dog, supposedly they can sort out all the licences or do whatever they've got to do… they buy the dog, they can do what they want in terms of sending it to Dubai";

(m) Eberand Snr said to us, "Well, my recommendation is to sell the dog, get $4,000 for it and let them sort out the passport and whatever licences they need…because supposedly this Farrugia guy at the time, I remember he said he can issue the licences or issue the passports at the time…";

(n) he recalled that 'the Farrugias just said to Eberand Snr, well, you know, "If you guys don't want to get your own passport, sell it to us and we'll sort it out"';[32]

(o) he did not know Farrugia and had no interaction with him concerning the sale of WM;

(p) when asked "…just to reiterate, you were never aware of the passport issue, that you require a passport issued by GA for the purpose of exporting greyhounds?", Cortis replied "I was … I asked the question how long has it been in for… that was the question I asked. I obviously was- you know, you do need to have a passport now. I just didn't know when it kicked – when it started…";

(q) when asked again "so you're saying that at the time that you sold the dog to the Farrugias that you were aware of the requirement for a passport to be issued for the dog?", Cortis replied "what I'm saying is we knew that there was paperwork that was involved. Whether or not it was a passport or not, but there was paperwork that would have to be involved… so Michael rang up Greyhound Racing Australasia or whatever it was, to work out what it was";[33]

(r) he thought the dog was sold for $4,000 or $5,000;

(s) he knew WM was going to Dubai when it was sold; and

30 Transcript of Interview of Cortis of 11 April 2018, page 29.
31 Ibid, page 36.
32 Ibid.
33 Ibid.

(t) about a year and a half ago, Eberand Snr told him that the dog came fourth in a big race in Dubai.

66. Eberand Jnr signed a statutory declaration on 31 May 2018 in which he said, in summary:

(a) he was not directly involved in the negotiations to sell WM to Farrugia;

(b) he was given an interest in WM by his father after he turned 18;

(c) he had thought that Farrugia had made the first approach to Eberand Snr, but had since been informed by his father and now believed that the first contact was with Lagogiane;

(d) they sold WM on 6 July 2015, and the transfer form was registered with GRNSW on 7 July 2015;

(e) his father said to him at the time that he had contacted GA to find out what the rules or regulations were around exporting a greyhound to Dubai;

(f) Eberand Snr informed him that GA did not provide him with a clear answer and it seemed to be a lengthy and complicated process;

(g) As a result, Eberand Snr said he thought the syndicate should not proceed with the sale, and they did not at that time;

(h) Some time later, Eberand Snr said to him that he had had contact with one of the Farrugias and they wanted to buy WM; and

(i) Eberand Snr said that they assured him they had all the necessary licensing to send the dog to Dubai and "I understand this to include all necessary approvals/passports. I also understood that they would buy the dog and that anything that occurred after that in terms of sending the dog to Dubai and therefore also obtaining any required documentation would be solely their responsibility."

67. The transfer form was signed by Cortis and Eberand Jnr as "previous owner" and Stephen Farrugia as Applicant.

68. At the hearing on 31 May 2018, Cortis said:

(a) at the time, he had no knowledge of what a passport was; and

(b) he was not into racing too much, other than being an owner.

69. In the penalty hearing for Lagogiane on 31 May 2018, Lagogiane said he never discussed the notion of the passport scheme with Eberand Snr and had no idea about its existence. The transcript of this penalty hearing was provided to the solicitors for the Eberands and Cortis prior to the hearing on 8 June 2018.

70. At the hearing on 8 June 2018, Eberand Jnr was cross-examined by Counsel Assisting. His additional evidence was that:

(a) his best recollection at the time of the 11 April 2018 interview was that the initial approach was from Stephen Farrugia, but since he had received the transcripts, his father had told him that it was actually from Lagogiane;

(b) in doing his research on the Internet about greyhound racing in Dubai:

(i) he came across the application form for exports on the GA website;

(ii) having found that document, he asked his father whether they needed to look into it, and Eberand Snr said, "No, the Farrugias are organising everything" and "everything was their responsibility";

(iii) he cannot now remember what the form said about exporting dogs to overseas jurisdictions. "Again, I didn't really look into it. I just asked [Eberand Snr] if it was something we needed to look at and he said "No, the Farrugias were organising everything." They told him that they were organising everything";[34] and

(iv) he definitely did not see a copy of the *Review of Australian Greyhound Export Welfare Standards* or the media release which accompanied it in the course of his research; and

(c) he had not made contact directly with GA or GRNSW when he had a query or uncertainty about his obligations or about exporting requirements.

71. At the hearing on 8 June 2018, Cortis said:

(a) at the time, he knew there was paperwork involved in exporting a dog, but he did not know that part of the paperwork was a thing called a passport;

(b) he didn't say passport and would "love to hear the recording of it, because the way that this came out, like I've got no idea how the transcript or whatever has picked it up";

(c) in his interview on 11 April 2018, he only picked up the word "passport" from the discussion that had earlier taken place in the interview. He would not have used the word "passport" at the time, but rather, "paperwork";

(d) he was an owner of dogs, not a seller of dogs, and did not know what the requirements for exporting were;

(e) he was not aware of the *Review of Australian Greyhound Export Welfare Standards* at the time; and

(f) he recalls one conversation with Eberand Snr where it was discussed that WM would be running over a kilometre in Dubai, which would be good for WM, and that the conditions in Dubai were first class.

72. At the hearing on 8 June 2018, Eberand Snr was cross-examined by Counsel Assisting. His evidence was that:

(a) he was first registered as an owner in 1991, and then as a trainer in 1996. He then became a public trainer, entitling him to train other people's dogs in 1997;

(b) he had made various submissions to parliamentary inquiries into greyhound racing in the past;

(c) he did not recall whether he was aware of the *Review of Australian Export Welfare Standards* at the time WM was sold;

(d) he did not recall the GBOTA members' code of conduct being issued in April 2015;

(e) as a director of GBOTA, he agreed that he had a heightened obligation to ensure that he was strictly complying with the obligations contained in the Greyhound Racing Rules;[35]

(f) with respect to the email of 1 March 2018, he was uncomfortable giving only the short answer that he gave, but he answered it in that way because of the way Ms Love had asked the question, and he never tried to hide anything;

(g) he obtained legal advice on 1 March 2018 in relation to the publication of what he considered to be a defamatory article by a Guardian journalist;

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[34] Transcript of Inquiry of 8 June 2018, page 6.

[35] Ibid, page 25.

(h) he tried to remember very carefully on 1 March 2018 what had happened with WM;

(i) he thought that Cortis was the principal owner of WM as stated in his 2 March statement and 2 March interview, although the register indicates that it was in fact Eberand Jnr;

(j) he expected Eberand Jnr to do whatever he said to do when communicating with him about WM;

(k) he cannot be sure what the duration was between speaking with GA and the later consideration of the sale of WM, but that 'a few months' in between those events as referred to in his 2 March statement was not correct;

(l) after speaking with GA, he told Lagogiane that "we were not comfortable with the process. We don't want to be filling in forms and we need photos of what you've got there and all sorts of things". In response, Lagogiane said, "that's not the case… Farrugia is buying the dog from us and he's got a relationship with them". He asked, "so the Farrugias are going to do all the application, do whatever they need to do?" Lagogiane then said, "that's right, they look after all that". He could not remember the exact words, but it was to the effect of, "they're experienced exporters, they do all that";[36]

(m) he did not mention Lagogiane in the email of 2 March 2018 because he did not think Lagogiane was relevant and, to an extent, he was trying to keep Lagogiane out of it;

(n) the references to Farrugia in paragraphs [5] and [6] of his statement of 2 March 2015 should have been references to Lagogiane;[37]

(o) Lagogiane told him "the dog was going to be bought by Farrugias who had all the arrangements";[38]

(p) when he called GA, the person he spoke to explained to him that he needed to fill out a form, have pictures and explain the circumstances of the dog, which sounded quite complex;

(q) he was not interested in doing all the work at a stressful time;

(r) he does not recall Eberand Jnr showing him an application form for a passport;

(s) he is not sure whether he knew about the *Review of Australian Greyhound Export Welfare Standards* report of June 2014;

(t) the parliamentary submissions he made were in relation to funding models;[39]

(u) before ringing GA, he had called GRNSW, who told him to ring GA;[40]

(v) he was unaware of any other greyhounds ever being given permission by GA to go to Dubai;[41]

(w) he told Lagogiane about the phone call to GA and Lagogiane said to him that "they look after all that, they know what they're doing";[42]

(x) he could not recall asking Farrugia about his phone call to GA and said "I might have said to them it sounds complicated and they said you know, we do all that";[43]

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36 Ibid, page 35.
37 Ibid.
38 Ibid, page 46.
39 Ibid, page 42.
40 Ibid, page 43.
41 Ibid, page 45.
42 Ibid, page 46.
43 Ibid.

(y) he did not call GA to check if Farrugia had GA approval to export to Dubai;[44] and

(z) it was not accurate that he recommended that Cortis "sell the dog… get $4,000 for it… and let them sort out the passport… and whatever licences they need".[45]

Submissions on evidence and some findings of fact

73. The Eberands' counsel submitted that Eberand Snr's misleading email of 1 March 2018 must not be taken into account by me because it was subject to legal professional privilege. While it is true that the email begins with the words 'PRIVILEGED AND CONFIDENTIAL', I do not accept this submission. First, the document was created the purpose of making a response to media enquiries, not for a dominant purpose relating to legal advice. Secondly, GRNSW was the client of Ms Love, not Eberand Snr, and, by its provision of the email to the Steward, GRNSW has waived any privilege.

74. It was also submitted that I ought not to take into account the answers provided in the initial interviews by the investigators in April 2018, and indeed that for me to take them into account would be ultra vires, because:

(a) the interviews were conducted on the understanding that WM had been exported to Macau, when it was subsequently established that WM had been exported and was always only ever in Dubai, as had been planned; and

(b) the terms of reference of my Inquiry did not authorise me to investigate dogs that were not in one or other of China or Macau.

75. I do not accept this submission. Stewards are entitled to inform themselves as they see fit. The interviews in April 2018 were not ultra vires the powers exercised by the investigators at the time.

76. Further, the terms of reference of the Inquiry were expanded on 16 April 2018 to incorporate exports to Dubai and the content of the interviews is properly relevant to the determination of these charges.

77. It is, however, appropriate that I read and analyse the answers to the questions given by the participants in light of the misunderstanding of the background circumstances at the time – being to which country WM had actually been exported.

78. Counsel Assisting urged me to find that Eberand Snr did not make a phone call to GA after his initial phone call with Lagogiane. I am not prepared to accept that submission. I accept that Eberand Snr did make the phone call to GA to ascertain the requirements for the export of dogs and was advised that a formal and detailed application would be required. I also accept that, to Eberand Snr, the process sounded complex and prohibitively difficult.

79. Counsel Assisting relied on the *New South Wales Greyhound Breeders, Owners and Trainers Association Code of Conduct*, as supporting the inference that Eberand Snr knew specifically about the details for the requirements for passports, because the Code was issued by the board (which, at the time, included Eberand Snr as a member), in April 2015. The Code of Conduct required that members comply with all rules, regulations, policies and instructions of GRNSW and NSW GBOTA regarding animal welfare. Eberand Snr acknowledged that "it's fair to say that the expectation would be that directors would strictly comply with the members Code of Conduct" and that it would have been included in the Board papers.

80. Counsel Assisting submitted that Eberand Snr was also aware that GA had published an export animal welfare policy as evidenced by his response to a post by Paul Wheeler on the Greyhound Knowledge Forum on 12 October 2014. This was the GA "Review of Australian Greyhound Export Welfare Standards" publicly released and published on the GA website from 29 May 2014 ("the GA Review"). The home page of the website under the heading "Services" also contained a link to "Greyhound Passports/Exports" which attached the "GA application for Greyhound Passport" form. This two-page form cites the terms of Rule 124(1) and states "Under Greyhounds Australasia (GA) Rules any person exporting a greyhound(s)

[44] Ibid.
[45] Ibid, page 47.

to another country must prior to meeting the requirements of the Australian Quarantine and Inspection Service (AQIS) obtain a Greyhound Passport." Eberand Jnr came across the application form when he was doing some research after his father told him of the approach from Lagogiane.[46] Eberand Snr said he did not remember Eberand Jnr accessing the application form. He said he was "not sure" if he was aware of the GA review at the time and "I don't recall that I was aware of that".[47]

81. The post of Paul Wheeler mentioning the GA review, the response of Eberand Snr and the further post of Eberand Snr on the same subject on 12 October 2014 were exhibit E at the hearing. Eberand Snr agreed with Wheeler that the tracks in the US were safer and said there should be more scientific research on the issue. His later post attaches a link to some scientific research indicating that slower tracks are safer and urging GA to coordinate a national program on development of track maintenance, lure mechanisms, and design. The "application for greyhound passport form" is attachment B of the GA Review.[48] The "Required Standard for Countries Seeking to Import Australian Greyhounds – Host Country Export Welfare Standards" is the one paged document at attachment D of the GA Review. The application form for exports to "unregulated countries" such as United Arab Emirates/Dubai is Attachment E: Host Country Greyhound Export Self-Assessment Questionnaire". It requires answers to extensive questions on Housing, Health and Veterinary Care, General Welfare, Clubs/Track/Racing and Accountability/Responsibility in relation to greyhounds' welfare in the host country.

82. In the context of Eberand Snr's exchange with Paul Wheeler and his dealings with GA, I infer that he was aware that GA had published an export animal welfare policy. I do not accept that this necessarily establishes that he read and understood the precise content of the GA Review.

83. Mr Corsaro also submitted that:

    (a) it was a genuine sale of WM from Eberand Jnr and Cortis to Farrugia, who did not represent himself to be an intermediary of the Crown Prince. Finding that the transaction was a sham would be a perverse finding;

    (b) Eberand Snr was assured by Lagogiane that Farrugia had the licensing necessary to export the greyhound;[49]

    (c) the paperwork for the exporting was done by Donna Farrugia, and there is no evidence that Eberand Snr had any contact with her;[50]

    (d) legal title was transferred from Eberand Jnr and Cortis to Stephen Farrugia, and so the owners and Eberand Snr could have no role or responsibility in ensuring that the regulatory mechanism of obtaining a passport was complied with after title was transferred, which is consistent with Farrugia being found to be the exporter of dogs in similar circumstances in an earlier decision of this Inquiry;[51] and

    (e) he could have been charged with breach of Rule 124A, had the rule been in force at the relevant time. Indeed, the enactment of the rule itself demonstrates that the rules in force prior to the enactment would not catch the conduct underlying the present charge. In particular, it was plain that the new rule imposes 'greater responsibilities' on owners. If the older rules caught the present conduct, then rule 124A would not be necessary.

84. In my opinion, the narrative disclosed by Eberand Snr's interview on 2 March 2018 and Lagogiane's interview of 11 April 2018 is substantially the correct one. I am comfortably satisfied on the balance of probabilities of the following key facts:

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46 Ibid, page 4.
47 Ibid, page 42.
48 Tab 13 of the Brief of Evidence.
49 Ibid, page 65.
50 Closing submissions for the Eberands, paragraphs [103]–[105].
51 Ibid, page 62.

(a) Lagogiane was training greyhounds for the Crown Prince in Dubai and the Crown Prince had identified WM as a greyhound he was interested in purchasing to take to Dubai to race;

(b) Lagogiane knew that Eberand Snr bred WM and called Eberand Snr to enquire if he might be interested in selling WM to race in Dubai;

(c) Farrugia had the expertise and know how to export greyhounds from NSW to Dubai including taking care of transport, veterinary checks, vaccinations, quarantine and AQIS approval;[52]

(d) Farrugia had assisted in building a greyhound track for the Crown Prince in Dubai and assisted in exporting three other greyhounds from Australia to Dubai for the Crown Prince;

(e) Lagogiane said that if Eberand Snr was happy to sell WM, then Farrugia would be the person to buy and export the greyhound and he should take it to Farrugia at Glengarrie trial track and he would look after it;[53]

(f) Lagogiane contacted Farrugia to let him know of the potential purchase of WM on behalf of the Crown Prince;[54]

(g) Eberand Snr spoke with Eberand Jnr and Cortis and they wanted to proceed with the proposed sale;

(h) Eberand Snr rang GA to check whether the process was "above board, ridgey-didge."[55] He said he would have asked to talk to someone who knew the rules;

(i) Eberand Snr discovered that GA approval was required for the export and was informed by GA that a formal and detailed application was required. Eberand perceived that the process for obtaining GA approval was complex and prohibitively difficult;

(j) Eberand Snr was not aware of GA permission ever being granted for any other greyhound to be exported to Dubai;

(k) Eberand Jnr also researched on the Internet and found a copy of the Application for a Greyhound Passport, in the form published at the time;

(l) Eberand Snr, Eberand Jnr and Cortis made the decision at that time not to proceed with the export as Eberand Snr perceived the process for seeking approval prohibitively complex and difficult;

(m) on running into Farrugia, the potential for the export of WM was again discussed. Farrugia said to Eberand Snr that he had the "licensing" to export and the capability to do it legally;

(n) Farrugia did not say he had GA approval or would obtain GA approval;

(o) Eberand Snr did not ask Farrugia if he had GA approval or would obtain it;

(p) Farrugia did not at any point indicate to Eberand Snr that he was aware of the requirement for GA approval;

(q) Eberand Snr did not ask Farrugia if he had GA approval or intended to obtain GA approval to export WM;

(r) Eberand Snr did not mention to Farrugia that he had called GA and knew that a formal application to GA was required;

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52 Transcript of Interview of Lagogiane of 11 April 2018.

53 This accords with Lagogiane's interview of 11 April 2018 and Eberand Snr's interview of 2 March 2018.

54 Transcript of Interview of Lagogiane of 11 April 2018, page 30.

55 Transcript of Interview of Eberand Snr of 2 March 2018, page 5.

(s) Eberand Snr agreed on behalf of Eberand Jnr and Cortis to sell WM to Farrugia for $5,000 on the condition that Farrugia would register WM in his name and be responsible for meeting the export requirements;[56]

(t) Eberand Snr then spoke separately to Eberand Jnr and Cortis to explain to them that Farrugia was buying WM, that he intended to export him to Dubai and that he would be responsible for making the export arrangements;[57]

(u) Eberand Jnr and Cortis signed the transfer forms and Eberand Snr delivered WM together with the transfer form to Farrugia on 6 July 2015 in return for $5,000 cash; and

(v) after meeting the quarantine requirements, conducting the necessary veterinary checks and vaccinations, and obtaining AQIS approval, Farrugia exported WM to Dubai around August 2018.[58]

Elements of the aid and abet charge

85. Under Rule 86(n) a person is guilty of an offence against the Rules if the person knowingly aids, abets, counsels or procures another person to commit a breach of the rules.

86. The charge provided that the relevant breach of the Rules was Mr Farrugia exporting WM without a valid passport or certified pedigree contrary to the requirements of Rule 124.

87. It was common ground that 'Aid, abet, counsel or procure' are to be read collectively, in accordance with the principles of *Giorgianni v The Queen* (1985) 156 CLR 473, to refer to a person who assists or encourages someone else to commit an offence.

88. It was also common ground that the following three elements would need to be satisfied for this offence to be committed:

(a) Farrugia breached Rule 124(1);

(b) Eberand Snr knew the essential circumstances that establish a breach of Rule 124(1) by Farrugia; and

(c) Eberand Snr intentionally assisted or encouraged Farrugia to breach Rule 124(1).

89. Mr Corsaro submitted that none of these elements were met and further submitted that:

(a) Eberand Snr was entitled to rely on the assurances from Farrugia that Farrugia had all the necessary paperwork and licensing;

(b) there was no evidence that Eberand Snr had counselled, supported, or encouraged the Farrugias to commit the Rule 124 offence expressly by encouraging them not to obtain a passport; and

(c) because Farrugia had not given evidence, Eberand Snr's evidence is unopposed. In order to find that Farrugia had been encouraged or assisted by Eberand Snr, Farrugia needed to give evidence.

90. A person can aid and abet an offence involving strict liability such that it is not necessary to prove any mental state on the part of the primary offender. In such a case, however, the secondary offender must nevertheless intentionally aid, abet, counsel or procure the offence and have knowledge of the essential circumstances of the offence.[59]

91. It was not submitted that the word 'knowingly' in Rule 86(n) imposes any requirement over and above the knowledge and intent already captured by the three elements outlined above. I do not consider that it does.

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56 Eberand Snr statutory declaration dated 31 May 2018, [13].
57 Ibid at [14].
58 Transcript of Interview of Lagogiane of 11 April 2018.
59 *Giorgianni v The Queen* (1985) 156 CLR 473, 501.

92. Mr Corsaro placed considerable emphasis in his submissions on the legal effect of transfer of ownership of WM to Farrugia on 6 July 2015.[60] The submission was to the effect that there is no principle of law and no part of the Rules and no standard which is objective that is predicated on the sale of something and the expectation that a person is going to do something unlawful with it.

93. That may be so, but the sale or supply of the instrument of an offence or anything essential to its commission can amount to aiding or abetting the offence if the seller or supplier does so knowingly and with the intent to aid the commission of the offence.[61] *National Coal Board v Gamble*[62] was a case in which the owners of a truck were convicted of unlawfully using the truck on a road when it was loaded above the maximum permitted weight. The appellant, the National Coal Board, was found to have aided and abetted the offence by selling and delivering the coal in circumstances where its employee had weighed the truck at the weighbridge and assented to the overweight quantity of coal on the truck. Devlin J stated "what they (the appellant) wished to establish was that responsibility for overloaded lorries rested solely with the carrier and that the sale and delivery of the coal could not, if that was all that could be proved involve them in a breach of the criminal law. For the reasons I have given I think that the law cannot be so stated and that the appeal should be dismissed."

94. Similarly, in *R v Ancuta*[63], the Queensland Court of Appeal dismissed an appeal from a person who had been convicted of aiding the commission of an offence by the provision of false compliance plates to the principal who a month later used them by attaching them to a stolen car. It was sufficient that the compliance plates had been supplied with the knowledge that an offence of unlawful possession of a motor vehicle was contemplated.

Element one - Stephen Farrugia breached Rule 124(1)

95. I am satisfied that Farrugia breached Rule 124(1). He pleaded guilty to the specific charge of exporting WM to another country without a valid passport and certified pedigree issued by GA. The fact that the Steward was previously under the misapprehension that WM had been exported to Macau not Dubai does not change the material fact that Farrugia breached Rule 124(1) in relation to the export of WM.

96. The material available in this matter in itself sufficiently demonstrates that Farrugia exported WM to Dubai in or around August 2015.

97. It was said that I could not be satisfied that Mr Farrugia committed a breach of the Rules because Mr Farrugia had not given evidence to this Inquiry, and that Mr Farrugia had pleaded guilty to the export of WM on the understanding that WM had been exported to Macau, not Dubai.

98. Pursuant to the Rules, a Steward is entitled to inform him or herself as he or she thinks fit. The fact that Mr Farrugia pleaded guilty to a breach of Rule 124(1) and had indicated that WM was exported to Dubai does not preclude me for being satisfied in this hearing that he was guilty of the breach of Rule 124(1) but that the destination was Dubai. Eberand Snr has been on full notice that it was alleged against him that WM had been exported to Dubai, not Macau.

Element two – Eberand Snr knew the essential circumstances that establish a breach of Rule 124

99. As to this element, I accept the submission of Counsel Assisting that wilful blindness can be evidence of actual knowledge of a particular matter. I refer in particular to the following passage in *Giorgianni* where Wilson, Deane and Dawson JJ state:

> *"Lord Goddard C.J. who also presided in Carter v Mace said:*

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60 See, eg, Transcript of Inquiry of 8 June 2018, pages 62 and 65.

61 [1959] 1 QB 11 at 20 per Devlin J. This passage was considered pertinent by Deane, Dawson, Toohey and Gaudron JJ in *Gollan v Nugent* (1988) 166 CLR 18 at 44, and referred to by Kellam J in *R v Wong* [2005] VSC 96.

62 [1959] 1 QB 11.

63 [1991] 2 Qd R 413.

> *"If a person shuts his eyes to the obvious or refrains from making any inquiry where a reasonably sensible man would make inquiry, I think the court can find that he was aiding and abetting, certainly if he shuts his eyes to the obvious."*
>
> *The fact of exposure to the obvious may warrant the inference of knowledge. The shutting of one's eyes to the obvious is not, however, an alternative to the actual knowledge which is required as the basis of intent to aid, abet, counsel or procure. Lord Goddard appears to have recognized this by concluding his judgment (64) with the words "…that is the point: you must know the essential matters which constitute the offence".*

Gibbs CJ stated at 488 that "wilful blindness, in the sense that I have described is treated as equivalent to knowledge but neither negligence nor recklessness is sufficient".

Mason J stated at 495 "It is enough if the defendant has deliberately shut his eyes to a relevant fact or has deliberately abstained from obtaining knowledge by making an inquiry for fear that he may learn the truth."

100. It is not necessary to establish that Eberand Snr knew of the terms of Rule 124(1) or that he knew that what Farrugia was doing was an offence. Ignorance of the rules is no excuse. It is only necessary that Eberand Snr knew what Farrugia was doing in the sense that he had knowledge of the essential matters which went to make up the offence committed by Farrugia.[64]

101. I am also of the opinion that it is not necessary that Eberand Snr knew the precise facts which constitute the offending by Farrugia. Eberand Snr did not admit, for example, that he knew that the form of GA approval required for a greyhound export under Rule 124(1) is known and referred to in the rule as a "greyhound passport". It is enough in my view if he knew that Farrugia was exporting the greyhound without GA approval. The "greyhound passport and certified pedigree" is the specific form of GA approval required under 124(1). Nevertheless, if there is no GA approval it necessarily follows that there was no GA approval in the form of a "greyhound passport and certified pedigree".

102. In support of this analysis I note the plurality in *Giorgianni* did not question the *ratio* of *R v Glennan*[65] that a person charged with aiding and abetting the offence of driving with a prescribed percentage of alcohol in the blood did not have to know the percentage in order to know all the facts which gave rise to the commission of the principal offence.[66] It was enough that the accused knew how much alcohol the driver had consumed.[67] I also note by way of analogy the cases referred to in *Giorgianni* which hold that the requisite knowledge need not extend to the precise crime which is in fact committed[68].

103. To satisfy element two, Eberand Snr must have known:

(a) Farrugia was intending to export WM to Dubai; and

(b) the export was to take place without GA approval.

Knowledge as to intent to export

104. As to the first element, I am satisfied that Eberand Snr knew that Stephen Farrugia was intending to export WM to Dubai. He admitted in his interview on 2 March 2018 and I accept that there was never any doubt in his mind the dog was going to Dubai. He delivered WM to Stephen Farrugia on 6 July 2018 on the express understanding that the dog was being exported to the Crown Prince in Dubai.

Knowledge that the export was to take place without GA approval

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64 *Giorgianni v The Queen* (1985) 156 CLR 473, per Wilson, Deane and Dawson JJ at 500 and 505.
65 (1970) 91 WN (NSW) 609.
66 *Giorgianni v The Queen* (1985) 156 CLR 473 at 508.
67 See also Gibbs CJ's discussion of *R v Glennan* in *Giorgianni v The Queen* (1985) 156 CLR 473 at 486.
68 *Giorgianni v The Queen* (1985) 156 CLR 473, at 505 to 506. See also *R v Ancuta* [1958] 2 Qd R 314.

105. As to the second element, I am satisfied that:

(a) Eberand Snr knew of the requirement of GA approval for the export; and

(b) Eberand Snr knew that Farrugia would not have GA approval.

106. After the initial approach from Lagogiane, Eberand Snr rang GA to check it was possible in terms of the rules.[69] He told his son he was contacting GA to find out "what rules and regulation were around exporting a greyhound to Dubai".[70] He asked to speak to someone who understood the rules and had a discussion about the rules.[71] He was told by GA that an application would need to be completed before GA would give its approval for the export to Dubai. He knew that an application form had to be filled in and submitted before the application could be approved. In his emailed statement of 2 March 2018 he admitted "GA advised a formal application would be required." He was aware of the need for formal approval from GA under the Rules regardless of whether the word "passport" was used. I therefore find he was aware of the requirement under the Rules for GA formal approval of the export regardless of whether he was aware of the terminology of a "passport".

107. I also infer that Eberand Snr knew that the Farrugias intended to export WM without having obtained GA approval.

108. First, Eberand Snr was on notice that GA approval was required under the Rules for the export of WM to Dubai and that this was a "very complicated and lengthy process". He knew it would have involved a detailed application form. He was not aware of GA permission ever being previously granted for the export of a greyhound to Dubai.[72]

109. Next, I am satisfied that Eberand Snr never had reason to believe that Farrugia would obtain a passport or equivalent from GA. In his interview with the Steward on 2 March 2018, Eberand Snr agreed that:

(a) the Farrugias never mentioned they had the ability to get passports from GA;

(b) the Farrugias never said anything to indicate they knew of the requirement to get passports from GA;

(c) the Farrugias probably had whatever the Federal Government exporting approval is and saw that as the approval that was required;

(d) the Farrugias probably did not know that you needed to get a passport; and

(e) he had no information contrary to the proposition that the Farrugias did not know about the passport requirement.

110. I do not accept the subsequent evidence in which Eberand Snr sought to resile from this position. I accept that Eberand Snr knew of the requirement of GA approval for exports and that Farrugia and Lagogiane did not. In particular, it is my view that when Farrugia or Lagogiane referred to Farrugia having approval or "relevant licensing" or "capability to do it legally", they were talking about the Federal government quarantine approvals and processes and never said he had GA approval. I accept the evidence of Lagogiane when he said he had no idea of the notion of the GA passport scheme[73] and that he therefore would never have told Eberand Snr that Farrugia would take care of passports. I find that Farrugia and Lagogiane did not know about the requirement of GA approval and said nothing to indicate that they did.

111. I also find that Eberand Snr never asked Farrugia if he had obtained GA approval. This is implicit from the admission that Eberand Snr had no reason to believe that Farrugia knew about the need for a passport from GA and believed that Federal Government approval was

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69 Eberand Snr's email statement of 2 March 2018.
70 Eberand Jnr's statutory declaration dated 31 May 2018 at [7].
71 Transcript of Inquiry of 8 June 2018, page 39.
72 Ibid page 45.
73 Transcript of Inquiry of Lagogiane's penalty hearing of 31 May 2018, pages 14 and 15.

all that was required. When asked at the hearing if he ever asked the Farrugias about having permission from Greyhounds Australasia, Eberand Snr said "I think it was pretty quick, when there's you know trials and they said, I might have said to them it sounds complicated and they said you know, we do all that."[74] I found that answer unconvincing and am convinced by the earlier evidence that Eberand Snr never directly asked Farrugia if he had obtained approval from GA. He also admitted that he did not make any enquiry of GA to check if Farrugia had obtained approval for the export.[75]

112. The circumstances that:

(a) Eberand Snr was on notice that GA approval was required under the Rules;

(b) he knew that it was prohibitively difficult to obtain a passport;

(c) Farrugia had never said anything to indicate that he knew about the passport requirement and Eberand Snr was unaware of any information which would indicate he did;

(d) Eberand Snr was not aware of GA permission ever being granted for any other greyhound to be exported to Dubai; and

(e) Eberand Snr failed to ask Farrugia or GA the simple and pertinent question whether Farrugia had obtained GA approval;

together support the inference that Eberand Snr was turning a blind eye to the obvious fact that Farrugia had not obtained and would not obtain GA approval for the export of WM. This in my view constitutes wilful blindness that supports an inference of actual knowledge.

113. This inference is also supported by the evidence of Eberand Snr, Eberand Jnr and Cortis that they decided not to go ahead with the export after Eberand Snr's call to GA. If Eberand Snr had any reason to believe that Farrugia had obtained or would obtain GA approval, there would have been no reason to cancel the proposed sale. If in doubt, a simple conversation with Farrugia would have been sufficient to find out if he had applied or would be applying for GA approval. The initial decision not to proceed with the export of WM would never have been made if Eberand Snr believed that Farrugia would obtain a passport.

114. Further:

(a) the misleading nature of Eberand Snr's email to the GRNSW General Counsel, CEO and Chairman on 1 March 2018;

(b) the omission of the involvement of Lagogiane in his statement of 2 March 2018; and

(c) other inconsistencies in the various iterations of Eberand Snr's version of events

are consistent with Eberand Snr holding a consciousness of guilt and a desire to obscure the true extent of his knowledge of and involvement in the export of WM without GA approval.

115. I find that Eberand Snr was aware of the need for GA approval even though Farrugia was not and knew that Farrugia intended to export WM without GA approval.

Element three - Eberand Snr intentionally assisted or encouraged Farrugia to breach Rule 124(1)

116. I am satisfied that Eberand Snr's conduct described above was done intentionally and assisted Farrugia to breach Rule 124(1). It is not necessary for Eberand Snr to have expressly encouraged Farrugia to commit a breach of Rule 124(1), or for Farrugia to have been aware of Eberand Snr's assistance.[76]

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74 Transcript of Inquiry of 8 June 2018, page 46.
75 Ibid, page 46.
76 *R v Lam [No 20]* (2005) 159 A Crim R 448.

Eberand Snr's assistance to Farrugia to breach Rule 124(1)

117. Eberand Snr assisted Farrugia by negotiating, coordinating and executing the sale of WM to him and delivering WM to him at Glengarrie on 6 July 2015 together with the transfer papers in return for $5,000 cash. Although Eberand Jnr and Cortis were the nominal owners of WM, Eberand Snr was the driving force behind the transfer of WM to Farrugia. He was the breeder and trainer of WM and owner before giving a half share to his son after he turned 18 and a half-share to close friend Cortis. Eberand Snr acknowledged during the hearing on 8 June 2018 that the lead owner, Eberand Jnr, "was a young kid and pretty well doing whatever I told him to do."[77] Cortis said he and Eberand Jnr gave Eberand Snr control over whatever needed to be done in the best interest of the dog and usually takes Eberand Snr's advice in relation to whether to sell or keep greyhounds. Eberand Snr had all the relevant dealings with Farrugia and Lagogiane and negotiated the sale of WM to Farrugia. In his statutory declaration of 31 May 2018, Eberand Snr stated that he agreed to sell WM to Farrugia when he met him at his trial track and then spoke separately to Cortis and Eberand Jnr to explain to them that Farrugia was buying WM and that Farrugia intended to export him to Dubai. He recalled a short conversation with Eberand Jnr where he insisted that Eberand Jnr sign the transfer. Eberand Snr then drove WM to Farrugia's trial track and delivered possession of WM and his racing papers and transfer form, in return for $5,000 in cash. Eberand Snr retained the cash. Although not technically the owner, Eberand Snr played the lead role in bringing about the sale of WM to Farrugia and thereby assisted Farrugia to breach Rule 124(1).

Intention to assist

118. I am also comfortably satisfied that Eberand Snr intended to assist the commission of the offence by Farrugia at the time he negotiated, coordinated and executed the sale of WM to him.

119. Eberand Snr knew that Farrugia intended to export WM to Dubai at the time of agreeing the sale as deposed in his statutory declaration. He also confirmed in his 2 March 2018 interview that there was never any doubt in his mind the dog was going to Dubai. I also accept what he said in the interview on 2 March 2018 when he said the initial enquiries were from Lagogiane and that "I was told that Farrugia would be the person to buy and export the greyhound". This is consistent with the evidence of Lagogiane in his initial interview on 11 April 2018 where he stated to Eberand Snr that Steve Farrugia from Glengarrie would be in contact to arrange the purchase and said, "if you're happy to sell it, just take it to Glengarries, Steve will look after it". It is also consistent with Eberand Snr's evidence on 8 June 2018 that Lagogiane told him "the dog was going to be bought by Farrugias who had all the arrangements".[78]

120. In my view, Eberand Snr intentionally assisted Farrugia in his commission of the Rule 124(1) offence.

Knowledge of passport requirement

121. For reasons stated above, I do not consider it necessary for this offence to be established that Eberand Snr knew that Farrugia intended to export WM without a passport in circumstances where he knew that Farrugia intended to export WM without GA approval.

122. In the event I am wrong about this, I should also state that I am also comfortably satisfied that Eberand Snr knew that Farrugia intended to export WM without a passport.

123. A passport is the one GA requirement for the export of a greyhound. The approval form Eberand Snr referred to in his evidence was contained within the brief and refers in bold type to Rule 124(1) and the requirement of a passport. It was publicly available on the GA website and Eberand Jnr accessed it on the Internet when he was conducting his research. Although Eberand Snr did not recall it, I accept Eberand Jnr raised the question of GA approval with his father and asked him if it was something they needed to look into. Eberand Snr told him "No, the Farrugias are organising everything" and "everything was their responsibility."

124. Cortis in his interview on 11 April 2018 said that at the time "we knew that there was paperwork that was involved, whether or not it was a passport or not… so Michael rang up

[77] Transcript of Inquiry of 8 June 2018, page 37.
[78] Ibid, page 46.

(GA)… to work out what it was".[79] Eberand Snr admitted in his 2 March statement that he called GA "to ask whether a greyhound could be exported to Dubai" and "GA advised a formal application would be required". It is highly unlikely that the officer of GA with whom Eberand Snr discussed the rules would not have mentioned the requirement of a passport.

125. I also accept that Eberand Snr later said to Cortis "Well my recommendation is to sell the dog, get $4,000 for it and let them sort out the passport and whatever licences they need" further evidencing Eberand Snr's knowledge of the passport requirement. Having listened to the recording of the relevant part of the interview of 11 April 2018, I do not accept Cortis' explanation that the transcript must have been inaccurate.[80] Having carefully considered the matter, I also do not accept the explanation that he only mentioned the passport requirement in this context because the investigator had put in in his mind with his questioning. Even if Cortis does not now remember it, I consider that it is more likely than not that Eberand Snr had become aware of the passport requirement and relayed this to Cortis. I am not satisfied, however, that Farrugia or Lagogiane were aware of the passport requirement.

126. It is also relevant that Eberand Snr is a well-educated certified practising accountant with in-depth industry knowledge and was also a board member of GBOTA at the time. Eberand Snr conceded at the hearing that he was under a "heightened obligation as a director of GBOTA" to ensure he was complying with the rules and that the GBOTA code of conduct under the heading "Animal Welfare Policies" specifically required Members to adhere to all rules, regulations, policies and instructions of GRNSW and GBOTA regarding animal welfare".

127. Eberand Snr himself did not specifically deny that he was aware of the requirement for a passport from GA. He said in his 2 March statement "the system and process was not as easily understood as it is today. I did not understand the Passport system as such, but understood an application would be required." In his 2 March interview, he was asked if the Farrugias said anything to indicate they knew that it was requirement to get passports and said "They didn't, they definitely didn't say they did know and to be honest I didn't understand the process at the time." In his statutory declaration of 31 May 2018, Eberand Snr acknowledged he rang GA "to check whether it was possible to export to Dubai" and was told there was a "form to complete" but did not state whether or not he was aware of the passport requirement. At the hearing on 8 June 2018 Eberand Snr was asked "do you say that you were unaware of the function of GA at the time in terms of passports?". His reply was "I knew that I should make enquiries, as I did. I rang GA". His counsel later stated "He hasn't conceded that he was aware that GA had a passport system in 2015." Although Eberand Snr may not have been fully cognisant of the details of the passport system in 2015, I find that he knew that a passport was required to export WM to Dubai before he negotiated, coordinated and executed the sale of WM to Farrugia.

128. In all the circumstances, it is simply not credible that Eberand Snr was not aware of the passport requirement prior to negotiating the sale and delivering WM to Stephen Farrugia on 6 July 2018. I am comfortably satisfied on the evidence before me that he was.

129. For the reasons outlined above, I am also satisfied that he knew that Farrugia was unaware of the passport requirement and would not obtain one before exporting WM to Dubai.

Elements of the facilitation charge

130. The elements of Rule 86(o) are that a person is guilty of an offence against the Rules if:

(a) the person has;

(b) in relation to a greyhound or greyhound racing;

(c) done a thing, or omitted to do a thing; which,

(d) in the opinion of the Stewards… is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct.

[79] Transcript of Inquiry of 31 May 2018, page 36.
[80] Transcript of Inquiry of 8 June 2018, page 11.

131. It was put in the charges that, in facilitating the export of WM to Dubai without a valid passport and certified pedigree, each of the participants did a thing that was, negligent, improper, or constitutes misconduct.

132. Accordingly, I must be satisfied that the participants facilitated the export of WM to Dubai without a valid passport in a manner that was negligent, improper or constitutes misconduct.

133. Facilitate is an ordinary English word. It means 'to make an action easier' or 'to assist the progress of an action'.

134. With respect to each man, I am satisfied that:

(a) without the fact of sale (agreed to by Eberand Jnr and Cortis, and negotiated by Eberand Snr) of WM; and

(b) delivery (performed by Eberand Snr) of WM to Farrugia on 6 July 2015;

WM would not have been exported to Dubai. In that sense, it was easier for Farrugia to export WM to Dubai by reason of the participant's conduct.

135. This element was not seriously in dispute. What remains in dispute is whether, in performing those acts, the participants acted in my opinion in a manner that was negligent, improper or constitutes misconduct (**Steward's opinion element**).

Negligent, improper or misconduct

136. I am satisfied that the ordinary meaning of these terms should be employed in the context of the Rules.

137. Concerning "misconduct", the Racing Appeals Tribunal in *Burnett* stated "…the Tribunal is satisfied, without looking further and in any detail, that it simply requires a consideration of what a right-thinking person would require of it." Also interpreting Rule 86(o) in *Arvanitis v Greyhound Racing Victoria*,[81] Nixon J utilised the shorter Oxford English Dictionary definition of misconduct as "improper conduct".

138. Concerning "improper" conduct, O'Bryan J in *Robbins v Harness Racing Board*[82] considered the expression "improper or offensive behaviour" in the context of Rules of the Victorian Harness Racing Board. His Honour stated "the word 'improper' is more difficult to define and must depend on the context in which it is used. For behaviour to be improper it must be such that a right-thinking person would regard the conduct as so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty." In *Dekker v Medical Board of Australia*[83], the Western Australian Court of Appeal considered the meaning of "improper conduct in a professional sense" in the context of section 13(1)(a) of the *Medical Act 1894* (WA). The Court defined improper conduct in that context as "conduct that would reasonably be regarded as improper by professional colleagues of good repute and competency." "Improper" conduct does not have to be intentional[84] and the offender does not have to be conscious of the impropriety. It is a breach of the standards of behaviour which would be expected of a person by reasonable people with knowledge of that person's duties, powers and authority and the circumstances of the case.[85] The term 'improper' refers to conduct which is inconsistent with the proper discharge of the person's duties, obligations, and responsibilities.[86]

139. Concerning "negligent" in the context of Rule 86(o), counsel for the Eberands submitted that the proper interpretation of this term required identification of a common law duty and that "negligence" requires breach of a common law duty of care. I do not accept this submission.

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81 [2011] VCAT 1892.
82 [1984] VR 641.
83 *Dekker v Medical Board of Australia* [2014] WASCA 216.
84 *Health Care Complaints Commission v Aref* [2018] NSWCATOD 133.
85 *R v Byrnes* (1995) 183 CLR 501.
86 *Willers v The Queen* (1995) 81 A Crim R 219; *Southern Resources Ltd v Residues Treatment & Trading Co Ltd* (1990) 56 SASR 455.

The Racing Appeals Tribunal considered the meaning of "negligence" in the context of Rule 86(o) in the matters of Andrew Rowe and Stephen Athanassas:[87]

> *11. The meaning of negligence in this rule is determined by the Tribunal from the following analysis: there is no definition of negligence in the rules; there is no case law presented to the Tribunal as to Racing Appeal Tribunal decisions on this rule or, indeed, under the other codes. All of those things are not surprising because negligence has had, since the snail was in the bottle a long time ago, a straightforward and ordinary meaning. Many courts and authors have phrased it in slightly different ways, but all of them come back to what this Tribunal might paraphrase as being what a reasonable person did or did not do in the circumstances that confronted that person when that conduct is assessed on an objective basis.*
>
> *12. The submissions for the respondent here are that dictionary definitions can be used and, as that was done in the matter of Burnett, it is suggested the same dictionaries might be considered here and it was submitted as follows: adopting the Merriam-Webster dictionary definition as follows: "failure to take care that a responsible person usually takes; lack of normal care or attention". Or "failing to take proper or normal care of something or someone". Reliance was placed on the Cambridge Dictionary definition as "the fact of not giving enough care or attention to something". From that, it is suggested that negligent could be considered to be "not embracing concepts of careful, thorough, attentive, diligent, characterised by care and perseverance in carrying out tasks".*
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> *…*
>
> *39. In those circumstances, he has not met the standards imposed upon him, he has not met what the rules required of him and he therefore has been negligent as previously defined, assessed on an objective basis, against what any reasonable person standing in the shoes of this appellant carrying out the function he did and the facts and circumstances which were then apparent to him, that he has not met that reasonably objective standard."*

I respectfully agree that 'negligent' in these circumstances has its natural and ordinary meaning and can be assessed by reference to what a reasonable person would or would not do in the circumstances that confronted that person when that conduct is assessed on an objective basis. It is not a word in the context of Rule 86(o) which imports the legal requirements of the common law tort of negligence.

Particulars

140. By letter dated 14 May 2018, the solicitor for the Eberands sought further particulars of the charges against his clients. The letter sought, inter alia, particulars of the facts, matters and circumstances relied upon to establish that the conduct was negligent, improper and constitutes "misconduct". Particulars of the charges were provided on 18 May 2018 which stated in relation to the 86(o) charge that it was put that Eberand Snr and Eberand Jnr:

> *(i) knew or ought to have known that:*
>
> *(A) special certification was required from GA or GRNSW for the export of greyhounds to Dubai; and*
>
> *(B) the Farrugias did not have, or would not obtain, that special certification for the export of WM to Dubai;*
>
> *(ii) alternatively, were recklessly indifferent as to whether the Farrugias had obtained or would obtain that special certification for the export of WM to Dubai;*

[87] Tribunal Mr DB Armati, Friday 29 July 2016 at pages 4 and 7–9.

(iii) further alternatively, were careless or failed to take proper or reasonable care to avoid acts which could reasonably be foreseen would facilitate the export of WM to Dubai without that special certification.

141. At the hearing on 31 May 2018, Mr Corsaro submitted that the Eberands had been denied procedural fairness due to the inadequacy of the particulars provided. Further particulars were then provided which identified why it was said that Eberand Snr and Eberand Jnr ought to have known, were recklessly indifferent, or were careless.

Duplicity

142. Mr Corsaro submitted that the rule against duplicity applies to disciplinary and administrative proceedings and referred in support of this proposition to the decision of Mann J at first instance in *R v General Medical Council; ex parte Gee.*[88]

143. It was submitted by Mr Corsaro that a charge is duplicitous in three situations:

(a) where a charge states that one offence or breach has occurred, when in fact two offences are alleged in that charge;

(b) where a charge alleges one breach, and the particulars provided disclose two separate occurrences of the same offence, or different offences; or

(c) where a charge alleges only one offence, but the evidence which is intended to be called potentially proves multiple offences.

144. It was said that the charge that Eberand Snr was in breach of Rule 86(o) contravened each of the three situations identified because:

(a) the particulars to the charge include a claim that Eberand Snr was 'recklessly indifferent', while the charge itself makes no reference to that concept;

(b) the conduct contained in the particulars covers various dates, so multiple instances of contravention were alleged; and

(c) the charge refers to each of 'negligence', 'improper conduct' and 'misconduct' without addressing in the particulars what facts, acts, matters or circumstances are relied upon to establish any of those matters constitute any of the alternatives.

145. In *R v General Medical Council; ex parte Gee* Mann J held that a charge of serious professional misconduct which combined a number of complaints was bad for duplicity. On appeal,[89] the House of Lords reversed the decision and reached the conclusion that it was not necessary to have the rule against duplicity applied to the procedure of the Professional Conduct Committee. Lord Mackay who delivered the leading judgment referred with approval to the following passage of the judgment of Cooke J in *Duncan v Medical Council of New Zealand*[90]:

> *"It cannot be right that every complaint, if to be taken further, must be represented by a separate charge. Further, we do not think that there can be any doubt that a charge may combine a series of similar complaints by alleging a course of conduct in the carrying on of a practice and specifying the separate complaints as particulars or instances."* [91]

146. In *Jacobsen v Nurses Tribunal*,[92] Dunford J referred to these and other authorities before coming to the conclusion that it was not necessary for him to resolve a claim of duplicity "because these are not criminal proceedings but proceedings of a disciplinary nature brought for the protection of the public and the strict rules relating to duplicity of criminal charges do not apply." These decisions were followed in *Reynolds & Co Pty Ltd v Australian Stock Exchange Ltd* (2003) 174 FLR 311 at paragraph [96]. Campbell J also referred to the

88 [1986] 1 WLR 236, 239 (at "B").
89 [1987] 1 WLR 564.
90 [1986] 1 NZLR 513.
91 Ibid at 546–547.
92 (Unreported, Supreme Court of NSW, Dunford J, 3 October 1997).

observation of Ipp A-JA (with whom Mason P and Stein JA agreed) in *Mitchell v Royal New South Wales Canine Council Ltd*, that:

> *I do not suggest that the rule against duplicity that is applicable in criminal cases necessarily and to its full extent in disciplinary proceedings of voluntary associations.*

147. I do not accept that the rule against duplicity applies to these charges as submitted by Mr Corsaro.

148. Further, I do not accept that the manner in which the charges have been put and particularised has caused unfairness.

149. Concerning the provision of particulars in the context of disciplinary tribunals, Halsbury's Laws of Australia states:

> *The extent of the requirement to give particulars of the charge is reduced in the case of an investigative tribunal where considerations of confidentiality and efficient conduct of the investigation apply. In such a case, it is sufficient if the investigative tribunal advises the person affected of the general nature of the matters to which they should direct their attention, there being no need for the tribunal to 'quote chapter and verse' against them.*[93] *In the case of investigative bodies making a general inquiry into a particular topic without precise allegations as to conduct, similar considerations apply.*[94]

150. The charges put the participants on notice that their conduct (as alleged in the particulars) might be found to be one or other of negligent, improper or constituting misconduct. It was not alleged in the charge that the conduct was dishonest, corrupt or fraudulent. It is a matter of evidence as to which, if any, of the descriptors alleged in the charge concerning the conduct alleged are made out. In my opinion, there is but one offence under Rule 86(o) – engaging in conduct in breach of Rule 86(o) – but there a number of different ways in which that breach might be established, depending on the circumstances of the case. The Steward determining a charge brought for breach of Rule 86(o) will take into account the evidence available to him at the time of determination of the charge in determining which, if any, of the descriptors contained in the charge are made out as a question of fact in each case. In particular, as acknowledged by Mr Corsaro, the charge in question is a "Steward's opinion" offence. Until the hearing of all the evidence and submissions, it is not appropriate to identify in advance what will be the Steward's opinion, only that there is sufficient evidence which justifies the laying of the charge as, if the allegations are proven, there may be, in the Steward's opinion, misconduct, negligent or improper conduct.

151. In my opinion, whether the conduct was negligent, improper or constituted misconduct are descriptors made in the alternative. It may be that in the more formal context of a criminal court, the charges would be laid as separate alternative charges, but given the way the Inquiry before me proceeded, I can see no prejudice in determining the matter in this way.

152. Further, I do not accept that the reference to 'recklessly indifferent' in the particulars to the charge raises an issue of duplicity. Recklessly indifferent conduct may, depending on the particular circumstances, be part of the circumstances which causes conduct to be negligent, improper or constitute misconduct.

153. Further complaint is made about the sufficiency of the particulars given in respect of each charge. In my opinion, the particulars are sufficient to give Eberand Snr notice of the case that is put against him.

154. Additionally, it was said that the charge that Eberand Jnr was in breach of Rule 86(o) contravened each of the three duplicitous situations identified above because the particulars to the charge allege that Eberand Jnr failed to make enquiries that would have prevented the Farrugia's conduct in exporting WM, without identifying what enquiries ought to have been made.

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93 *R v Gaming Board for Great Britain* (CA) [1970] 2 QB 417 per Lord Denning at 430.

94 Halsbury's Laws of Australia [10-12765].

155. Again, I reject this submission for the same reasons I have given with respect to Eberand Snr's facilitation charge.

156. In part, the submissions with respect to duplicity appeared to relate to the sufficiency of the particulars of the charge.

157. It was submitted that the charges 'are opportunistic and demonstrate a lack of belief as to which of the three alternatives apply', and, on this basis alone, they were duplicitous and unfair, and should be dismissed.

158. I reject this submission. The purpose of the hearing on this Inquiry was to determine whether there were breaches of Rule 86(o) (and Rule 86(n) with respect to Eberand Snr). When laying the charges, I had determined that I had obtained sufficient evidence to charge each man with an alleged breach of Rule 86(o) on the basis of the evidence available to me at the time, although whether the conduct, after making findings on all the facts and circumstances on further Inquiry, would amount to one or other of negligence, improper conduct, or conduct constituting misconduct was not, nor could not, have been known before the hearing of further material.

159. In fairness, each of the potential ways in which a breach of the Rule, as I then saw it, might be made out was identified in the charge. Eberand Snr and Eberand Jnr, through their counsel, have put forward cogent submissions on each of the elements of the charges, despite the claimed uncertainty in the charges. In my view, they have not been unfairly treated by the manner in which the charges were laid or the level of particularisation of the charges prior to the hearing. Further, they have been given the opportunity to respond to the way the case at the hearing was put by Counsel Assisting by providing further written submissions.

Application of the facilitation charge to Eberand Snr

160. Counsel Assisting argued that Eberand Snr acted in a manner that was negligent, improper or constitutes misconduct because:

(a) it was open to find that he knew about the Export Report at the time, despite his evidence that he does not recall it, particularly in light of the online forum discussion where Eberand Snr responds to a comment which refers expressly to an 'export animal welfare policy' of GA;

(b) he ought to have known that WM would be sent without a GA passport;

(c) he knew or ought to have known that there was a significant risk that WM would be sent to Dubai without all proper approvals from GA, with a risk to WM's welfare in being sent to Dubai; and

(d) he was facilitating the export of WM to the Crown Prince in Dubai, although not directly engaging in it, and so was obliged to take additional steps to ensure the proper approvals were in place, having chosen 'consciously not to ask (because he did not wish to be placed on notice that no passport had been obtained)'[95], disavowing any responsibility in the transaction.

161. Mr Corsaro argued that:

(a) it was a genuine sale of WM from Eberand Jnr and Cortis to Farrugia, who did not represent himself to be an intermediary of the Crown Prince. Finding that the transaction was a sham would be a perverse finding;

(b) Eberand Snr was assured by Lagogiane that Farrugia had the licensing necessary to export the greyhound;[96]

95 Submissions of Counsel Assisting dated 4 July 2018, page 24 [85].
96 Transcript of Inquiry of 8 June 2018, page 65.

(c) the paperwork for the exporting was done by Donna Farrugia, and there is no evidence that Eberand Snr had any contact with her;[97]

(d) legal title was transferred from Eberand Jnr and Cortis to Stephen Farrugia, and so the owners and Eberand Snr could have no role or responsibility in ensuring that the regulatory mechanism of obtaining a passport was complied with after title was transferred, which is consistent with Farrugia being found to be the exporter of dogs in similar circumstances in an earlier decision of this Inquiry;[98] and

(e) he could have been charged with breach of Rule 124A, had the rule been in force at the relevant time. Indeed, the enactment of that new rule itself demonstrates that the rules in force prior to the enactment would not catch the conduct underlying the present charge. In particular, it was plain that the new rule imposes 'greater responsibilities' on owners. If the older rules caught the present conduct, then rule 124A would not be necessary.

162. In my opinion, Eberand Snr acted in a manner was improper and constitutes misconduct.

163. Eberand Snr is a well-educated, long-standing and prominent member of the greyhound racing community in NSW. He first became registered as an owner in 1991 and became registered as an owner/trainer in 1996 and public trainer in 1997. He is a Certified Practising Accountant.

164. He has had involvement in various industry bodies and was asked by one group who knew of his commercial experience to present on financial and economic issues facing the industry to the Select Committee on Greyhound Racing which was established on 27 August 2013 and tabled reports on 18 March 2014 and 17 October 2018. Eberand Snr lodged detailed written submissions in January 2014[99] and made a presentation to the Select Committee in person in February 2014[100].

165. Eberand Snr was appointed a Board member of the NSW GBOTA on 17 January 2015 and remained in that role at the time he delivered WM to Farrugia in July 2015.

166. In February 2015, the Four Corners program "Making a Killing" was broadcast on the ABC. The Executive Officer's Report in the GBOTA 2014/15 Annual Report[101] aptly states that the live baiting revelations in the program "will continue to have a profound effect on our business and the wider industry going forward… The program revealed animal cruelty that was barbaric and has no place in our industry. Whilst it is accepted that the vast majority of participants to partake in greyhound racing in a professional and law-abiding manner, the Four Corners program exposed cruelty at a number of trial tracks and in three States and, accordingly, has impacted heavily on the image and reputation of the entire industry." The Chairman's Report captured the sentiment that "there is no place in the future of our industry for regulatory failings and animal welfare must be the central core to all future decision making".

167. In April 2015, GBOTA commenced operation of its "Members Code of Conduct"[102]. This three-page document under the heading "Animal Welfare Policies" states that "Members must adhere to all rules, regulations, policies and instructions of GRNSW and NSW GBOTA regarding animal welfare." Eberand Snr indicated that it would have been included in the Board papers and agreed that the expectation would be that directors would strictly comply with it. Eberand Snr rightfully accepted that he had a heightened obligation as a director of GBOTA to ensure that he was strictly complying with the rules.

168. Eberand Snr had also become aware that GA had published an export animal welfare policy as evidenced by his response to a post by Paul Wheeler on the Greyhound Knowledge Forum on 12 October 2014.[103]

97 Closing submissions for the Eberands, paragraphs [103]–[105].
98 Transcript of Inquiry of 8 June 2018, page 62.
99 Exhibit B.
100 Exhibit A.
101 Exhibit G.
102 Exhibit F.
103 Exhibit E.

169. In these circumstances, Eberand Snr around June and early July 2015 negotiated, coordinated and executed the sale of WM to Farrugia:

(a) knowing Farrugia intended to export WM to Dubai;[104]

(b) knowing that a passport or at least GA approval was required to export WM to Dubai;[105] and

(c) knowing or being recklessly indifferent to the fact that Farrugia had not obtained and would not obtain a passport or at least GA approval for the export.[106]

170. In my opinion, assessed at the time of the conduct, this conduct falls below the standards of conduct a right-thinking person would have expected in the circumstances. The future of the industry required (and still requires) that its leaders no longer facilitate or turn a blind eye to animal welfare offences. More must be required. A right-thinking person would have regarded the conduct as sufficiently wrongful and inappropriate in the circumstances to call for the imposition of a penalty. It is not enough to rely on utterances from Farrugia that he had "the necessary licensing" or the "capacity to do it legally" when it was, or ought to have been, obvious that he would not have GA approval for the export.

171. I should also say that it is not enough to say in defence that WM is treated well in Dubai. Rules such as Rule 124(1) are in place to protect the welfare of greyhounds and it is for GA and not individual participants to approve an export for the reasons set out in the GA Review. Further, even if it is right that WM is and remains well treated, it is a stud dog in Dubai,[107] and there is no assurance that WM's progeny will be well treated.

Negligence

172. If I am wrong in my conclusion that Eberand Snr knew or was recklessly indifferent to the fact that Farrugia had not and would not obtain GA approval I nevertheless find that he was negligent in failing to ask Farrugia or GA if Farrugia had obtained GA approval or to inform him that GA approval was required in circumstances where Eberand Snr:

(a) had spoken with GA and knew the process for obtaining GA approval was prohibitively difficult;

(b) knew that Farrugia had never said anything to him to indicate that he knew of the requirement to get passports from GA;

(c) was not aware of any information which would indicate that Farrugia was aware of the passport requirement;

(d) was not aware of GA granting approval for any other greyhound to go to Dubai; and

(e) was not aware of GA permission ever being granted for any other greyhound to be exported to Dubai.

173. In these circumstances, and also where Eberand Snr knew that a passport or at least GA approval was required, it was not enough to simply rely on bald assertions from Farrugia that he had "the necessary licensing" or "the capacity to do it legally". Eberand Snr himself later noted that the Farrugias probably had whatever the Federal Government exporting approval is and saw that as the approval that was required. His conduct falls below what a reasonable person would do in the circumstances that confronted Eberand Snr when that conduct is assessed on an objective basis.

174. If Counsel for the Eberands is correct that "negligent" conduct requires identification of a "duty" then I consider that Eberand Snr owes that duty to the industry if not the greyhound itself.

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104 See also [104] above.
105 See also [106] and [121] - [131] above.
106 See also [105] - [114] and [121] – [131] above.
107 Transcript of Interview of Lagogiane of 11 April 2018, page 14.

Application of the facilitation charge to Eberand Jnr

175. Counsel Assisting submitted that Eberand Jnr acted in a manner that was negligent, improper or constitutes misconduct because:

(a) he knew there were regulatory requirements in relation to the export of greyhounds;

(b) knew or ought to have known that approval was important in ensuring the welfare of greyhounds;

(c) in substance, the sale was from Eberand Jnr and Cortis directly to the Crown Prince, because Farrugia was representing the Crown Prince, acting as an intermediary;

(d) he never took steps to confirm whether a GA passport had in fact been obtained;

(e) he knew or ought to have known that there was a significant risk that Mija would be sent without proper approvals, putting WM's welfare at risk;

(f) he was indifferent to WM's welfare and the obtaining of approvals in selling WM to the Crown Prince; and

(g) he failed to consult the Rules, and demonstrated indifference as to whether all proper approvals were obtained.

176. Mr Corsaro submitted that:

(a) the paperwork for the exporting was done by Donna Farrugia, and there is no evidence that Eberand Jnr had any contact with her;

(b) Eberand Jnr relied on the advice of his father, which was reasonable for him to do;

(c) he never had any contact with Farrugia directly;

(d) his actions should be assessed in the context of his young age and relative inexperience in the industry; and

(e) his only involvement was to agree to the sale and to sign the form transferring ownership to Farrugia.

177. Eberand Jnr signed the transfer form knowing WM was destined for Dubai.

178. He had found the export application form on the GA website and was also aware of the requirement of a passport from GA.

179. Nevertheless, while he was "technically" or "officially"[108] the owner, he had just turned 18, he had not previously owned greyhounds and acted on the advice of his father, who had the substantially greater experience. Eberand Snr confirmed that "I'd just expect [Eberand Jnr] to do whatever I said to do"[109] and "he was a young kid and pretty well doing whatever I told him to do".[110] Eberand Snr also indicated that Eberand Jnr did not pay anything for purchase of WM and did not receive the $5,000 cash that he collected from Farrugia.

180. Eberand Jnr rightfully raised the matter with Eberand Snr when he discovered the application form on the GA website and asked him if it was something they needed to look into. Eberand Snr told him "No, the Farrugias are organising everything" and "everything was their responsibility." Eberand Snr also recalled a short conversation with Eberand Jnr where he insisted that Eberand Jnr sign the transfer.

181. He did not have any direct dealings with Farrugia and I am not comfortably satisfied that he knew that Farrugia was unaware of the passport requirement. I am not satisfied that he knew or was recklessly indifferent to the fact that Farrugia was exporting WM without a passport.

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108 These were the terms used by Cortis to describe Eberand Jnr's ownership in his 11 April 2018 interview at page 30.
109 Transcript of Inquiry of 8 June 2018, page 32.
110 Transcript of Inquiry of 8 June 2018, page 37.

182. He is also not subject to the higher standard applicable to someone with Eberand Snr's knowledge, experience and leadership role within the industry.

183. Although it is the responsibility of any registered owner to ensure compliance with the Rules, I accept Mr Corsaro's submission that, in Eberand Jnr's circumstances, it was reasonable for him to rely upon the advice and assurances of his father and I am not of the opinion that he negligently facilitated the sale of WM without GA approval or facilitated the sale in a manner that was improper or constituted misconduct.

184. I find Eberand Jnr not guilty of the charge against him.

Application of the facilitation charge to Cortis

185. Counsel Assisting argued that Cortis acted in a manner that was negligent, improper or constitutes misconduct because:

(a) he knew there were regulatory requirements in relation to the export of greyhounds;

(b) he knew or ought to have known that approval was important in ensuring the welfare of greyhounds;

(c) in substance, the sale was from Eberand Jnr and Cortis directly to the Crown Prince, because Farrugia was representing the Crown Prince, acting as an intermediary;

(d) he never took steps to confirm whether a GA passport had in fact been obtained;

(e) he knew or ought to have known that there was a significant risk that Mija would be sent without proper approvals, putting WM's welfare at risk;

(f) he was indifferent to WM's welfare and the obtaining of approvals in selling WM to the Crown Prince; and

(g) he failed to consult the Rules, and demonstrated indifference as to whether all proper approvals were obtained.

186. Cortis provided a short, written submission on 17 May 2018 in which he stated "Until these charges were laid I would not even know what a passport is. Even in my transcript it is clear I have no idea. I would not know whoever transferred to dog over to Dubai was standing next to me. I simply wanted what was best for the greyhound to keep racing. This is our hobby. I have been buying 1 dog in nearly every one of Michael Eberand's litters for the last 15 years and I'm devastated that you have charged me."

187. During the hearing he maintained that he was not aware of the passport requirement at the time of the sale of WM and did not know that GA approval was required. He suggested the transcript was inaccurate when he indicated that he did know about the passport requirement. He also said that the interviewer had "put passport into my head" when he went through the regulatory requirements earlier in the interview and what he meant to say was "paperwork". He said that although he had been a trainer for 5 years in the past, he had been and owner for 13 years after that and "everything got looked after by the trainer…it was all run by them."

188. In his interview on 11 April 2018, Cortis said he and Eberand Jnr gave Eberand Snr control over whatever needed to be done in the best interest of the dog and usually takes Eberand Snr's advice in relation to whether to sell or keep greyhounds. He said he did not have a clue about exporting the dog, and Eberand Snr made all the enquiries. He said that Eberand Snr said to him "Well, my recommendation is to sell the dog…get $4,000 for it…and let them sort out the passport…and whatever licences they need." Other relevant matters are set out in the summaries of Cortis' evidence above.

189. It is clear that Cortis knew that WM was going to Dubai.[111]

190. In terms of his knowledge of the passport requirement, Cortis relevantly said in his interview "we knew there was paperwork that was involved. Whether or not it was a passport or not,

[111] Transcript of Interview of Cortis of 11 April 2018, page 10 and Transcript of Inquiry of 8 June 2018, page 12.

but there was paperwork that would have to be involved… so [Eberand Snr] rang up Greyhound Racing Australasia, or whatever it was, to work out what it was." I am satisfied that Eberand Snr did mention the passport requirement to Cortis as set out in Cortis' interview. Whether he recalls it or not, I am satisfied that Cortis was made aware of the passport requirement before he signed the transfer form for the reasons set out above.

191. Nevertheless, I am not comfortably satisfied that Cortis knew or was recklessly indifferent to the fact that Farrugia was sending WM to Dubai without a passport. Eberand Snr had all the relevant dealings with Farrugia and Lagogiane and negotiated the sale of WM to Farrugia. In his statutory declaration of 31 May 2018, Eberand Snr stated that he agreed that WM would be transferred to WM with Farrugia at his trial track and then spoke separately to Cortis and Eberand Jnr to explain to them that Farrugia was buying WM and that Farrugia intended to export him to Dubai. Eberand Snr told him "Well, look, if they buy the dog, supposedly they can sort out all the licences or do whatever they've got to do". I consider that Cortis was under the impression from his conversations with Eberand Snr that it was easy for Farrugia to obtain a passport and Farrugia would "sort it out".[112]

192. Although owners must take appropriate responsibility for their greyhounds, Cortis reasonably relied on the advice and assurances of Eberand Snr and I am not comfortably satisfied that he had reason to expect that Farrugia would not obtain a passport. I do not find that he negligently facilitated the sale of WM without GA approval or facilitated the sale in a manner that was improper or constituted misconduct.

193. I find Cortis not guilty of the charge against him.

Consideration of penalty for Lagogiane

194. Lagogiane initially indicated on 23 May 2018 that he pleaded not guilty but on 31 May 2018 pleaded guilty to the facilitation charge against him. On that basis, I am satisfied that the charge is made out and find him guilty of misconduct in that he facilitated the export of WM in breach of Rule 124(1). He did this by contacting Eberand Snr and instigating the export with the intention that WM would be exported to Dubai by Farrugia. His actions in doing so were wrongful, inappropriate and inconsistent with the proper discharge of his duties, obligations, and responsibilities as a licensed trainer.

195. Lagogiane is a successful and established trainer and has held his public trainer license since at least 2002.

196. He was represented by Mr Vince Murphy. Through Mr Murphy, Lagogiane accepted that he ought to have known about the Rules relating to exports, and that he was obliged to be more aware of the communications coming from the industry regulators concerning the regulations relating to the export of greyhounds from Australia.[113]

197. In relation to the appropriate penalty, Mr Murphy submitted that his client:

(a) pleaded guilty at a relatively early time, and was entitled to expect a discount of 25% on sentence for an early plea;

(b) was only involved in the export without a passport of a single dog, unlike other investigations conducted by this Inquiry;

(c) has by his plea demonstrated contrition, remorse and insight, which is relevant to specific deterrence;

(d) has two prior offences for r 83(2) presentation offences, which occurred 8 and 4 years ago, involving dogs with caffeine, tramadol and Zantac, which are of a different character to the present charge;

(e) has not had any breaches of the rules alleged in the three years since the events relevant to the current charge;

112 Transcript of Interview of Cortis of 11 April 2018, page 36.

113 Transcript of Inquiry of Lagogiane's penalty hearing of 31 May 2018, page 3.

(f) there is no evidence that there was sub-standard treatment of WM in Dubai; and

(g) a fine of $1000 was the appropriate starting point for considering penalty then with aggravating or mitigating factors to be taken into account.

198. Mr Byrne as Counsel Assisting submitted that the above submissions were accepted, but:

(a) there was still breach of the rules with respect to the obtaining of a passport;

(b) Lagogiane ought to have known about the rule, and not facilitated the export of WM without ensuring that a passport would be obtained, although there was no setting out to breach the rules;

(c) the priors aggravated the penalty; and

(d) a fine would be the appropriate penalty.

199. I accept the submissions of Mr Murphy except that Lagogiane is not entitled to a full 25% discount due to the timing of the plea. I also accept the submissions of Mr Byrne and have taken into account the following additional matters:

(a) the role played by Lagogiane in instigating the export with the intention that WM would be exported to Dubai by Farrugia;

(b) Lagogiane's apology;

(c) Lagogiane's cooperation to this inquiry;

(d) the importance of general deterrence in ensuring that participants in the industry are aware of their obligations under the Rules; and

(e) the additional responsibility that comes with being a long-standing, successful and established trainer such as Mr Lagogiane.

200. In all the circumstances, I impose a fine of $1000. Given the timing of the plea, I have not applied the full 25% discount. I would have imposed a fine of $1250 if not for Lagogiane's plea.

Penalty for Eberand Snr

201. It will be necessary to hear submissions on penalty with respect to Eberand Snr.

Adrian Anderson

GRNSW Steward