

DECISION



INQUIRY NUMBERS: 2018 EXP 001
PARTICIPANTS: Paul Wheeler (**Wheeler**)
PANEL MEMBER(S): Mr Adrian Anderson (**Steward**)
DATE OF DECISION: 24 April 2018

Summary

1. This decision is part of an ongoing Inquiry primarily into unauthorised greyhound exports to Macau and China. A summary of the background to this Inquiry can be found in my earlier decisions relating to other participants charged by the Inquiry.
2. Mr Wheeler faced 41 charges relating to the unauthorised export of greyhounds to China. I held a hearing in relation to those charges on 18 April 2018, and now publish the following reasons for my decision.
3. Mr Wheeler is disqualified for 12 months and sanctioned \$22,000 for:
 - a. facilitating the export of 10 registered greyhounds to China without passports in contravention of Rule 86(o);
 - b. failing to lodge prescribed transfer of ownership forms for each of the registered greyhounds in contravention of Rule 117(1);
 - c. contravening Rule 86(q) by engaging in conduct that is prejudicial to the interest, welfare, image, control or promotion of greyhound racing by being engaged in or associated with a breach or breaches of Rule 124(1).

Six months of the disqualification is suspended pending any further breaches of Rules 86(o), 117(1) or 86(q) of the GRNSW Greyhound Racing Rules (**Rules**) within the next two years.

4. Mr Wheeler has been a significant participant in the greyhound racing industry for some time and it is to his credit that he recognised the seriousness of this conduct, and at the hearing of the charges on 18 April 2018, pleaded guilty to the Rule 86(o), 117(1) and 86(q) charges, and expressed remorse for his conduct.
5. The alternative charges against Mr Wheeler under Rules 124(1) and 86(n) for exporting or aiding and abetting the export of the ten greyhounds were discontinued. Rule 124(1) and 86(n) charges remain on foot against Yiwen Xi, Wei Shan and Danny Li relating to the export of those ten greyhounds.

Summary of charges, plea and submissions

6. Following extensive investigations and interviews, on 9 March 2018 Mr Wheeler was charged with the following 37 offences relating to nine registered greyhounds exported from Australia to China between October 2013 and September 2015:
 - a. nine charges (one for each of the nine greyhounds) under Rule 124(1) of exporting a greyhound to China without a greyhound passport or certified pedigree issued by Greyhounds Australasia (**GA**);

- b. nine charges (one for each of the nine greyhounds) under Rule 86(n) of knowingly aiding or abetting the export of a registered greyhound to China without a valid passport or certified pedigree issued by GA;
 - c. nine charges (one for each of the nine greyhounds) under Rule 86(o) of facilitating the export of a registered greyhound without a passport, an action which was negligent, improper or constitutes misconduct;
 - d. nine charges (one for each of the nine greyhounds) under Rule 117(1) of failing to lodge a prescribed transfer of ownership form following the sale of a registered greyhound; and
 - e. one charge under Rule 86(q) of engaging in conduct prejudicial to the interests of greyhound racing by being engaged in or associated with breaches of Rule 124(1).
7. Registered participants Danny Li, Wei Shan (Eric) and Yiwen Xi (Leo) were also charged on 9 March 2018 with offences under Rules 124(1), 86(n), 86(o) and 86(q) relating to the export of the same nine greyhounds. Mr Xi was charged in relation to five of the greyhounds; Mr Li in relation to two of them; and Mr Shan in relation to two of them. In each case, the greyhound was identified to have been previously owned by Mr Wheeler and then ultimately being located by GRNSW investigators in China.
8. On 18 April 2018, I laid a further four charges against Mr Wheeler for breaches of Rules 124(1), 86(n), 86(o) and 117(1), regarding an additional registered greyhound, Bekim Bale, previously owned by Mr Wheeler and found by GRNSW investigators to have been transferred to China in October 2015.
9. Mr Wheeler therefore faced 41 charges in total in connection with the unauthorised export of 10 registered greyhounds from Australia to China.
10. At the hearing on 18 April 2018, Mr Wheeler pleaded guilty to 21 charges, comprising:
 - a. 10 charges under Rule 86(o) for facilitating the export of ten registered greyhounds to China without a passport, an action which was negligent, improper or constitutes misconduct;
 - b. 10 charges under Rule 117(1) for failing to lodge prescribed transfer forms following the sale of each of those greyhounds, and
 - c. one charge under Rule 86(q) for engaging in conduct prejudicial to the interests of greyhound racing by being engaged in or associated with a breach or breaches of Rule 124(1).
11. The alternative charges laid against Mr Wheeler under Rule 124(1) and Rule 86(n) were discontinued. The charges laid against Danny Li, Wei Shan and Yiwen Xi under those Rules remain on foot and will be the subject of a future decision or decisions.
12. At the hearing, Braddon Hughes SC, counsel for Mr Wheeler, tendered character references on behalf of Mr Wheeler from Margaret Long (General Manager – Melbourne Greyhound Racing Association), David Woodward (Senior Partner, Young Veterinary Clinic), Brenton Scott (Executive Officer, NSW Greyhound Breeders, Owners & Trainers' Association) and Greg Miller (CEO, Sandown Greyhound Racing Club).
13. Mr Wheeler also expressed his remorse, in person before the hearing, for his offences and the negative impact his conduct had on the greyhound racing industry. Mr Hughes SC in his submissions stated that Mr Wheeler accepted that the sanction being put forward by counsel assisting the inquiry, Mr Andrew Byrne, was appropriate.
14. Mr Byrne submitted that, following his careful consideration of the circumstances of the offending and the substantial amount of evidence before the Inquiry, an appropriate sanction would be:

- a. disqualification for 12 months (in total, for the 21 offences), with six months of the disqualification to be suspended pending any further breaches of Rules 86(o), 117(1) or 86(q); and
 - b. a financial sanction of \$22,000.
15. Mr Byrne also submitted that he considered this sanction appropriate taking into account:
 - a. the nature of the breaches and the circumstances in which they were committed, including the seriousness of the subject matter of the charges, which were identified in detail in the Brief of Evidence;
 - b. Mr Wheeler's character as attested to by his character references; and
 - c. Mr Wheeler's admissions and statement of contrition made to the Inquiry on 18 April 2018.
16. Local Rule 99B sets out the effect of a disqualification, and provides that a person who is disqualified:
 - a. is not permitted to conduct any business affecting the registration of greyhounds or participants with the Controlling Body;
 - b. is not entitled to hold any registration, licence, certificate or permit issued by the Controlling Body;
 - c. is not entitled to recognition by the Controlling Body as an owner, trainer or breeder of any greyhound or for any purpose affecting the breeding, training or racing of greyhounds;
 - d. must not enter any racecourse or place under the control of any club or the Controlling Body;
 - e. must not attend any race meetings pending the outcome of an appeal against a disqualification; and
 - f. must not enter, any place where greyhounds are trained, raced or kept.
17. At the hearing, Mr Byrne also noted that, although not a matter in respect of which any orders or directions were (or could be) sought at the hearing:
 - a. GRNSW had considered a separate application from Mr Wheeler under Local Rule 99B(2), including submissions by Mr Wheeler concerning his personal circumstances, to allow him to attend or reside at his property (on which his greyhounds are located and trained) for the duration of any disqualification; and
 - b. GRNSW had indicated that Mr Wheeler would not be permitted to attend or reside at that property for a period of three months following the commencement of any disqualification, but would be permitted to live on that property (strictly subject to all of the other restrictions imposed on a disqualified person, as set out in the Rules).
18. As such, I understand that, over the period of disqualification recommended by Mr Byrne, Mr Wheeler would be precluded from residing on or attending his property for the first three months; and that, after that period, he would be permitted to return to the property, subject to all of the other restrictions imposed by the Rules on a disqualified person (as well as the conditions for suspension of the second six month period of the disqualification, recommended by Mr Byrne).

Consideration in relation to penalty

19. I have considered all of the submissions and evidence, and agree with Mr Byrne's recommendation as to sanction.
20. While the charges under Rules 124(1) and 86(n) have not been pursued, Mr Wheeler has admitted guilt of engaging in negligent, improper or other actions that constitute misconduct by

facilitating the export of 10 registered greyhounds. These offences are very serious, and Mr Wheeler's conduct has facilitated unauthorised exports of greyhounds to countries that do not meet GA's greyhound welfare standards. That offending has jeopardised the welfare of the exported greyhounds and their progeny (placing them at risk of maltreatment and suffering), and is highly prejudicial to the industry and its reputation.

21. The message must be clear that this industry will not tolerate the involvement of its participants in the unauthorised export of greyhounds to countries deemed by GA to have inadequate greyhound welfare standards.
22. I also find that the offences under Rule 117(1) for failing to lodge transfer forms are not insignificant. Lodgement of appropriate documentation under the Rules is essential to enable the Regulator to monitor the whereabouts of registered greyhounds and to properly supervise participants and enforce compliance with the Rules.
23. I have also taken into account in Mr Wheeler's favour:
 - a. his long and extensive involvement in the industry, without any previous findings of misconduct;
 - b. his character as attested to by the character references provided at the hearing; and
 - c. his admissions and expression of remorse, at the hearing, for his conduct and the damage caused to the industry by it.

Penalties and Conclusion

24. For the Rule 86(o), 117(1) and 86(q) offences combined, I fine Mr Wheeler \$22,000 and disqualify him for a period of one year from the date of this decision. I suspend six months of that disqualification pending any further breaches of Rule 86(o), Rule 117(1) or Rule 86(q) by Mr Wheeler within the next two years.
25. I have already noted in another decision my view that it is not clear that section 21(1)(f) of the *Greyhound Racing Act 2009* (NSW) authorises any higher fine than \$22,000 in circumstances such as this. I urge the relevant authorities to review the wording of section 21(1)(f) and the appropriateness of the limit it imposes. It may be appropriate and desirable that the regulator have the power to impose fines in excess of \$22,000 for individual or multiple offences in certain circumstances. The same sentiment applies to section 59(c) of the *Greyhound Racing Act 2017* (NSW).
26. I defer the commencement of the penalty imposed in this matter for a period of nine days from the date of this decision in order to enable Mr Wheeler to get his affairs in order prior to the commencement of the disqualification.



Mr Adrian Anderson
Steward