TASMANIAN RACING APPEAL BOARD

Appeal No 10 of 2023-24

Panel:	**Ms Kate Cuthbertson (Chair)** **Ms Amber Cohen (Deputy Chair)** **Mr Rodney Lester (Member)**	**Appellant:**	**Mr Anthony Bullock**
Appearances:	**Ms Nicole Winton (on behalf of the Stewards)** **Mr Damian Sheales (on behalf of the Appellant)**	**Rules:**	**GAR 159(3)(b) – LR 159.1 possess a part of an animal which would be capable of being used as bait, quarry, or lure.**
Heard at:	**Conference Room** **Office of Racing Integrity** **Prospect Government Offices** **171 Westbury Road** **Prospect TAS**	**Penalty:**	**Disqualification for the period of their natural life.**
Date:	**6 December 2023**	**Result:**	**Upheld**

REASONS FOR DECISION

Introduction

1. On 2 August 2023, Animal Liberation Tasmania (ALT) released drone footage of Mr Anthony Bullock's (the appellant's) property at Exeter. The video was posted to social media and distributed with a media release. The footage raised issues in respect of the welfare of animals kept on the appellant's property. On becoming aware of the video, the Office of Racing Integrity (ORI) organised a team of Stewards to attend the appellant's property to inspect the conditions there. The first of those inspections occurred on 3 August 2023. A follow-up inspection took place on 4 August 2023. As a consequence of material contained in the footage and the inspections undertaken by Stewards, two parallel inquiries commenced. The first, undertaken by the Director of Racing, related to animal welfare concerns and whether the appellant had committed any breaches of the welfare provisions of the Greyhound Australasian Rules (GAR), the *Animal Welfare Act 1993* or the *Animal Welfare (Dogs) Regulations 2016*. The second inquiry was undertaken by Stewards regarding potential breaches of the Greyhound Australasian Rules (GAR) relating to luring and baiting.

2. It was not controversial that during the course of the inspections of the appellant's property, a pademelon tail was located tied to a training lure at an area known as "the bullring". That animal part was not initially noticed by Stewards on 3 August 2023. Subsequent review of body worn camera footage and photos taken during the course of the inspection alerted Stewards to the potential presence of an animal part attached to the lure arm and prompted the second inspection on 4 August 2023. During the course of that inspection, the pademelon tail was seized by Stewards. It was subsequently forensically examined by the Animal Health Laboratory. A further sample of the tail was also submitted for DNA testing. The DNA profile of the sample was consistent with that of a Tasmanian pademelon.

3. On 24 October 2023, Stewards conducted an inquiry into the matter. The transcript of the inquiry is lengthy. Stewards had also undertaken an interview with the appellant on 10 August 2023 during the course of their investigation.

4. During the course of the inquiry, the appellant was charged pursuant to GAR159(3)(b). The particulars of the charge were as follows:

> *The Stewards in charging him under r.159(3)(b), alleging that you, Mr Anthony Bullock, as a registered greyhound trainer with the Office of Racing Integrity did possess a part of an animal, a pademelon tail, which was attached to the lure ring or bullring, which would be capable of being used as bait, quarry, or lure.*

5. The appellant pleaded not guilty to the charge. The basis of his not guilty plea was that he did not know that the pademelon tail was attached to the lure in the bullring and that he was therefore not in possession of it within the meaning of the rules. Stewards, however, found that the appellant was guilty of the charge and disqualified him for the period of his natural life which was the mandatory penalty required to be imposed pursuant to local rule 159.1. Stewards did not provide reasons at the conclusion of the inquiry for rejecting the appellant's explanation and his evidence as to his absence of knowledge. The Stewards decision which was ultimately published on 24 October 2023 stated the following:

> *Following submissions to support his not guilty plea, and Stewards being mindful of the definition of 'possession' as described in the Tasmanian Greyhound Racing Rules where Mr Bullock is required to prove that he did not know of the existence of the pademelon tail, rather than simply state he did not know it was there, Mr Bullock was subsequently found guilty of the charge.*

6. The appellant lodged an appeal against his conviction on 24 October 2023. He has not been granted a suspension of penalty pending the outcome of that appeal. The appellant's licence has been suspended by the Director of Racing since 5 August 2023. The appellant initially applied for a suspension of penalty, but ultimately did not pursue that application pending the appeal. The hearing of the appeal was conducted on 6 December 2023. The appellant was represented by counsel, Mr Damian Sheales. Ms Nicole Winton from the State Litigator's Office appeared on behalf of Stewards.

7. In order to determine this appeal, the Board has given close consideration to the evidence that was available to Stewards at the time of the inquiry, the appellant's explanation and to the footage released by Animal Liberation Tasmania. The evidence available at the time of the inquiry included body worn camera and video footage and photographs taken by Stewards during the course of both inspections on 3 and 4 August 2023. The appeal raises important questions concerning the definition of possession under the rules and the operation of the deeming provision in paragraph (c) of that definition.

8. Fortunately, this is only the second occasion where this Board has been required to consider the application of the luring and baiting offence rules since the introduction of the mandatory penalty of lifetime disqualification. The previous case, *Whitney* TRAB Appeal No. 1 of 2019/20 did not principally concern the definition of possession or require the Board to consider how the reverse onus aspect of the definition of possession operates where knowledge is denied. Consequently, the determination of this appeal has required close consideration of the meaning of the relevant provisions in the rules and their application to the evidence before the Board.

The Rules

9. GAR159(3)(b) relevantly provides as follows:

> A *person* who, in the opinion of a *Controlling Body* or the *Stewards*:

…

(b) attempts to *possess*, has *possession* of, or brings onto any premises, grounds or within the boundaries of any property where *greyhounds* are, or activities associated with *greyhound racing* occur or are intended to occur, any animal carcass or part of an animal, for the purpose of being, or which is reasonably likely to be or capable of being, used as bait, quarry or *lure*;

…

must be *disqualified* for a period not less than 10 years and, if applicable, in addition fined a sum of money not exceeding the amount where it specified in a *relevant Act* or *the Rules*, unless there is a finding that a special circumstance exists at the time of the offence, in which case a *disqualification penalty* less than the minimum *disqualification penalty* stated in this sub-rule may be imposed.

10. GAR159(3) is modified by local rule 159.1 which provides as follows:

Notwithstanding the penalty stipulated in GAR159(3), a *person* who, in the opinion of *Stewards* or Controlling Body is deemed guilty of an *offence* under the provisions of that rule must be *disqualified* for the period of their natural life.

11. GAR159(8) provides that an offence within sub-r.(3) is an absolute liability offence in that the references to "animal carcass" and "part of animal" refer to the fact of the existence of each of those conditions, whether or not the charged person knew or believed of the applicable conditions. Essentially, sub-r.(8) operates to render a person liable for contraventions of sub-r.(3) relating to an animal carcass or part of an animal regardless of whether or not the person knew the particular object concerned constituted one of those things.

12. There is no question that the pademelon tail was located at the appellant's premises where greyhounds are or activities associated with greyhound racing occur or are intended to occur. It is uncontentious that the appellant's property is used for the purposes of greyhound training and kennelling. The bullring has previously been used as a training facility for greyhound pups.

13. The key issue in this case concerns the definition of possess and possession. Those terms are defined in GAR9 as follows:

possession means:

(a) an article, substance or thing is in the custody or control of a *person*;

(b) the *person* has and exercises access to the article, substance or thing;

(c) the article, substance or thing is found at any time on premises used in any manner in relation to *greyhound racing* and the *person* occupies or has the care, control or management of those premises or owns, trains or is in charge of a *greyhound* or *greyhounds* at those premises,

provided that paragraph (c) does not apply if the *person* proves that he or she did not know of the existence or the identity of the article, substance or thing. ***Possess*** has a similar meaning.

14. Although Stewards did not expressly reference during the course of the inquiry which definition of possession applied in this case, it may be inferred that they relied on the definition in sub-para.(c), given that in their written decision they referred to the appellant being required to prove that he did not know of the existence of the pademelon tail.

15. If sub-paras.(a) or (b) of the definition of possession apply, knowledge of the relevant article, substance or thing is required to be proved by Stewards. The notions of custody and control in sub-para.(a) and having and exercising access to an article in sub-para.(b) imply the existence of the state of mind of knowledge that is encompassed within the ordinary legal definition of possession: see for example, *He Kaw Teh v R* (1985) 157 CLR 523; [1985] HCA 43.

16. In circumstances where the relevant thing, in this case part of an animal, is found on premises used in relation to greyhound racing, as in this case, and the person owns or occupies those premises or owns or trains greyhounds on those premises, possession of the relevant article is deemed to exist. In those circumstances, a person must prove that they did not know of the existence or the identity of the article, substance or thing to displace that presumption. In such cases, GAR159(8) also operates to further modify the definition of possession so that absence of knowledge that the identity of the relevant item, namely that it was an animal part, is not exculpatory. Absence of knowledge of the existence of the article, however, is exculpatory. It is on this basis that the appellant pleaded not guilty and has brought this appeal.

17. The rules are silent as to the standard of proof required to displace the presumption under sub-para.(c) of the definition of possession. Pursuant to the rules, Stewards are not bound by formal rules of evidence and can inform themselves in any manner they think fit: GAR169(1).

18. In *Hillier*, TRAB appeal no.1 of 2013/14 the Board considered the nature of an appeal pursuant to the Act and determined at [4]-[5] as follows:

> 4. …..The hearing of appeals for this Board is prescribed by statute. Relevantly, s.30 of the *Racing Regulation Act 2004* provides:
>
> *(6B) An appeal is to be heard and determined upon the evidence at the original hearing when the decision or finding appealed against was made, but, if the presiding member considers it to be proper, expert or other evidence may be required or admitted.*
>
> *(6C) The appellant may request the TRAB to admit any expert or other evidence that the appellant considers necessary.*
>
> *(6D) The TRAB –*
>
>> *(a) is to make a full and thorough investigation in open court, without regard to the forms, requirements or solemnities that might have been appropriate in legal proceedings; and*
>>
>> *(b) may inform itself on any matter in such manner as it think fit, and admit any evidence considered by the presiding member to be relevant notwithstanding that that evidence would not be admissible in a court of law; and*
>>
>> *(c) may take into account any matters relating to, or to the administration of, racing that are within the knowledge or experience of a member of the TRAB or which have arisen in or as a result of other proceedings or appeals before the TRAB.*
>
> 5. In our view, the following propositions may be drawn from this statutory scheme:
>
> (a) An appeal from the Stewards to this Board is not an appeal in the strict sense, nor is it an appeal *de novo*.

(b) The appeal is in the nature of a re-hearing with this Board exercising its own discretion.

(c) The appeal is decided upon the materials before the Stewards, together with any further evidence the Board may see fit to receive.

(d) The Board has full power to receive further evidence and, in deciding whether or not to do so, will be guided by what it considers to be the interests of justice in the particular circumstances.

(e) The power or discretion to receive further evidence, whatever its form, is unfettered.

(f) No error on the part of the Stewards need be demonstrated before an appeal can succeed.

(g) It will remain for the Board to be comfortably satisfied, having regard to the evidence before it, that the appellant was in breach of any particular rule or rules (See *Briginshaw v Briginshaw (1938)* 60 CLR 336).

19. In light of the nature of the appeal and its application to the issues arising in this case, the question for the Board is whether it is comfortably satisfied on the evidence before it that the appellant did not know of the existence of the pademelon tail attached to the lure in the bullring. It is therefore necessary to traverse that evidence for the purposes of this decision.

Evidence

ALT Drone Footage

20. As noted above, the drone footage of the appellant's property was first released by ALT on 2 August 2023. A media release accompanying the footage described it as having been "anonymously provided" to ALT. The footage is 2 minutes and 16 seconds long. It has clearly been edited, and is comprised of pieces of footage taken by an unmanned aerial vehicle (drone). According to the report titled *"Investigation Report: Inquiry under Greyhounds Australasia Rules into greyhound trainer Anthony Bullock"* dated 3 October 2023, which concerns the inquiry conducted by the Director, the footage was allegedly taken in July 2023. It is not clear from the report how that date was identified. The version that was released also includes subtitles providing the following commentary on various aspects of that footage:

> *Sunrise over the Exeter property of Tasmania's leading greyhound trainer, Anthony bullock. Winter temperatures here have recently been as low as -2 overnight.*
>
> *The greyhounds are waking up, many of whom have faced the frozen night in tin sheds without coats or rugs.*
>
> *Even those given coats are held in tin and concrete kennels, with the barest comfort offered.*
>
> *Those whose runs are tucked away in the shadows wait for the sun, as their trainer sleeps inside his home.*
>
> *The sheds are sparse and barely offer any protection at all.*
>
> *Shredded paper, the only bedding provided for many.*
>
> *Over the period of filming, a ute tray was used to dump animal refuse, becoming progressively filled with horses' bones, hides, a horse's head, and a dead pademelon.*

To the back of the property, at the end of what appears to be a dilapidated training run, lay the remains of another deceased pademelon.

Just meters away, ravens feast on the corpse of third dead pademelon.

Horses are also kept on the property.

What appears to be a trap or small animal cage sits atop a barren greyhound shelter, the purpose unknown.

More possible cages are piled alongside another run.

Is this really the best an industry propped up by millions of dollars in tax payer funding can offer?

Where animals are exploited for money, they will always come last.

21. ALT describe themselves as a "grassroots organisation working for the liberation of other animals since 2016". The end of the drone footage references the "Defund Tasracing" campaign. There is a website dedicated to this campaign. It cites the goal of ensuring that there is no funding agreement between the State Government and Tasracing when the current funding deed expires in 2029. The website also indicates they are campaigning for the funding deed *"to end sooner rather than later"*. The funding provided to Tasracing by the State Government supports the operation of the racing industry overseen by Tasracing across all three codes.

22. It is apparent from media releases and associated websites that ALT are opposed to the racing industry in general. Their succinct identification of the key issue from their perspective is that *"wherever money is involved, animals will always finish last"*.[1] Further, ALT condemns what they describe as the *"system of exploitation that views the lives and bodies of other animals as mere tools to be used for human profit"*.[2]

23. As to the released video, the Board was not able to ascertain from any of the material before it whether it had been provided to ALT in its edited form or whether they were involved in the editing of it. The Board is also not aware whether a lengthier version of that footage exists or what it depicts. No other version of the footage was before it.

24. The footage principally focusses on kennelling conditions at the appellant's property and the presence of animal carcasses in the tray of a ute. The media release accompanying the release of the footage refers to the footage showing a ute filling up with animal refuse during the period of filming. This would imply that the filming occurred over a period of time. The bullring is not the focus of any of the released footage. It can at one point be seen in the aerial shot taken of the entirety of the property. It is apparent from that footage that the bullring is separated from the kennels and residential parts of the property by some distance. Importantly for the purposes of this appeal, the footage of the pademelon carcass in the ute and at the end of what is described as a dilapidated training run shows their tails intact. The third pademelon depicted in the footage is in an advanced state of decomposition and it is difficult to interpret whether it is a complete carcass or not. It is also filmed being scavenged by ravens.

25. While the principal focus of the footage is concerned with welfare of greyhounds on the property, a neighbour of the appellant wrote an email to the local municipal council and the RSPCA on the morning of the 3 August 2023 squarely raising the spectre of live baiting and stating the following:

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[1] https://defundtasracing.com/ Accessed 5 January 2024.

[2] https://defundtasracing.com/anthonybullock282023. Accessed 5 January 2024.

I am deeply concerned at the drone footage which was released last night on social media which depicts the images of three dead Pademelons and what appears to be possum traps.

I am requesting as a matter of urgency that these carcasses be retrieved and inspected before Bullock removes them.

Tas Police have advised that 'it is not their responsibility' to follow up this issue of possible live baiting. As you are aware, live baiting in a criminal offence and what I have viewed indicates that this is possibly continuing to happen at Bullock's property.

Amanda, you were instrumental in passing Bullock's planning application. Shame on you! These images are horrendous and it is now being viewed world wide.

Inspections of the Appellant's Property

26. The initial inspection on 3 August 2023 was undertaken by Stewards Mr Bruce Free and Ms Tracey Canham. They undertook an inspection of a number of areas of the appellant's property, including the bullring, and spent in excess of two hours there: see inspection form dated 3 August 2023 completed by Mr Free. Both Stewards wore body worn cameras. Ms Canham also took a number of photographs of the site.

27. The Board has viewed the relevant parts of the body worn camera footage relating to the inspection of the bullring area. The appellant leads the Stewards to the area. It takes some minutes to walk there. He shows them various aspects of the bullring, including its state of disrepair and absence of evidence of recent use. He also directs Stewards' attention to the lure arm, approaching it, taking it in his hand and shaking it. He also briefly demonstrates its operation by pushing it around the track. The footage viewed by the Board does not clearly depict the tail, although the pink baling twine later found to be used to attach the tail to the lure is clearly visible. Photographs taken by Ms Canham of the lure during the course of that inspection clearly show the pademelon tail attached with pink baling twine to the lure arm.

28. The pademelon tail was not seized at that time. It appears that neither of the Stewards inspecting the bullring on that day noticed the tail. During the course of the inquiry, Mr Free acknowledged that he did not see the tail at the bullring during the course of his inspection. He accepted that it was there at the time of the inspection because he had subsequently viewed the film footage and saw it. He noted in his evidence at the inquiry that he remembered the appellant picking the lure up with his hand after taking him and Ms Canham to the bullring. He stated that when he was advised that there was a tail on the lure arm he was very surprised. When Ms Canham gave evidence during the course of the inquiry, she admitted that at the time she was at the property she was not aware the tail was on the lure arm. She said this was the case despite the fact that she thought that all three of them (herself, the appellant and Mr Free) had actually touched the lure while at the bullring. She stated that she knew that she had grabbed it and thought that Mr Free had grabbed it when he walked past. She stated it was not until she was reviewing the photos the next day that she noticed the tail was there. As at the time that she had left the property she had not noticed it.

29. Having reviewed the photographs and footage, Stewards organised a second inspection on 4 August 2023. On that occasion, the inspection was undertaken by Ms Carolyn Ellson from ORI and Mr John Robinson from Biosecurity Tasmania. On attending, the appellant was spoken to and advised that those attending needed to conduct an inspection of his bullring. He guided them to the area. Ms Ellson, in a file note, reports observing what she describes as a "fresh wallaby tail" tied onto the lure with pink hay band after entering the bullring. She seized it and put it in an evidence bag. Having seized the tail, Mr Bullock stated it was the first time that he had seen it. He also stated during the course of that inspection that he had

not used the bullring in over 6-12 months and that other people had not used the bullring for approximately the same period of time.

30. During the course of the inquiry, Ms Ellson was questioned by the appellant. She was asked if she believed that when they walked down to the bullring that the appellant knew why they were going down there. She responded that she did not believe so. She was also asked if she thought that the appellant knew that the tail was there. She responded "no". She was then asked some questions about the way the tail had been tied on to the lure arm. The appellant asked her if she believed that it had been tied on sufficiently enough to be used. Ms Ellson responded that she did not believe so, and stated:

> *The way that it was knotted, a greyhound would tug it off in one go. It wasn't tied on properly, tightly, securely.*

31. She was asked how long it took to untie it and stated that the appellant had untied it in seconds from the top. In relation to the knot on the tail she stated it did not appear like it would hold if anything gave it a tug. In her estimation, the end tied to the arm was able to be untied within a matter of seconds and the knot tying it to the tail would not have held with any force.

Forensic Examination of the Tail

32. As noted above, the Animal Health Laboratory undertook an analysis of the tail. It issued two certificates of analysis dated 9 August 2023 and 21 August 2023. They appear to be identical in content but for the date. The status of each of the certificates of analysis is described as "interim". Each certificate of analysis indicates that the tail had been presented for determination of estimated time of severance, presence of maggots, type of animal the tail belongs to, collection of saliva swabs, detection of bite marks and inflammation and determination of whether the tail severed.

33. Under the heading "Gross Findings" the following was stated:

> *This is a section of macerated, autolysed tail tissue 30cm long, weighing 64 grams. The hair depilates easily. There is a length of pink baling twine tied around the tail. The diameter is 3cm at the proximal end and the protruding vertebra at this point is rough (fractured). The skin edges of the proximal end are smooth. There are large puncture wounds on both dorsal and ventral surfaces at 2 and 7cm from the proximal end (5cm apart). There is minimal muscle tissue remaining, and the remnant subcutaneous tissues appear to consist of ligaments and tendons. There is a fracture though the vertebrae at 6-7cm from the proximal end? Several live maggots are present within the puncture wound.*

34. Under the heading "Pathologists Comments" the following was noted:

> *DNA testing could clarify the origin animal of this tail. Based on the absence of any colouration at the tip it is probably from a pademelon*. The severed end edges are smooth consistent with a sharp instrument, however there is the possibility of post-mortem scavenging. The puncture wounds are consistent with bite wounds but the absence of visible bruising at the edges suggests that these were inflicted post-mortem. Maggots have been submitted to entomology to get an idea of post-mortem interval (time from death to sample collection). I have also collected swabs, hair and skin sections suitable for genetic testing. I will cut in some of the wound edges for histology to attempt to clarify if the injuries were ante or post-mortem, but maceration of tissue may limit this examination.*

35. The sections of skin at the severed end and through the bite wounds were also examined. The histopathological description was as follows:

Skin (hair): Severed proximal tail; Autolysis is advanced with only dermal collagen still present. Within the tissues are fungal hyphae with irregular bulging walls, septate and dichotomous branching. The surface is covered with mixed bacterial flora.

Skin (hair): Edge of puncture wound: Autolysis is advanced with only dermal collagen still present. The surface is covered with mixed bacterial flora.

36. Under the heading "Diagnosis", the pathologist stated "none". The pathologist's comments, however, were as follows:

The absence of any haemorrhage, bruising or cell reaction may be due to exposure of the tissues to the elements. In the absence of these changes I am unable to confirm whether the injuries were post or ante mortem.

37. As noted, the report refers to an intention to submit maggots to entomology and to collect swabs, hair and skin sections for genetic testing. As to the former, no information has been provided to the Board to suggest that this occurred or, if it did, what the results of any such analysis were. As to the latter, as already noted above, the DNA profile of the tail matched that of a Tasmanian pademelon. In addition, the samples were submitted for possible determination of predatory bites on a carcass. In respect of that testing, the canine mitochondrial genome was targeted. Canine mitochondrial DNA was not detected on any of the swabs.

The Bullring

38. The bullring, including its location and use, was a significant focus of the evidence. The appellant indicated he had not used the bullring for a long period of time. Part of the reason he provided was the difficulties he had experienced with a neighbour that lived across the road. He told Stewards during the inquiry that he used to drive down every Saturday and use the bullring to break in his dogs. He used to break in 20-30 dogs at a time. He referred to his neighbour frequently taking photos of him driving down to the bullring on those occasions and that being part of the reason why he was no longer using that facility. He told Stewards that the purpose of the bullring was as a training device to educate young dogs. He indicated you could use it for any dog to educate them to chase. It is constructed to be a mini-racetrack. In the period preceding the inspection, the appellant had been using facilities at racetracks and had ceased using his bullring as he could do exactly what he wanted to do at the track during trial sessions. He told Stewards it had been a number of months since the bullring had been used.

39. He also indicated that he had previously allowed others to use the bullring, but that had also ceased about the same time he stopped using it. The last two people to use the bullring with him present were Ben Clark and Kyron Ebdon. Mr Clark was called by the appellant during the course of the inquiry. Both Mr Clark and Mr Ebdon now use the racetrack facilities to undertake similar training exercises with their dogs.

40. During the course of the inquiry the appellant described the operation of the lure arm. It is required to be physically pushed around the track as it is not motorised. He noted, and the Stewards who inspected the bullring confirmed, that there were no wear marks on the bullring showing a person walking around consistent with pushing the arm around the bullring track. He also indicated there were no tracks consistent with the dogs recently being in the bullring. A good part of the surface of the bullring was under water. He further referred to the poor state of the bullring. A sheet of tin was lying in the area which would have posed a hazard to any dogs utilising the bullring. Further, the boxes had significant grass growth in and around them. Finally, the exterior perimeter of the bullring was not secure. A large portion of the fence was lying on the ground, meaning that if the bullring was used, dogs could easily escape. All of these observations were confirmed by the

inspecting Stewards and are clearly visible on the footage taken of the bullring during those inspections. For example, in his evidence to Stewards, Mr Free stated the following:

> *I made the comment about the top of the railing on the bullring where the lure goes around to say that it hadn't been used because it was fully rusted and had a coating of rust on it. Also, the other thing was that the bullring has 3-4 inches of water in it, so if you'd had greyhounds in there, you would have, would have been noticeable with there being a disturbance to both the top surface of the soil and the water. So there was no mud at all, there was no footprints in there at all and the other thing was that was notable was that there was fencing that was down at one side at the bullring, which was a fair amount of fencing that was basically - whether it had fallen over or whether you were doing repairs, you obviously couldn't keep a greyhound in there because the fencing was missing as well. .... That bullring had not been used in relation to putting any greyhounds around it for a very long period of time.*

41. As noted above, the bullring is situated some distance from the other parts of the appellant's training facilities. It took a number of minutes for the appellant and those inspecting the property to reach the bullring by foot. Further, during the inquiry, another Steward who had also attended the property, Mr Neal, agreed with the observation that the bullring was some distance from the highway but that there were areas down the side of the property which would not be difficult for anyone to gain access.

Appellant's Evidence of Absence of Knowledge

42. The appellant consistently indicated he had no knowledge of the presence of the pademelon tail on the arm of the lure at the bullring. As already noted above, when he arrived at the bullring with inspectors on the first occasion, he approached the arm of the lure and shook the twine attaching the various items to it. He also demonstrated its use to Stewards. When the tail was pointed out to him on 4 August 2023, he indicated that was the first time he had seen it. He told Stewards that he considered himself in charge of the bullring, regardless of whether he was utilising it for his own dogs or it was being utilised for other people's dogs. He indicated to Stewards that he always accompanied others who were utilising the facility. He thought that the last time that it had been used was in March 2023.

43. The appellant indicated that he was well aware of the footage being posted online and the likelihood of Stewards conducting an inspection of his property as a consequence. In his words he had 17 hours from the time the drone footage was posted to take the tail out of the bullring. He posed the rhetorical question why had he not done so and answered because he had no inkling it was there. He had, for example, taken steps to remove a horse from the property that had been the focus of part of the drone footage in the period between the release of the footage and the attendance of Stewards at his property.

44. The appellant also gave evidence that he had obtained an application for his phone that detects the presence of Bluetooth devices. He claimed that he was able to detect a number of cameras overlooking his property. His theory was that people had trained them on the bullring to try and trap him into using it with the pademelon tail on the lure arm. In his words, his firm belief was that someone planted the tail there for him to be caught using the tail in order to be given the penalty he received. The Board was not provided any other information concerning the application used by the appellant or any information verifying his assertions. There was no challenge to that evidence during the course of the inquiry.

45. Ms Ellson gave evidence that when the tail was pointed out to the appellant he displayed total shock. Her evidence was that she had known Mr Bullock for quite a few years and had never seen him react like that. In her opinion his responses were genuine and reflective of someone who was shocked about something.

46. The appellant during the inquiry also described the security cameras he has set up himself to monitor his property, particularly in light of his perception that there are people interested in seeing his operation closed down. He attempted to review the footage after the detection of the pademelon tail but discovered that the cameras had not been operational for some weeks. He described that some wires had melted, but that they had now been repaired. No information verifying damage to the cameras, or their subsequent repair was before the Board. Again, the appellant's account was not challenged during the course of the inquiry.

Submissions

47. As noted above, the appellant has at all times denied any knowledge of the presence of the pademelon tail attached to the lure in the bullring. The appellant submitted that should the Board be satisfied that it is more likely than not that the appellant's denials are truthful, then the appeal must be allowed. It was further submitted that there was no direct evidence that the appellant knew of the presence or existence of the tail in the bullring. The appellant acknowledged that the evidence established the possession of the tail by the appellant within the meaning of para.(c) of the definition of possession. It was accepted that the appellant, therefore, was required to establish on the balance of probabilities that he did not know of the existence or presence of the tail on his property. This reverse onus of proof was, on the appellant's case, discharged by him during the course of the inquiry. It was submitted on behalf of the appellant that the Stewards had not challenged any of that evidence during the course of the inquiry and that the totality of evidence objectively supported his assertion that he did not know of the presence of the pademelon tail in the bullring.

48. The appellant relied on the following evidence in support of this submission:

(a) the drone footage of the appellant's property was posted on social media becoming broadly known and a matter of great public controversy within a very short period of time;

(b) from that time it was inevitable that Stewards would attend and inspect the appellant's property, a matter the appellant also knew to be inevitable;

(c) the appellant relied on the presence of maggots in the wallaby tail when seized. He asserted during the course of the inquiry that maggots only last for 8-10 days and that this was consistent with it having been placed on his property shortly before the inspection and around the time of the drone footage being taken. The appellant submitted that no evidence to challenge that assertion was presented by Stewards;

(d) the evidence of Ms Ellson was that the tail was immediately observed to be still attached to the lure when she attended the property on 4 August 2023 following review of the body cam footage taken the day before, but that the appellant had stated it was the first time he had seen the tail and that the bullring had not been used in the past 6-12 months. This explanation was consistent with her observations of the conditions of the bullring track including that it had good grass cover on the surface, the surface was not marked with any track marks that would be left if dogs had been exercised in the bullring and there was long grass in the bullring boxes;

(e) the appellant also relied on the information he provided to Stewards during the course of the interview on 10 August 2023. During that interview he indicated he had not used the bullring, did not put the tail there and did not do anything with it. He stated in that interview that he had last used the bullring in August 2022, advised it takes 2 people to operate the bullring and that he was wary and cautious about others using the bullring as it was his responsibility. He told Stewards that he now uses the Launceston track bullring on Wednesdays instead of using the bullring at his property. He also told Stewards he believed he had been set up by activists who had attached the tail to the lure in the bullring without his knowledge. He further told Stewards that he was aware of the draconian nature of the rules and that he had

no motive to break them, in that he had permission to have up to 91 dogs and if he has a non-chaser, that dog is just retired and still lives on the property with the other retired dogs;

(f) the evidence of Mr Neal, Mr Free, Ms Canham and Mr Janes also confirmed that the bullring gave every appearance of not having been used consistent with the appellant's explanation to that effect;

(g) the pathology reports from August 2023 reported there were large puncture wounds 5cm apart on both sides of the tail that was seized and that live maggots were observed in the puncture wounds. A subsequent pathology report dated 23 October 2023 reported that canine DNA was not detected on the tail;

(h) the way the tail was affixed to the lure revealed that whoever did so was ignorant as to the fact that it would not work as a lure in that state with particular reference to the evidence of Ms Ellson referred to above;

(i) the evidence of Mr Clark confirming that he had last used the bullring on the appellant's property in about March 2023 to break in a couple of pups when they were 13-14 months old. He also confirmed that when he used the bullring two others were involved in handling the dog and operating the lure. Those people were his associate Kyron Ebdon and the appellant;

(j) the evidence of Mr Free and Ms Canham that neither of them noticed the tail attached to the lure when they inspected the bullring with the appellant on 3 August 2023. Ms Canham also gave evidence that the appellant, herself and Mr Free had each touched the lure at the time of that inspection without noticing the tail.

49. In addition, reliance was placed on the evidence given by the appellant during the course of the inquiry to the following effect:

> *This is a 5 year period of my neighbour across the road that overlooks my property. It has not stopped. So when I do something, I have her in full, 100% in mind "What is the best outcome for myself and the industry".*
>
> *So where I say I've not used the bullring, I am telling you I do not use the bullring for that (inaudible) simple reason. I used to drive down every Saturday when I used to break in dogs. I used to break in 30 to 20 at a time. I stopped because she takes photos of me driving down every Saturday, which is the letter from [redacted], which is the second email you got because she's watching my place like a guard dog. I cannot do anything that she does not know. ...*
>
> *That is why I'm 100% - when the Stewards come, I've done nothing wrong. There is no footage of me doing anything wrong because I don't do it. Because I am under 100% where she can see. ...*
>
> *So I had 17 hours from the time the drone footage went over to take it off the bullring. Why didn't I take it off?, why? I'll tell you the reason why, because I didn't know it was there. Had no inkling it was there. ...*
>
> *Had no inkling. No inkling. Now, 17 hours, I didn't go there. Why? Had no reason to go there. No reason at all to go there. Now people, you say people clean up. Mate, I done the poorest job. I must be the dumbest bloke in Australia. And I mean the dumbest because my memory is very good. I have a very good memory.*

50. As noted by the appellant, none of this evidence was challenged during the course of the inquiry.

51. Stewards submitted that the appellant had failed to positively discharge the onus of proof that arose as a result of the operation of the definition of possession at GAR9. The appellant had submitted that if the Board is satisfied that it is more likely than not that the appellant's denials of knowledge were truthful, then the appeal must be allowed. Stewards argued that this was not the correct test.

52. Stewards referred to the definition of "prove" from the Macquarie Dictionary, which provides "*to establish the truth or genuineness of, as by evidence or argument*". The Board notes that the Oxford English Dictionary relevantly defines the word "prove" as follows:

> *To establish as true; to make certain; to demonstrate the truth of by evidence or argument.*

53. Stewards further submitted that the standard of proof required is coloured by the nature and object of the relevant offence provisions in the rules. Those provisions made clear the intolerance of the presence and use of parts of animals as lures in the greyhound racing industry. Stewards framed the relevant question as being "how the pademelon tail came to be attached to the lure". This they said is because the relevant rules evince an intention and obligation upon every participant to be aware of all things on their property that could offend against the rules. In Stewards' view, the acceptance of the appellant's assertion that he did not have the relevant knowledge was sought to be established by him by "mere inference". That in their view was insufficient to discharge the relevant burden of proof.

54. In reply, the appellant rejected the description of the path to proof being utilised by the appellant as "mere inferences". It was submitted that the appellant was seeking to establish the conclusion that he did not have the relevant knowledge by a process of inferential reasoning. That process of reasoning is, it was submitted, legitimate. It was submitted that it was not necessary for the appellant to prove who had placed the tail at the bullring as the appellant had no burden of proof to do so. His burden of proof was solely directed at establishing his absence of knowledge. On the appellant's case, Stewards had not been able to point to any fact other than the location of the pademelon tail at the bullring to contradict the appellant's assertion that he had no knowledge of it being there. In his submission, all other evidence pointed in one way, that is to establish he had no actual knowledge of its presence on his property.

Decision

55. The circumstances in which the pademelon tail was located on the appellant's property are such that he bears the onus of proving that he did not know that the animal part was on his property in order to avoid being found guilty of an offence pursuant to GAR159(3) and the consequent lifetime disqualification. Proof of the negative will usually rely on inferences to be drawn from other evidence.

56. During the course of the appeal, the appellant made the following submissions concerning what is required to discharge the onus of proof:

    (a) in a civil proceeding the question is whether to draw an inference on the balance of probabilities. On such occasions there need only be circumstances raising the probable inference in favour of what is alleged. Before such an inference can be drawn, it must be something which follows from the given premises at being at least probably true. In such cases, it is not necessary to show that if the underlying facts were accepted an inference necessarily followed. It only has to be more probable than not: *Chapman v Cole* (2006) 15 VR 150 at [14] and [16], Callaway JA, Warren CJ and Ashley JA agreeing;

    (b) the onus is on the appellant to prove that the inference sought to be drawn is more probable than not. Such an inference may be proved even in circumstances where the evidence does not establish, for example, when the lure was deposited: *Strong v*

Woolworths Ltd [2012] HCA 5; (2012) 246 CLR 182 at 34, French CJ, Gummow, Crennan and Bell JJ;

(c) that other possible explanations exist and cannot be excluded is not fatal. An inference may still be drawn where that inference provides a reasonable and probable explanation: *Fuller-Lyons v New South Wales* [2015] HCA 31; [34] per the Court;

(d) an inference is a conclusion based on established fact. The drawing of inferences is affected by how and for what reason a tribunal of fact may have accepted or rejected particular pieces of evidence which is important to the drawing of that inference or conclusion: *Box Hill Institute of TAFE v Johnson* [2015] VSCA 245 at 37;

(e) in a case relying on circumstantial evidence, each proven fact may gain support from each other proven fact, and, although each in isolation may not provide a sound basis for inferring the ultimate fact sought to be proved, in combination they may provide a compelling basis from which to draw the relevant inference. It remains the case that the tribunal of fact's task is to consider whether the weight of the combination of facts is sufficient to support the relevant inference as a matter of probability.

57. The Board accepts these principles as relevant to the task required to be undertaken by the decision maker in this particular case. At the inquiry, Stewards were required to consider all the evidence to determine whether the appellant had proved that he had no knowledge of the presence of the pademelon tail on his property. On this appeal, the Board is also required to consider the evidence for itself and determine whether it is satisfied that the appellant has proved he lacked the requisite knowledge. The opinion of Stewards arrived at in this case is of little relevance in this appeal as no reasons for rejecting the appellant's account were given by them either during the course of the inquiry or in their published decision. The Board must assess all of the evidence including by drawing any inferences for itself. As noted above, the rules and Act are silent as to the standard of proof. There is, however, no suggestion that the appellant is required to prove his absence of knowledge beyond reasonable doubt. Such a burden of proof would be inconsistent with the standard of proof required to be satisfied by Stewards in the ordinary case. There is no reason to think that the burden should be any greater on the appellant than would be on Stewards.

58. In this case, there is no direct evidence that the appellant knew of the existence of the pademelon tail on his property. The appellant says he did not have that knowledge. Simply saying so is, of course, insufficient to establish that as a fact. The Board is, therefore, required to give consideration to all other evidence to ascertain whether or not it accepts that the appellant's assertion to that effect.

59. The presence of the pademelon tail on the appellant's property is consistent with a number of competing propositions:

(a) that the appellant placed it on the arm of the lure himself at some time prior to the inspections conducted by Stewards on 3 and 4 August 2023 and therefore knew of its presence in that location or had forgotten it had been placed there by the time of those inspections;

(b) that the pademelon tail was placed on the lure by some other person and that the appellant knew of its presence in that location or had forgotten it had been placed there by the time of those inspections; or

(c) it was placed on the arm of the lure by some other person without the appellant's knowledge.

Only the last of those propositions is exculpatory.

60. Given that each of these are inferences open on the evidence, it remains for the Board to consider whether the inference that the appellant was neither responsible for the placement of the pademelon tail on the lure and, in addition, had no knowledge of its presence there is more probable than not.

61. The Board is mindful of the seriousness of the charge and the objects and purpose of the relevant provisions of the rules. Nevertheless, it is incumbent on Stewards and, during an appeal, the Board to consider the entirety of the evidence. It is not the case that the appellant was required to prove who had placed the animal part on the lure in order to discharge the burden. Indeed, establishing who did so might also establish knowledge on his part. The Board accepts that the burden of proof is directed at establishing absence of knowledge.

62. It is not controversial that the Stewards' inspections occurred within the context of drone footage being released by ALT in the day prior to them commencing. There is no evidence to contradict the appellant's assertion that he knew of the release of the footage, its content, and the likelihood of it precipitating such an inspection. In fact, the evidence given by the appellant, again uncontradicted, squarely points to that being the case. He gave evidence that he took steps to remove a horse from his property in anticipation of an inspection being undertaken. That horse was the subject of some attention in the drone footage.

63. During the course of the inspection, the evidence is that the appellant drew attention to the lure by touching it, shaking it and demonstrating the operation of the arm around the bullring in the presence of Stewards. The Stewards conducting that inspection did not see the pademelon tail during the course of that demonstration or while taking photographs of it. It was, however, plainly there. So much was established by the photographs taken on the day and subsequent viewing of the footage. The review of the footage prompted a subsequent inspection of the appellant's property for the express purpose of looking for and seizing the pademelon tail. The appellant's conduct in drawing attention to the lure arm and demonstrating its use is consistent with his evidence that he did not know it was there. The Board is mindful that an alternative inference also open on the evidence is that the appellant had forgotten the pademelon tail had been placed on the lure arm, but considers this to be an unlikely explanation in the circumstances. The Board accepts that the appellant was particularly mindful of the scrutiny he would be subjected to as a result of the release of the footage and his experience in the industry and knowledge of its rules. In that context, it seems unlikely he would have overlooked such a serious matter.

64. The evidence of the forensic examination of the tail is somewhat equivocal. No evidence was called to explain the length of time over which the sort of decomposition noted in the forensic reports would take place. Nor was there any cogent evidence as to whether the maggot activity provided a basis to date the length of time that the pademelon tail had been attached to the lure. Certainly, Ms Ellson who seized the animal tail formed the distinct impression that it was fresh. Of particular significance is the means by which the tail was attached to the lure. The clear evidence is that it had not been attached in a suitable manner to operate as a lure. The nature of the bullring is such that the lure arm is operated manually. As the Board understands it, the dogs trained in that facility would be able to catch the lure without much difficulty particularly when unmuzzled. The evidence suggested that the pups trained in the bull ring were at times trained while unmuzzled. Having the tail affixed in the way in which it was found would have meant it was likely that an unmuzzled dog would easily remove it from the lure therefore serving no practical purpose. The Board accepts that it is unlikely that the tail was attached to the lure by someone with any real knowledge of the industry and how that sort of training is conducted.

65. Finally, the Board cannot rule out that someone else is responsible for placing the pademelon tail on the lure arm. Stewards did not contradict the evidence that the bullring was accessible from outside the property without great difficulty. So much was confirmed by Mr Neal during the inquiry. The bullring is visible from the highway. According to Mr Neal, while the bullring is some distance from the highway, there are access points down the side of the property and it would not be difficult for anyone to gain access.

66. The context in which all of these events occurred cannot be ignored. ALT received footage from an unknown person. It is not possible to discount the possibility that the unknown person or persons responsible for taking the footage, no doubt motivated by their strongly held animal welfare concerns, might be minded to take steps to ensure that the operator of a large training facility be removed from the industry entirely. The Board can make no express finding to that effect. It is simply not in a position to rule it out.

67. The entirety of the circumstances are such that the Board is comfortably satisfied that the appellant had no knowledge of the presence of the pademelon tail on his property. There is no direct evidence to the contrary. The only evidence that can be relied upon by Stewards to contradict that claim is the presence of the animal tail on the property. That is not sufficient, particularly in circumstances where that part of the property was not being presently utilised for the purposes of greyhound training and had not been used for some considerable period of time. There is no suggestion that its use was imminent given the state of the facility, with fallen down fences, large portions under water and the boxes utilised to hold the greyhounds being in a state of disrepair and overgrown with grass.

68. As a consequence, the appeal is upheld and the conviction and penalty quashed. The appellant will have the entirety of his appeal deposit returned to him pursuant to s.34(1A) and (2)(e) of the Act.

DATED: 16 JANUARY 2024

Details redacted by order of TRAB and published 17 June 2024