

**RACING PENALTIES APPEAL TRIBUNAL DETERMINATION**

**APPELLANT:**

**MR PHILLIP WORTHINGTON**

**APPLICATION NO:**

**A30/08/795**

**PANEL:**

**MR D MOSSENSON (CHAIRPERSON)  
MR A MONISSE (MEMBER)  
MR W CHESNUTT (MEMBER)**

**DATE OF HEARING:**

**28 FEBRUARY 2017**

**DATE OF DETERMINATION:**

**6 JULY 2017**

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**IN THE MATTER OF an appeal by PHILLIP WORTHINGTON against the determination made by Racing and Wagering Western Australia Stewards of Greyhound Racing on 30 November 2016, imposing three terms of disqualification of three years for breaches of Rule 86(o) of the Racing and Wagering Western Australia Rules of Greyhound Racing.**

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Mr T F Percy QC appeared for the Appellant.

Mr R J Davies QC appeared for the Racing and Wagering Western Australia Stewards of Greyhound Racing.

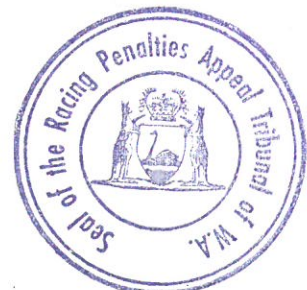
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By a unanimous decision of the members of the Tribunal, the appeal against penalty under Rule 86(o) is upheld. By majority decision, the period of disqualification is reduced from 3 years to 1 year.

*Dan Mossenson*

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**DAN MOSSENSON, CHAIRPERSON**



**RACING PENALTIES APPEAL TRIBUNAL**

**REASONS FOR DETERMINATION OF MR D MOSSENSON  
(CHAIRPERSON)**

**APPELLANT:** MR PHILLIP WORTHINGTON

**APPLICATION NO:** A30/08/795

**PANEL:** MR D MOSSENSON (CHAIRPERSON)  
MR A MONISSE (MEMBER)  
MR W CHESNUTT (MEMBER)

**DATE OF HEARINGS:** 28 FEBRUARY 2017

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Mr T F Percy QC appeared for the Appellant.

Mr R J Davies QC appeared for the Racing and Wagering Western Australia Stewards of Greyhound Racing.

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- 1 I have read the draft reasons of Mr W Chesnutt and am in agreement with what is therein stated up to and including paragraph 25. Mr Worthington pleaded guilty to the three improper conduct charges and only challenged the severity of the penalties

which were imposed. As the facts and circumstances relating to the offences are clearcut, I see no need to go over the background to the matter and am content to rely on Mr Chestnutt's summary and analysis. However, I do need to make the following observations and findings in order to explain the conclusion which I have reached.

2 This is an unusual case, being the first time the Stewards have had to deal with a breach of Greyhound Racing Rule 86(o), where the offending behaviour involved improper conduct for having euthanised greyhounds.

3 By letter dated 4 July 2016, the Stewards had written to Mr Worthington to express concerns regarding the number of healthy greyhounds that were being euthanised by him. The purpose of the letter was to serve as a caution and a clear message as Mr Worthington was one of a number of registered persons who had caught the Stewards' attention due to poor statistics and practices in this area. The letter in part stated:

*"...The entire greyhound industry now faces unprecedented scrutiny. We all must ensure our activities are both ethically and socially accepted, when retiring greyhounds from their racing careers. The euthanasia of otherwise fit and healthy greyhounds must only occur, if and when all other avenues of retirement have been exhausted." ...*

4 Mr Worthington clearly not only knew of the greyhounds as pets program but in fact had used it previously. Despite that, Mr Worthington did not heed the warning given to him in the Stewards' letter.

5 I too, like Mr Chesnutt, am satisfied that the appropriate type of penalty is a disqualification for this type of offence. Indeed, in my opinion it is the only type of penalty which reflects the seriousness of the wrongdoing. I do fully appreciate the importance of the greyhound racing industry's concerns over euthanasia of healthy greyhounds and the need to stop wastage of greyhounds once their racing careers are over.

6 I am very conscious of the special roles played by the Stewards in their diverse and important day to day functions. These responsibilities include managing the conduct of the sport, ensuring the integrity of the industry is upheld, being conscious of the importance of community attitudes and perceptions at this time of close scrutiny of the sport, enforcing compliance with the Rules and handing out appropriate punishments for offenders. As to the latter aspect, the Stewards enjoy a wide discretion. As a consequence, the onus is on an appellant in a case like the present to satisfy the Tribunal that the penalty which was imposed was categorically outside the discretionary range available to the decision-making Stewards.

7 Mr Davies argued that only the Stewards who dealt with the matter could appropriately judge the significance of this breach in terms of its impact on the continuance of the industry. By virtue of their day to day specialist role and continual interaction with the industry, the Stewards are much better placed compared to the Tribunal, to have an empathy for what is an appropriate punishment for this type of misconduct. As to this aspect, the Stewards stated in their reasons:

“6        *The Greyhound Industry is under tremendous scrutiny from the public and in particular welfare activists. Since the airing of the Four Corners programme in February 2015, the focus and attention on welfare matters in the greyhound industry has significantly increased. The unnecessary euthanasia of otherwise healthy post racing greyhounds has become a crucial issue and is constantly being thoroughly examined by the public at large and welfare groups. As a result, the industry finds itself under immense pressure to survive, with euthanasia rates, Australia wide, closely under the microscope.*”

8 As there are no other penalties which have been imposed for this type of manifestation of improper conduct to refer to, there is no range to rely on in making an assessment as to whether the Stewards have impliedly erred. This case has the potential to set a

precedent. The Tribunal should not lightly interfere with the Stewards' judgment of the severity of the penalty, but must carefully evaluate all of the relevant factors including the personal circumstances of the appellant and the background facts to the case.

9 This was not a case of a totally flagrant disregard of the Rules. Further, there is no evidence of any cruelty or suffering to any greyhound.

10 I am persuaded that the Stewards have not given a proper discount for Mr Worthington's antecedents, despite the fact that he obviously knew of the Rule and was in a position of responsibility and authority. In the circumstances of this case and partly because of it being a novel offence, a reduction of the severity of the penalty is appropriate. Mr Worthington's fall from grace has been greater due to the role he has played in the industry than in the case of a lesser contributor and participant.

11 I am not convinced that serving a full three years is appropriate in view of the fact that it is a new type of offence, the plea of guilty, the cooperation with the Stewards and Mr Worthington's contribution to the industry extending over many years. I have been persuaded that the individual penalties and the total effective sentence imposed on Mr Worthington were manifestly excessive in all the circumstances.

12 Absent the various factors I have mentioned, I would otherwise have been satisfied that a three year disqualification would not have been an unreasonable or excessive penalty. I am satisfied that a particularly tough penalty is necessary in the case of unjustified euthanasing of greyhounds both to punish the offender and as a lesson to others. It is important for a strong message to go out to the community that the greyhound industry is making appropriate endeavours to rehome its competitors once they are retired from the sport. But, in this particular case, I believe the Stewards have erred and should have been more lenient. Being punished by having to serve an embargo from participating in the sport in any way for three years is too severe in my assessment.

- 13 In order to ensure the appropriate tough message, I would endorse that lengths of disqualification imposed for each of the offences, namely three years in each case, but would suspend both the second and third years of each disqualification on the condition that Mr Worthington does not reoffend in respect of the same matter from now until those three year periods expire.
- 14 I would uphold the appeal on this basis.

*Dan Mossenson*

\_\_\_\_\_**DAN MOSSENSON, CHAIRPERSON**





**RACING PENALTIES APPEAL TRIBUNAL**

**REASONS FOR DETERMINATION OF MR W CHESNUTT (MEMBER)**

**APPELLANT:** MR PHILLIP WORTHINGTON

**APPLICATION NO:** A30/08/795

**PANEL:** MR D MOSSENSON (CHAIRPERSON)  
MR A MONISSE (MEMBER)  
MR W CHESNUTT (MEMBER)

**DATE OF HEARINGS:** 28 FEBRUARY 2017

**DATE OF**

**DETERMINATION:** 6 JULY 2017

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IN THE MATTER OF an appeal by PHILLIP WORTHINGTON against the determination made by Racing and Wagering Western Australia Stewards of Greyhound Racing on 30 November 2016, imposing three terms of disqualification of three years for breaches of Rule 86(o) of the Racing and Wagering Western Australia Rules of Greyhound Racing.

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Mr T F Percy QC appeared for the Appellant.

Mr R J Davies QC appeared for the Racing and Wagering Western Australia Stewards of Greyhound Racing.

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- 1 This is an appeal by Mr. Worthington against an effective penalty of 3 years disqualification, commencing on 21 November 2016, which was imposed on him by the RWWA Greyhound Stewards in a letter to that effect dated 30 November 2016 and sent to him by the Stewards as their reasons for penalty. In fact, there are 3 separate penalties each of 3 years disqualification, but the Stewards made them concurrent.

- 2 On 21 November 2016 at Ascot Racecourse the Stewards held an inquiry into the deaths of 3 greyhound racing dogs that had formerly been trained by Mr. Worthington, a licenced greyhound trainer. All 3 dogs had been retired from racing by Mr. Worthington and then subsequently euthanized. As a result of this inquiry, charges were laid against Mr. Worthington pursuant to Rule 86 (o), which reads:

86. *A person (including an official) shall be guilty of an offence if the person -*

*(o) 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;*

- 3 At the inquiry, the Stewards advised Mr. Worthington that each of the offences they were charging him with related to improper conduct under the rule (p. 37 of the transcript).
- 4 There were 3 charges. The first related to a dog called Jodal. The particulars of this charge were that Mr. Worthington "failed to present the greyhound Jodal to the Greyhound Adoption Program for assessment, as requested in a letter dated 4 July 2016, and in failing to do so you have in relation to greyhound racing omitted to do a thing, which, in the opinion of the stewards is improper."
- 5 The second dog was called Gox Rocks. The particulars of this charge were that Mr. Worthington "failed to present the greyhound Gox Rocks to the Greyhound Adoption Program for assessment, as requested in a letter dated 4 July 2016, having failed to do so you have, in relation to greyhound racing omitted to do a thing, which, in the opinion of the stewards is improper."



- 6 The third charge related to a dog called Groovy Bullet. The particulars of this charge were that Mr. Worthington “failed to make a reasonable effort to ensure that the greyhound Groovy Bullet, would be re-homed when taken to Murdoch University on the 24 August 2016, which resulted in the greyhound being euthanised and in so doing, you have in relation to greyhound racing omitted to do a thing, which, in the opinion of the stewards is improper.”
- 7 Mr. Worthington immediately pleaded guilty to each of these three charges when they were put to him at the hearing. He had earlier, during the inquiry stage of the hearing, given his explanations about what happened with each of the dogs.
- 8 A brief background to the facts underlying these charges is as follows.
- 9 On 4 July 2016 the stewards sent a letter to Mr . Worthington. It indicated to him that they had concerns about the number of greyhounds from his kennels that were being euthanised and pointed out that in the current climate where greyhound racing is facing increasing social disapproval it was necessary for all participants in the industry “to ensure that their activities are both ethically and socially accepted.”
- 10 The penultimate paragraph read as follows:

“We wish to point out to you that as a registered person, you are to ensure you conduct your affairs as an Owner or Trainer in such a way that it is not detrimental to the image of Greyhound racing. In that respect, participants are expected to make every effort and attempt to rehome greyhounds prior to euthanasia. Greyhounds should at the very least to be presented to GAP for assessment and all other rehoming options fully explored. Stewards will be monitoring future euthanasia rates for you. A failure to demonstrate reasonable efforts to apply alternative outcomes to euthanasia for greyhounds post racing life, may be considered by the Stewards to be an act detrimental to the image of

greyhound racing and raise serious questions as to whether you should continue to enjoy the privileges of holding a license with RWWA.”

- 11 It is clear enough that Mr. Worthington was making some efforts generally to rehome his greyhounds. On 10 August 2016 he presented four dogs to the Greyhound Adoption Program for assessment, one of which included Groovy Bullet. Groovy Bullet was assessed as being suitable for rehoming and Mr. Worthington donated him to Murdoch University in what he claimed was the belief that the University carried out a rehoming program. To this end he asserted that other dogs which he had donated to the University had been seen by him being walked in the streets and that he therefore held an honest belief that Groovy Bullet was likely to be rehomed.
- 12 Much was made during the course of the inquiry into the form that Mr. Worthington signed when he handed over the dog to the University, which included consent for euthanasia or rehoming at the discretion of the University. The Stewards appeared to take it for granted that this put Mr. Worthington on notice as to what the dog's fate would ultimately be. I struggle to accept this. All that the form did was to give to the University the power to decide for itself what the dog's fate would be, and whether they would rehome it or euthanise it.
- 13 Mr. Searle, the Deputy Chief Steward, and a witness at the inquiry, asserted his belief to the inquiry that it was not reasonable to believe that any dog being donated to the University would be rehomed. He quoted figures to show that only a small proportion of donated dogs were in fact rehomed.
- 14 Mr. Worthington claimed that he was not aware of those figures when he donated Groovy Bullet and did not become aware of them until he was told of them by Mr. Searle at a later time. He expressed dismay to the inquiry about what had happened to the dog and asserted that he would never again donate any dog to Murdoch University.

- 15 The Stewards did not make any positive finding that they disbelieved Mr. Worthington's claimed belief that the dog would be rehomed. On the evidence that was before the inquiry, it is difficult to see how they could have done so.
- 16 The circumstances concerning the other two dogs were different. There is no argument that neither of those was presented to the Greyhound Adoption Program for assessment. Mr. Worthington gave reasons during the inquiry as to why he did not present them for assessment. Instead, on or shortly after 24 August 2016 both dogs were euthanised.
- 17 Jodal was sent to Murdoch University, and Gox Rocks donated to Royal Perth Hospital.
- 18 Mr . Worthington gave explanations to the inquiry for his decision to proceed to have these animals euthanised rather than present them to the Greyhound Adoption Program for assessment.
- 19 In the case of Jodal, he indicated that the dog had a chipped wrist and that despite ongoing efforts by a vet to treat this, it continued periodically to flare up.
- 20 In the case of Gox Rocks, he gave evidence that the dog had bitten him at his kennels. He told the inquiry that it was only the second time any greyhound had ever bitten him, and he believed the animal was unsuitable to be a pet and would be a danger to children.
- 21 Ultimately, he conceded at the inquiry that nonetheless he ought to have presented these two dogs for assessment instead of substituting his own judgement about their unsuitability, and his plea of guilty to the charges reflects this.
- 22 Despite his plea of guilty, it seems that his understanding of the requirement to present the dogs for assessment was somewhat clouded on 24 August 2016. It does not appear to me

that his failure to present them was a contumelious disregard towards a direction from the Stewards. Rather, it appears that he thought at that time that he did not need to present the dogs to be assessed if they were, in his mind at least, clearly unsuitable for being rehomed as a pet. In the case of Gox Rocks, in particular, I think that his view deserves a degree of sympathy. As important as the public perception of Greyhound racing is, it cannot possibly take precedence over the possibility that the dog might in the future maim a child. Although it was wrong of Mr. Worthington to substitute his view for that of the proper assessing body, it does not seem to me that this was a wrong deserving of the condign sanction that the Stewards handed out to him.

- 23 The case with Jodal is less clear, but given the long and unsuccessful history of attempts by Mr. Worthington to treat this dog, it is clear at least that he was not cavalier in reaching his decision to have the dog euthanised rather than present it for assessment.
- 24 There is no question of any cruelty or suffering being involved in the fate of these dogs. All were humanely euthanised by veterinarians in a proper and acceptable fashion. The gravamen of this offence is that Mr. Worthington failed to take sufficient steps to present a socially acceptable face to the practice of racing greyhounds; particularly at a time when the very industry of racing greyhounds is under threat.
- 25 This appears to be the first case of its kind. Both counsel at the hearing told us that there has not been any other case in point that they are aware of. The requirement by the Stewards that all dogs should be assessed before euthanasia is considered for them is a relatively recent requirement. This is the first case where a trainer has failed to give effect to that requirement.
- 26 Mr. Davies QC, for the Stewards, argued that the 3 years disqualification was appropriate given the appellant's high profile role in the industry. Mr. Percy QC directed our attention to the South Australian case of Isaac, where Mr. T. Anderson QC as the President of the

Racing Appeals Tribunal, found that as the rule in question in that case had only recently been implemented, a discount in sentence could be given, without in any way setting a precedent for future cases. Mr. Percy QC argued that the approach of "a shot across the bows" was an appropriate course to take in this case.

27 I do not think that we have to decide whether to follow that course in this case. For present purposes, I am content to accept that a fairly lengthy period of disqualification should generally flow from a failure by a trainer to follow a direction given by the Stewards and, in particular, this direction to have dogs assessed by the Greyhound Adoption Program before considering euthanasia. The general range of such disqualification is not a matter which we need to determine on this occasion.

28 However, in this case, I think that Mr. Worthington's judgment was clouded by the matters I have referred to above. A lesser penalty should be applied to him than would normally be the case. This case should also serve as a clear warning to the industry that the policy of rehoming is to be taken seriously and that assessments by Greyhound Adoption Program should always be carried out.

29 I think that a 1 year term of disqualification on each charge is sufficient to meet the circumstances of Mr. Worthington's offending. The Stewards thought that the penalties should be concurrent and I agree. I would therefore reduce the penalty to a total of 1 year disqualification.



**WILLIAM CHESNUTT, MEMBER**





**RACING PENALTIES APPEAL TRIBUNAL**

**REASONS FOR DETERMINATION OF MR A MONISSE (MEMBER)**

**APPELLANT:** MR PHILLIP WORTHINGTON

**APPLICATION NO:** A30/08/795

**PANEL:** MR D MOSSENSON (CHAIRPERSON)  
MR A E MONISSE (MEMBER)  
MR W CHESNUTT (MEMBER)

**DATE OF HEARINGS:** 28 FEBRUARY 2017

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Mr T F Percy QC appeared for the Appellant.

Mr R J Davies QC appeared for the Racing and Wagering Western Australia Stewards of Greyhound Racing.

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I have read the draft reasons of Mr W Chesnutt, Member. I agree with those reasons and conclusions in allowing the Appellant's ground of appeal that the penalty imposed by the Stewards of 3 years disqualification was manifestly excessive in all the circumstances of the case. I have nothing further to add.

*A E Monisse*

**ANDREW MONISSE, MEMBER**

