

**CITATION:** *Edmondson v Queensland All Codes Racing Industry Board* [2016] QCAT 70

**PARTIES:** Julie Elizabeth Edmondson  
v  
Queensland All Codes Racing Industry Board

**APPLICATION NUMBER:** OCR183-15

**MATTER TYPE:** Occupational regulation matters

**HEARING DATE:** 9 May 2016

**HEARD AT:** Brisbane

**DECISION OF:** **Member Hughes**

**DELIVERED ON:** 12 May 2016

**DELIVERED AT:** Brisbane

**ORDERS MADE:** **1. The decision of the Queensland Racing Disciplinary Board on 22 September 2015 to warn off Julie Edmondson for five years is set aside and substituted with a decision to warn off Julie Elizabeth Edmondson for six years, from 29 April 2015.**

**CATCHWORDS:** GENERAL ADMINISTRATIVE REVIEW – DISCIPLINARY PROCEEDINGS - GREYHOUND RACING – LIVE BAITING – PENALTY – whether penalty appropriate - where licensee witnessed live baiting without actively participating – where licensee failed to report live baiting – where licensee swore false statutory declaration – where making positive statement about existence or non-existence of state of affairs different from exercising right to remain silent - whether appropriate to discount penalty for licensee cooperation with police - where licensee cooperated with police investigation but not Racing Queensland – where Racing Queensland did not receive benefit from licensee cooperation with police – where no evidence to support licensee followed up to ensure police information passed onto Racing Queensland – where penalty of eight to

ten years reflects community repugnance of live baiting and need to deter – where extended period will help to restore confidence and support of public in industry – where penalty should be at lower end of range to reflect licensee’s less active involvement – where discount for personal circumstances and belated cooperation – where purpose of penalty in disciplinary proceedings is protective rather than punitive – where penalty should deter without being oppressive - where six years warning off appropriate after applying discount for recent cooperation, otherwise unblemished record and personal circumstances including age, medical condition and impact on earning capacity

*Penalties and Sentences Act 1992, s 12*  
*Queensland Civil and Administrative Tribunal Act 2009, s 20*  
*Racing Act, s 4*

*Abbott v. Racing Queensland* [2012] QCAT 230  
*Bita v. Queensland All Codes Racing Industry Board t/as Racing Queensland* [2014] QCAT 460  
*Board of Professional Engineers of Queensland v. Bartilomo* [2006] CCT ED008-05  
*Board of Professional Engineers of Queensland v. Zaranis* [2009] CCT D001-09  
*Canty & Ors v. Greyhound Racing Victoria* [2015] VSC 71  
*Green v. Racing Queensland* [2012] QCATA 269  
*Kehl v. Board of Professional Engineers of Qld* [2010] QCATA 58  
*Lambourn v. Racing Queensland Limited* [2011] QCAT 488  
*Lawlor v. Racing Queensland Limited* [2012] QCAT 255  
*Leitenberger v. Racing Queensland* [2012] QCAT 248  
*Medical Board of Australia v. Martin* [2013] QCAT 376  
*R v. Kak* [2013] QCA 310  
*Racing Queensland v. Cullen* [2011] QCAT 393  
*Smith v. Racing Queensland* [2013] QCAT 23  
*Taylor and Anor v. Racing Queensland (No. 2)* [2011] QCAT 577  
*Thomas v. Racing Queensland* [2012] QCAT

436  
*Vains v. Racing Queensland Limited* [2010]  
 QCAT 669  
*Wiggins v. Racing Queensland* [2011] QCAT  
 370  
*Winchester v. Queensland Racing* [2010] QCAT  
 376

## **APPEARANCES and REPRESENTATION (if any):**

**APPLICANT:** Ms Julie Edmondson appeared for herself

**RESPONDENT:** Mr J M Horton of Queen’s Counsel with Mr D D Purcell of Counsel instructed by Clayton Utz appeared for Queensland All Codes Racing Industry Board

## **REASONS FOR DECISION**

### **What is this Application about?**

[1] Oft cited is the maxim:

*“Bad men need nothing more to compass their ends, than that good men should look on and do nothing.”<sup>1</sup>*

[2] Ms Edmondson is a greyhound breeder who witnessed the unlawful practice of live baiting in the racing industry but did not take any action to stop it. She did not intervene. She did not report it. When the Queensland All Codes Racing Industry Board investigated, she falsely denied seeing live baiting.

[3] Racing Queensland warned her off for life. On appeal, the Racing Disciplinary Board reduced the penalty to five years.

[4] Ms Edmondson has applied to the Tribunal to review the penalty. She submits that the penalty is too harsh for “simply knowing” about something.<sup>2</sup>

[5] The purpose of the review is to produce the ‘correct and preferable’ decision.<sup>3</sup> The Tribunal does this by a fresh hearing on the merits.<sup>4</sup> This

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<sup>1</sup> John Stuart Mill, 1867.

<sup>2</sup> Ms Edmondson also applied to restrict the penalty to non-breeding activities, but this option is not available under Rule 99 of the *Greyhound Australasia Rules* which prohibit warned off persons from all listed activities, including breeding. Even if it were, I would not be mindful to exercise it because of my reasoning in [8].

<sup>3</sup> *Queensland Civil and Administrative Tribunal Act 2009*, s 20(1).

<sup>4</sup> *Queensland Civil and Administrative Tribunal Act 2009*, s 20(2).

means that neither Ms Edmondson nor the Board need prove error in the decision being reviewed – that decision is not presumed correct.<sup>5</sup>

### **What are the circumstances of the conduct?**

- [6] ‘Live baiting’ aims to enhance performance and involves tying a live animal to a lure for the purpose of allowing a greyhound to catch the lure and savage it, causing the animal to bleed. Horrific injuries and painful deaths are frequent. The practice of live baiting has been judicially recognised as “abhorrent”.<sup>6</sup> It is cruel to animals and undermines the integrity of the industry.<sup>7</sup>
- [7] Central to penalty is the impact on the integrity of the industry as a whole.<sup>8</sup> Ms Edmondson still does not appear to fully appreciate the gravity and impact of her conduct. During the hearing, she stated that a five year warning off would be too harsh for “just knowing” about live baiting and that she just wants to breed dogs.
- [8] Although Ms Edmondson did not actively participate in live baiting, by not reporting it and continuing to supply dogs at the least amounts to tacit approval of the practice, and shows indifference to the welfare of animals. That is contrary to the statutory framework for the industry<sup>9</sup> and the very nature of a breeder’s role in the industry. Even if the Tribunal had the power, it would not be appropriate in these circumstances to impose a penalty that would apply only to Ms Edmondson’s trainer licence, yet allow her to continue breeding.
- [9] Ms Edmondson compounded her initial “turning a blind eye”, by then falsely asserting that she had not witnessed live baiting. Ms Edmondson claimed that this was because she had received legal advice to not say anything. However, exercising a legal right to remain silent is quite different from making a positive statement about the existence or non-existence of a state of affairs. Industry administrators rely on the integrity, honesty and forthrightness of licensees to assist them to properly administer their legislative obligations so that the industry does not fall into disrepute.<sup>10</sup>
- [10] Instead of remaining silent, Ms Edmondson chose to make a statement. That statement was not true. It was misleading to the extent that it would encourage investigators to focus their efforts elsewhere. This unnecessary diversion of resources helps the practice of live baiting to continue.

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<sup>5</sup> *Racing Queensland v. Cullen* [2011] QCAT 393 at [9], citing with approval *Kehl v. Board of Professional Engineers of Qld* [2010] QCATA 58 at [9].

<sup>6</sup> *Canty & Ors v. Greyhound Racing Victoria* [2015] VSC 71 at [8].

<sup>7</sup> *Racing Act*, s 4(1) provides the main purposes of the Act are to maintain public confidence in racing animals, ensure the integrity of persons involved and safeguard the welfare of all animals involved in racing.

<sup>8</sup> *Winchester v. Queensland Racing* [2010] QCAT 376 at [9].

<sup>9</sup> *Racing Act*, s 4(1) provides the main purposes of the Act are to maintain public confidence in racing animals, ensure the integrity of persons involved and safeguard the welfare of all animals involved in racing.

<sup>10</sup> *Thomas v. Racing Queensland* [2012] QCAT 436 at [20].

- [11] The purpose of a penalty is to ensure that the standards of the racing industry are upheld: this necessarily involves a penalty that has a deterrent effect and demonstrates to the public that this behaviour will not be tolerated.<sup>11</sup> This means that a penalty to deter both Ms Edmondson and others is warranted.

**To what extent does Ms Edmondson's co-operation mitigate penalty?**

- [12] In the appeal below, the Board reduced Ms Edmondson's penalty from ten years to five years:

The appellant has undoubtedly been of great assistance to the police and her cooperation will lead to the elimination of many offenders from the Greyhound Racing Industry, the majority of which were active participants in the live baiting of greyhounds and the provision of live animals for such purpose. It is suggested that her participation in live baiting was limited to be aware of it and lying about it rather than being a direct participant....

In this particular case Mrs Edmondson has proven that she has remorse for her activity as her actions in assisting the police in their investigations have resulted in her already having lost her property and her greyhounds, all of which were of significant breeding stock, and further of being ostracised by persons whom she regarded as friends during her association in the industry. That is something that she must live with for the remainder of her days but it is incumbent that this Board give recognition to her attempts to assist the authority.

In all of the circumstances this Board would normally have imposed a penalty of something in the order of eight to ten years warning off but proposes that a discount of 50% be allocated and substitutes a period of five years warning off as the penalty that is appropriate for her activities.<sup>12</sup>

- [13] Although the Board noted Ms Edmondson's limited involvement and her personal circumstances, I am satisfied that the main reason for the substantial discount was her cooperation with the police. However, the Board applied the discount not simply for the cooperation alone, but on the basis that it will lead to other offenders and, presumably, reduce live baiting.
- [14] Unfortunately, Ms Edmondson's cooperation was limited to the police and Racing Queensland did not receive any benefit from this to assist its own investigations:

At no time since 17 March 2015 has Ms Edmondson provided any assistance to Racing Queensland in respect of its investigations in relation to live baiting activities or any other matters.

I acknowledge that Ms Edmondson has provided assistance to police in respect of live baiting activities. Notwithstanding that assistance, Racing Queensland has not received any benefit from that assistance in that Racing Queensland

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<sup>11</sup> *Smith v. Racing Queensland* [2013] QCAT 23 at [11]; *Vains v. Racing Queensland Limited* [2010] QCAT 669 at [48].

<sup>12</sup> Queensland Racing Disciplinary Board Appeal Decision dated 22 September 2015.

has not received any advice or information from the police (whether provided by Ms Edmondson or otherwise) that is capable of assisting Racing Queensland's investigations to date.<sup>13</sup>

- [15] I am not satisfied that a substantial discount is warranted in disciplinary proceedings for cooperation with the police that does not assist the disciplinary authority with its own investigations. The basis for a substantial discount is the public interest in bringing transgressors to justice.<sup>14</sup> Because of the limited nature of Ms Edmondson's cooperation, that is yet to be achieved.
- [16] Ms Edmondson claimed that she understood that the police would pass on her information to Racing Queensland. However, Ms Edmondson cannot transfer to other authorities her responsibility to cooperate. A person who is genuinely remorseful about their involvement with wrong practices and concerned about the impact of those practices on the industry and animals involved, will be motivated to do all they can to prevent their recurrence. Ms Edmondson provided no supporting evidence to indicate that she followed up with the police or Racing Queensland to ensure her information was passed on.
- [17] Ms Edmondson did not provide assistance to Racing Queensland until recently: she denied her presence at and knowledge of live baiting in her Statutory Declaration sworn 28 February 2015, she repeated this at the initial Board interview on 17 March 2015, and did not tell Racing Queensland of her co-operation with the police at her 'show cause' hearing on 28 April 2015. Ms Edmondson maintained her stance up to and including the first disciplinary hearing on 22 September 2015.
- [18] During the hearing, Racing Queensland acknowledged that it will receive some benefit from Ms Edmondson's recent cooperation. I am satisfied that some discount should be applied to penalty to reflect this, but not to the extent of 50% allowed by the Board in the appeal below.

### **How does the present application compare with previous decisions?**

- [19] The Board submitted that the appropriate penalty is in the range of a warning off for eight to ten years, with only a small reduction (if any) for Ms Edmondson's co-operation with the police. Ms Edmondson submitted that a warning off for two years would be appropriate.
- [20] In the absence of Tribunal decisions on live baiting, Mr Horton assisted me with decisions on live baiting from the Board and other jurisdictions.
- [21] The Tribunal has previously expressed reticence in aligning Queensland penalties with other States, without notice to the industry.<sup>15</sup> It is for this reason that I approach the decisions of other jurisdictions with caution,

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<sup>13</sup> Affidavit of James Leonard Dart, Acting Head of Integrity, sworn 19 February 2016.

<sup>14</sup> *R v. Kak* [2013] QCA 310 at [43].

<sup>15</sup> *Taylor and Anor v. Racing Queensland (No. 2)* [2011] QCAT 577 at [6], citing with approval *Wiggins v. Racing Queensland* [2011] QCAT 370.

where the recommended ten year bans in guidelines have often been considered a minimum penalty.<sup>16</sup>

- [22] The Tribunal has also previously recognised the need for consistency of penalty.<sup>17</sup> Within this context, I have carefully reviewed recent Board decisions in Queensland.
- [23] In *Thompson*,<sup>18</sup>*Ball*,<sup>19</sup>*Paull*<sup>20</sup> and *Chapman*<sup>21</sup> the Board imposed a penalty of a ten year warning off. Like *Thompson*, *Ball* and *Paull*, Ms Edmondson did not cooperate with Racing Queensland. However, unlike *Thompson*, *Ball*, *Paull* and *Chapman* Ms Edmondson did not actively participate in live baiting. This suggests a lesser penalty to reflect Ms Edmondson's lesser involvement.
- [24] In *Campbell*,<sup>22</sup>*Kunde*,<sup>23</sup>*Gatti*<sup>24</sup> and *Pollock*<sup>25</sup> the Board also imposed a penalty of a ten year warning off. Unlike *Campbell*, *Kunde*, *Gatti* and *Pollock* Ms Edmondson did not pay for and participate in the trial. This again suggests a lesser penalty to reflect Ms Edmondson's lesser involvement.
- [25] In *Sykes*,<sup>26</sup> the Board imposed a penalty of time served, on the basis that Mr Sykes was suffering from a serious depressive illness. However, a Consultant Psychiatrist gave unrefuted evidence that the condition had been untreated for four to five years. The medical evidence does not suggest that Ms Edmondson's anxiety is of the same severity or effect to warrant a similar penalty.
- [26] *Druery*<sup>27</sup> is most apposite. The Board imposed a penalty of eight years warning off. Like *Druery*, Ms Edmondson did not actively participate in live baiting but failed to report her observations to authorities. Unlike *Druery*, Ms Edmondson provided a false Statutory Declaration, but also provided some (albeit recent) cooperation to Racing Queensland.

### **What is the appropriate penalty?**

- [27] Imposing a penalty involves a balance between the severity of the offence, the need for deterrence and any mitigating factors.<sup>28</sup>

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<sup>16</sup> Victorian Racing Appeals Disciplinary Board decisions of *Roberts*, *Connolly*, *Mills*, *Sykes*, *Reynolds*, *King*, *Smith*.

<sup>17</sup> *Leitenberger v. Racing Queensland* [2012] QCAT 248 at [9] and *Lawlor v. Racing Queensland Limited* [2012] QCAT 255 at [24], citing with approval *Abbott v. Racing Queensland* [2012] QCAT 230; *Lambourn v. Racing Queensland Limited* [2011] QCAT 488 at [4].

<sup>18</sup> Queensland Racing Disciplinary Board Appeal Decision dated 29 March 2016.

<sup>19</sup> Queensland Racing Disciplinary Board Appeal Decision dated 3 March 2016.

<sup>20</sup> Queensland Racing Disciplinary Board Appeal Decision dated 24 June 2015.

<sup>21</sup> Queensland Racing Disciplinary Board Appeal Decision dated 6 May 2015.

<sup>22</sup> Queensland Racing Disciplinary Board Appeal Decision dated 26 November 2015.

<sup>23</sup> Queensland Racing Disciplinary Board Appeal Decision dated 26 November 2015.

<sup>24</sup> Queensland Racing Disciplinary Board Appeal Decision dated 24 November 2015.

<sup>25</sup> Queensland Racing Disciplinary Board Appeal Decision dated 12 November 2015.

<sup>26</sup> Queensland Racing Disciplinary Board Appeal Decision dated 16 February 2016.

<sup>27</sup> Queensland Racing Disciplinary Board Appeal Decision dated 26 August 2016.

<sup>28</sup> *Seymour v. Racing Queensland Limited* [2012] QCAT 241 at [53].

- [28] Live baiting is a blight on humanity. A warning off of eight to ten years reflects community repugnance of live baiting and reflects the need to deter this egregious practice. An extended period will help to restore public confidence in the industry.<sup>29</sup> However, like *Druery*, Ms Edmondson's penalty should be at the lower end to reflect her less active involvement, equating to eight years before applying any discount.
- [29] During the hearing, Ms Edmondson gave evidence that she has since been convicted in the Magistrates Courts of charges arising out of these circumstances. Ms Edmondson was unable to say whether the learned Magistrate recorded a conviction. Mr Horton of Queen's Counsel for the Board submitted that I may still consider the conviction to impose a higher penalty, even if no conviction was recorded.<sup>30</sup> However, I am not prepared to do this in the absence of supporting evidence of any convictions, the sentence imposed and accompanying sentencing remarks.
- [30] Ms Edmondson is a 64 year old lady who has held a trainer licence in the industry for 46 years without incident, until the circumstances for these proceedings. Her only source of income is the pension. She is an acclaimed breeder who has suffered and will continue to suffer loss, to her health,<sup>31</sup> reputation and financially as a result of her regretful conduct.
- [31] Ms Edmondson is understandably concerned about an extended penalty preventing her from returning to breeding dogs. During the hearing, Ms Edmondson testified that she has frozen breeding semen that is three years into a life expectancy of ten years. The purpose of disciplinary proceedings is protective rather punitive.<sup>32</sup> A penalty in disciplinary proceedings should have a deterrent effect without being oppressive.<sup>33</sup> The penalty should reflect this by allowing Ms Edmondson to continue that bloodline and return to her main source of income in the future, obviating any oppression to her.
- [32] After applying a discount for her - albeit belated – cooperation, otherwise unblemished record, and personal circumstances<sup>34</sup> including her age, medical condition and impact on her earning capacity, I have formed the view that the appropriate penalty is a warning off for six years from 29 April 2015, the date when the original penalty was imposed,<sup>35</sup> to allow for time already served.

### **What is the appropriate Order?**

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<sup>29</sup> *Green v. Racing Queensland* [2012] QCATA 269 at [17]; *Lawlor v. Racing Queensland Limited* [2012] QCAT 255 at [28].

<sup>30</sup> *Penalties and Sentences Act 1992*, s 12(4).

<sup>31</sup> Medical Certificate of Dr Md Islam dated 06 November 2015 certifying that Ms Edmondson suffers from anxiety since at least 10 February 2015.

<sup>32</sup> *Medical Board of Australia v. Martin* [2013] QCAT 376 at [91] to [93].

<sup>33</sup> *Board of Professional Engineers of Queensland v. Bartilomo* [2006] CCT ED008-05;

*Board of Professional Engineers of Queensland v. Zaranis* [2009] CCT D001-09.

<sup>34</sup> In *Bitá v. Queensland All Codes Racing Industry Board t/as Racing Queensland* [2014] QCAT 460 at [16], the Tribunal similarly applied a discount for a person's personal situation, age, financial resources and longstanding good record in the industry.

<sup>35</sup> Racing Queensland Board Decision dated 29 April 2015.



- [33] The Tribunal orders that the decision of the Queensland Racing Disciplinary Board on 22 September 2015 to warn off Julie Edmondson for five years is set aside and substituted with a decision to warn off Julie Elizabeth Edmondson for six years, from 29 April 2015.