

# Racing Appeals & Disciplinary Board

## Media Release

11<sup>th</sup> November 2015

### Decision

# Racing Appeals & Disciplinary Board

Date of Hearing: 16 June and 26 October 2015

Panel: Mr. John Wardle (Chairman) and Mr. Terry O'Connor (Deputy Chairman)

Name of Person Charged: Mr. Dennis Dean

Suburb: Nyora

Track: Tooradin Trial Track

Breaches of rules: LRR 18.5, GAR 86(af)

### Offences Charged:

- (1) Dennis Dean did, on 18 November 2014 at Tooradin, on an occasion other than those occasions referred to in Charges 3 & 4 and Charges 5 & 6 and Charges 7 & 8 herein, use or cause to be used a live animal (namely, a live rabbit) for the exciting of two greyhounds (namely, two black greyhounds, one with white markings on its chest and neck and the other with white markings on its chest, both greyhounds being handled by him) whilst Stuart Mills had the live rabbit on a leash and then as a lure for those greyhounds on a greyhound trial track (namely, the Tooradin Trial Track located at 175 Harewood-Mains Road, Tooradin), the live rabbit having been attached to the lure arm by Stuart Mills.
- (2) Dennis Dean did, on 18 November 2014 at Tooradin, on an occasion other than those occasions referred to in Charges 3 & 4 and Charges 5 & 6 and Charges 7 & 8 herein, use an animal (namely, a live rabbit) for a purpose connected with greyhound racing in a manner which was improper, namely, the exciting of two black greyhounds, one with white markings on its chest and neck and the other with white markings on its chest, both greyhounds being handled by him whilst Stuart Mills had the live rabbit on a leash and then as a lure for those greyhounds at the Tooradin Trial Track located at 175 Harewood-Mains Road, Tooradin, the live rabbit having been attached to the lure arm by Stuart Mills.
- (3) Dennis Dean did, on 18 November 2014 at Tooradin, on an occasion other than those occasions referred to in Charges 1 & 2 and Charges 5 & 6 and Charges 7 & 8 herein, use or cause to be used a live animal (namely, a live rabbit) for the exciting of two black greyhounds (both with white chests and necks being handled

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by him) whilst Stuart Mills had the live rabbit on a leash on a greyhound trial track, namely, the Tooradin Trial Track located at 175 Harewood-Mains Road, Tooradin.

- (4) Dennis Dean did, on 18 November 2014 at Tooradin, on an occasion other than those occasions referred to in Charges 1 & 2 and Charges 5 & 6 and Charges 7 & 8 herein, use an animal (namely, a live rabbit) for a purpose connected with greyhound racing in a manner which was improper, namely, the exciting of two black greyhounds (both with white chests and necks, being handled by him), whilst Stuart Mills had the live rabbit on a leash at the Tooradin Trial Track located at 175 Harewood-Mains Road, Tooradin.
- (5) Dennis Dean did, on 18 November 2014 at Tooradin, on an occasion other than those occasions referred to in Charges 1 & 2 and Charges 3 & 4 and Charges 7 & 8 herein, use or cause to be used a live animal (namely, a live rabbit) for the exciting of a black greyhound with a white spot on its chest which was being handled by him whilst Stuart Mills had the live rabbit on a leash on a greyhound trial track, namely, the Tooradin Trial Track located at 175 Harewood-Mains Road, Tooradin.
- (6) Dennis Dean did, on 18 November 2014 at Tooradin, on an occasion other than those occasions referred to in Charges 1 & 2 and Charges 3 & 4 and Charges 7 & 8 herein, use an animal (namely, a live rabbit) for a purpose connected with greyhound racing in a manner which was improper, namely, the exciting of a black greyhound with a white spot on its chest which was being handled by him whilst Stuart Mills had the live rabbit on a leash at the Tooradin Trial Track located at 175 Harewood-Mains Road, Tooradin.
- (7) Dennis Dean did, on 18 November 2014 at Tooradin, on an occasion other than those occasions referred to in Charges 1 & 2 and Charges 3 & 4 and Charges 5 & 6 herein, use or cause to be used a live animal (namely, a live rabbit) for the exciting of two greyhounds (namely, two black greyhounds, one with white markings on its chest and the other with white markings on its chest and neck being handled by him) whilst Stuart Mills had the live rabbit on a leash and then as a lure for those greyhounds on a greyhound trial track, (namely, the Tooradin Trial Track located at 175 Harewood-Mains Road, Tooradin).
- (8) Dennis Dean did, on 18 November 2014 at Tooradin, on an occasion other than those occasions referred to in Charges 1 & 2 and Charges 3 & 4 and Charges 5 & 6 herein, use an animal (namely, a live rabbit) for a purpose connected with greyhound racing in a manner which was improper, namely, for the exciting of two greyhounds (namely, two black greyhounds, one with white markings on its chest and the other with white markings on its chest and neck and being handled by him) whilst Stuart Mills had the live rabbit on a leash, and then as a lure for those greyhounds at a greyhound trial track, namely, the Tooradin Trial Track located at 175 Harewood-Mains Road, Tooradin.

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## A. Background

This serious offence hearing of the RADB commenced on 16 June 2015 and was adjourned part-heard. The hearing resumed on Monday 26 October 2015.

Mr. Dennis Dean was represented by Mr. Mark Higgins of the Sydney Bar, instructed by Murphy's Lawyers Solicitors Sydney.

Mr. Paul Holdenson QC, instructed by Corrs Chambers Westgarth represented the Stewards Panel.

Mr. Glenn Fish (GRV Chief Steward), Mr. Carl Scott (GRV Steward) and Mr. Ron Matthews (GRV Steward) appeared as witnesses.

Mr. Holdenson tendered various material including footage of activities at the Tooradin Trial track.

After all the evidence had been given Mr. Holdenson and Mr. Higgins made closing submissions and the RADB reserved its decision which it now sets out below.

## B. Decision

**1.** The evidence before the RADB board was video footage of activities at the Tooradin Trial Track on 18 November 2014. That footage showed Mr. Dean engaging in all the matters the subject of the charges set out above and as particularised by the Stewards. These were separate instances involving the use of a live rabbit to excite a greyhound and further the use of a live rabbit as a lure for the trialling of a greyhound. The RADB were comfortably satisfied that the offences had been proven. Mr. Dean is therefore found guilty on each of charges 1 to 8. The RADB noted that if the charges were established then the Stewards had foreshadowed seeking a penalty on one only of each set of paired charges.

**2.** Considerable time was taken at the hearing in establishing that it was in fact Mr. Dean that was shown on the footage. This was so because only fleeting glimpses of him were apparent and in some cases in a crouching position wearing a cap. However the RADB heard and accepted clear and affirmative identification evidence from Mr. Glenn Fish GRV Chief Steward and Stewards Messrs Ron Matthews and Carl Scott. It must also be noted that whilst no admissions were made Mr. Dean's Counsel did not address identification in his final submissions.

**3.** Before the RADB Mr. Dean's submission was that the Stewards charges failed at the outset as there was a departure from the principles of procedural fairness. It was put in a subtly developed argument that a substantial injustice had been worked against Mr. Dean. Although not a court of law the RADB as a statutory tribunal must and does act fairly. The essential point being that the Stewards before bringing these charges had not verified the integrity and provenance, i.e legally obtained or otherwise of the Tooradin Trial Track footage and had made their case in a way that was unfair to Mr. Dean. It was unfair because

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Mr. Dean would be required to accept the evidential burden of raising and proving matters of integrity and legality.

4. With respect to the argument advanced and summarised in para. 3 above the RADB considered it misconceived for a number of reasons. First in the earlier matter of Mackie in a ruling made on 8 July 2015 the RADB had dealt with and rejected a similar argument. Secondly the evidence was that the footage had been provided by the Racing Integrity Commissioner to the GRV (and other bodies) to enable it, the GRV, to investigate the content. There is an element of unreality to expect the GRV having received the footage from such a person but be then charged with the obligation of establishing the manner in which it had been obtained. It was common ground that the footage had been obtained covertly but that is not necessarily a bar to usage nor a breach of the Victorian Surveillance Devices Act 1999. Thirdly the evidence from the Stewards more than met any objection (which in fact was not made) that the footage had been edited or doctored in some way to the disadvantage of Mr. Dean –refer R v Chen [1993] 2 V R 139 at pp 149-150.. Fourthly the RADB had regard to the terms of Section 138 of the Evidence Act. Strictly the RADB is not a court of law and not bound by the rules of evidence. That said it is empowered by Statute to make decisions having regard to ‘...the interests of justice...’ –see Racing Act section 830 (1) (b). It considered that the probative value of the footage and the desirability of receiving it into evidence more than outweighed any prejudice to Mr. Dean even if a case had been made out that the footage had been illegally or improperly obtained by GRV –which was not the case. No injunctive application has been made to the knowledge of the RADB in respect of usage of the footage – refer ABC v Lenah Game Meats Pty Ltd [2001] HCA 63.

5. The RADB requests that the Solicitors for the Stewards and Mr. Dean agree and confirm with the RADB registrar a convenient time to address the question of penalty. In the absence of timely agreement the RADB will fix a date to receive submissions as to penalty. Having regard to Mr. Dean’s interstate representation, if he were so minded, any representations as to penalty could be made by written submissions with a right of response to the Stewards.

J.F. Wardle,

Chairman.

**For More Information:**

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